

Identifying the First 10 Priority Chemicals

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One of the major pillars of TSCA reform has been mandating the review of existing chemicals. However, this process could take decades: as of today, the TSCA Inventory has over 85,000 chemicals, including 62,000 that were grandfathered into the inventory without any sort of risk review. To jumpstart EPA's review of that list, **the new law mandates that EPA identify 10 "high priority" chemicals by December 22, 2016** to begin review immediately, without waiting for the procedural framework to be finalized.

Once these first 10 chemicals are designated as high priority, they will undergo a risk evaluation. If during the risk evaluation, the chemical is shown to present "unreasonable risks," the chemical will subsequently be regulated in some capacity. The statute requires that these first 10 high priority chemicals be drawn from the 2014 update to the TSCA Work Plan for Chemical Assessments, which includes 89 possible candidates.

During the selection process for the first 10, EPA is to give preference to chemical substances that are listed in the 2014 Work Plan that:

1. Are listed as having a Persistence and Bioaccumulation score of 3; and
2. Are known human carcinogens and have high acute and chronic toxicity.

Currently, there are 25 chemicals on the Work Plan that would meet either one or both of those two recommendations. However, EPA also is able to consider other factors, which may lead them to pick different chemicals.

Practice Areas

Environment & Product Regulation
Toxic Substances Control Act (TSCA)

Since the Lautenberg Act enactment, several groups and individuals have weighed in with their ideal candidates for the first 10 priority chemicals. Some have focused on a single chemical. For example, Senators Boxer and Feinstein (D-CA) have both urged EPA to include asbestos on the list of 10, along with industry group Motor & Equipment Manufacturers Association (MEMA). For her part, Senator Kirsten Gillibrand (D-NY) urged the EPA to prioritize regulatory assessment of perfluorooctanoic acid (PFOA), even though it is not currently listed on the TSCA Work Plan.

But others have provided more comprehensive lists. The Environmental Working Group released a list of 10 possible chemicals (as well as 10 alternates) that would be their ideal first 10 priority chemicals. A different coalition of over 60 NGOs (including EarthJustice and NRDC) also put together a list of their ideal first 10 candidates. Asbestos, PERC, BPA, and brominated flame retardants are present on both of these lists.

For any of the first 10 chemicals identified by EPA this upcoming December, EPA will have until June 22, 2020, to finalize the risk evaluations. From there, a Final Rule outlining possible restrictions or bans would have to be published by June 22, 2024, at the very latest.