

# Implementation of Toxic Substances Control Act (TSCA) Amendments (P.L. 114-182)

June 7, 2017 (IN10713)

---

## Related Author

---

- [Jerry H. Yen](#)

---

Jerry H. Yen, Analyst in Environmental Policy ([jyen@crs.loc.gov](mailto:jyen@crs.loc.gov), 7-9113)

---

Since President Obama signed the Frank R. Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act ([P.L. 114-182](#)) on June 22, 2016, the U.S. Environmental Protection Agency (EPA) has been implementing the act's amendments to Title I of the Toxic Substances Control Act (TSCA; [15 U.S.C. 2601-2629](#)). TSCA as amended establishes a framework to identify commercial chemicals that present unreasonable risks and to regulate the product life cycle of a chemical (i.e., manufacture or importation, processing, distribution, use, and disposal) so that it no longer presents unreasonable risk. Nearly one year after the enactment of [P.L. 114-182](#), EPA continues to take steps toward potential regulation of existing chemicals under the amended statute, though it has not promulgated any regulation that restricts activities associated with the existing use of any chemical. This CRS Insight summarizes select EPA actions to implement the TSCA amendments.

## Designation of Active or Inactive Substances on the TSCA Inventory

[P.L. 114-182](#) requires EPA to determine which chemicals covered by TSCA (i.e., more than 84,000 chemicals listed on the [TSCA inventory](#)) are active or inactive in commerce. EPA has proposed a rule to require reporting from chemical manufacturers to support such agency determinations ([82 Federal Register 4255](#), January 13, 2017). Active chemicals would generally receive priority for risk evaluation by the agency.

## Substantiation of Confidential Business Information

[P.L. 114-182](#) provides additional procedures and standards for confidential treatment or disclosure of certain information submitted to EPA under TSCA. Without undergoing rulemaking, EPA has interpreted amended TSCA Section 14 to require substantiation of confidential business information at the time of the information submission ([82 Federal Register 6522](#), January 19, 2017). Prior to the amendments, information submitted to EPA and claimed to warrant confidential treatment was generally presumed confidential without substantiation unless EPA expressed its intent to disclose the information and showed that it did not warrant confidential treatment.

## Prioritization of Chemicals for Risk Evaluation and Chemical Risk Evaluations

[P.L. 114-182](#) amended TSCA to direct EPA to prioritize existing chemicals for risk evaluation to determine whether such chemicals present unreasonable risks. Additionally, [P.L. 114-182](#) specifies certain requirements and deadlines with regard to completing risk evaluations. For example, amended TSCA requires EPA to determine unreasonable risks without consideration of costs and other nonrisk factors. EPA has proposed rules that would establish procedures for prioritization and evaluation of chemicals ([82 Federal Register 4825](#), January 17, 2017; and [82 Federal Register 7562](#), January 19, 2017). EPA proposed that the agency would prioritize chemicals for risk evaluation based on several screening criteria and considerations and evaluate chemicals through several phases: scope determination (including a conceptual model and an analysis plan), hazard and exposure assessments, and risk characterization and determination.

Separately, as required by [P.L. 114-182](#), EPA has prioritized the first 10 chemicals for risk evaluation ([81 Federal Register 91927](#), December 19, 2016) while developing the prioritization procedures described above. The first 10 chemicals selected for risk evaluation are:

- 1,4-dioxane;
- 1-bromopropane;
- asbestos;
- carbon tetrachloride;
- cyclic aliphatic bromide cluster (HBCD);
- methylene chloride;
- n-methylpyrrolidone;
- Pigment Violet 29;
- trichloroethylene; and
- tetrachloroethylene.

Based on statutory criteria regarding the extent that a chemical is persistent and bioaccumulative, EPA has also [identified](#) particular applications of five chemicals for which the agency would develop risk management rules without risk evaluation. These five chemicals are:

- decabromodiphenyl ether (DecaBDE), used as a flame retardant in textiles, plastics, and polyurethane foam;
- hexachlorobutadiene (HCBD), used in the manufacture of rubber compounds and lubricants and as a solvent;
- pentachlorothiophenol (PCTP), used to make rubber more pliable in industrial uses;
- tris(4-isopropylphenyl) phosphate, used as a flame retardant in consumer products and other industrial applications; and
- 2,4,6-tris(tert-butyl)phenol, used as a fuel, oil, gasoline, or lubricant additive.

#### Proposed Chemical Risk Management Rules

EPA has proposed rules to regulate specific uses of three chemicals under the amended TSCA. Risk evaluations for these chemicals were completed prior to enactment of [P.L. 114-182](#). Based on the risk evaluations, EPA proposed to prohibit the manufacture, importation, processing, and distribution in commerce of:

- trichloroethylene in commercial and consumer aerosol degreasing and as a spot cleaner in dry cleaning ([81 Federal Register 91592](#), December 16, 2016);
- trichloroethylene in vapor degreasing ([82 Federal Register 7432](#), January 19, 2017); and
- methylene chloride for consumer and most commercial paint and coating removal and n-methylpyrrolidone when used as a paint remover ([82 Federal Register 7464](#), January 19, 2017).

#### New Chemical and Significant New Use Reviews

With regard to new chemicals and significant new uses of existing chemicals, TSCA as amended requires the agency to determine, prior to their introduction into commerce, whether such chemicals or uses present unreasonable risk. If the agency has insufficient information to determine whether a new chemical or significant new use presents unreasonable risks, TSCA authorizes EPA to require the development of new information for purposes of making such a determination. Before [P.L. 114-182](#), EPA had discretionary authority to review new chemicals and significant new uses and was not required to make a determination regarding unreasonable risk. Since the enactment of [P.L. 114-182](#), EPA

has made a number of determinations regarding new chemicals and significant new uses and has published them on the agency [website](#).

### Appropriations and TSCA Service Fees

[P.L. 114-182](#) authorizes EPA to collect fees from chemical manufacturers and processors for certain information submissions. Fees are intended to supplement discretionary appropriations provided to administer TSCA. EPA has [announced](#) that a rule governing TSCA service fee collection is under development.

### Concluding Observations

As EPA continues to implement the amended TSCA, the agency will be making various implementation decisions of interest to stakeholders. For example, completion of chemical risk evaluations will depend on whether adequate information is available to the agency to make risk determinations and the level of resources available to EPA. It remains to be seen which additional chemicals EPA would prioritize for risk evaluation, which chemicals would be determined to present unreasonable risks, what regulatory controls would be proposed and finalized, whether stakeholders would challenge EPA decisions in court, and the outcome of any litigation.