

TSCA: It Is Not What You May Think



RETAIL INDUSTRY LEADERS ASSOCIATION

The Retail Industry Leaders Association (RILA) is the US trade association for retailers that have earned leadership status by virtue of their sales volume, innovation or aspiration. We convene decision-makers to collaborate and gain from each other's experience. We advance the industry through public-policy advocacy and promote operational excellence and innovation. And through research and thought leadership, we propel developments that foster both economic growth and sustainability.

Our aim is bold but simple: to elevate a dynamic industry by transforming the environment in which retailers operate.

<https://www.rila.org/>

RETAIL COMPLIANCE CENTER

The Retail Compliance Center has a number of resources related to environmental compliance and sustainability that apply in retail including introductory information as well as detailed reviews of regulations and variations in state requirements.

www.rila.org/rcc



Webinars



Fact Sheets



Tracking Matrices



Retail Advisor



Newsletters

HOUSEKEEPING

Everyone is muted upon entry

- This reduces background noise during the webinar.

Recording

- The webinar is being recorded and will be housed on the RCC site for future views. The slide deck will also be posted to the RCC site.

Posing a question/commenting

- Please use the Q&A box to pose questions or comments.
- Questions and comments posed will go directly to the speakers and moderators.
- Questions will be answered after the conclusion of the speakers' presentation.

Webinar Feedback Survey

- Survey launched during Q&A as live poll

ANTITRUST STATEMENT

RILA believes strongly in competition. Our antitrust laws are the rules under which our competitive system operates. It is RILA's policy to comply with both the letter and the spirit of antitrust laws. This Antitrust Statement has been adopted to avoid even the appearance of impropriety under the antitrust laws.

At any association meeting, participants must avoid any discussion of the following subjects in order to avoid even an appearance of impropriety:

- **Do not** discuss current or future prices, price quotations or bids, pricing policies, discounts, rebates, or credit terms.
- **Do not** discuss cost information such as production costs, operating costs, or wage and labor rates.
- **Do not** discuss profits or profit margins, including what is a "fair" profit margin.
- **Do not** discuss allocating markets, territories, or customers.
- **Do not** discuss current or future production or purchasing plans, including plans to take facility downtime, production quotas, or limits on output.
- **Do not** discuss refusing to deal with any suppliers, customers, or competitors (or any class or type of suppliers or customers).
- **Do not** require or pressure any supplier, customer, or competitor to adopt any particular actions or policies.
- Never agree on any aspect of future pricing or output.

Do not engage in prohibited discussions before a meeting or after a meeting is over. These antitrust guidelines apply not only in formal RILA meetings, but also in hallways, casual conversations, phone calls, emails, text messages, cocktail parties, golf outings, or any other setting that is related in any way to the RILA. If you have questions or concerns, or if you are uncertain about the propriety of any subject of discussion or proposed activity, you should stop the discussion immediately and bring the issue to the attention of RILA staff or consult your company's general counsel.

WEBINAR OVERVIEW

- What the Toxic Substances Control Act (TSCA) is and why it matters to retailers
- What retailers need to know about their products
- What steps to take after the webinar

TODAY'S SPEAKER



Lynn L. Bergeson
Managing Partner,
Bergeson & Campbell, P.C.

Retail Industry Leaders Association Retail Compliance Center Webinar

TSCA: It Is Not What You May Think June 10, 2021

Lynn L. Bergeson
Managing Partner, Bergeson & Campbell, P.C.
President, The Acta Group



TSCA

It Is Not What You May Think



A dramatic scene from a stage production. A woman with an elaborate hairstyle, wearing a red dress with gold embroidery and a long blue cape, leans over a man lying on his back on the floor. The man is wearing a white shirt and a dark vest. The background features dark wood paneling, a red upholstered chair, and a candelabra on a table.

TSCA

It Is Not What You May Think

Agenda

- Historical Background on TSCA
- Reasons Leading to 2016 Amendments
- Focus on TSCA and Retail Operations
- Q&A

TSCA: At a Glance

- Enacted in 1976



TSCA: At a Glance

- **Enacted in response to awareness of chemical exposures' potential to harm human health and the environment**





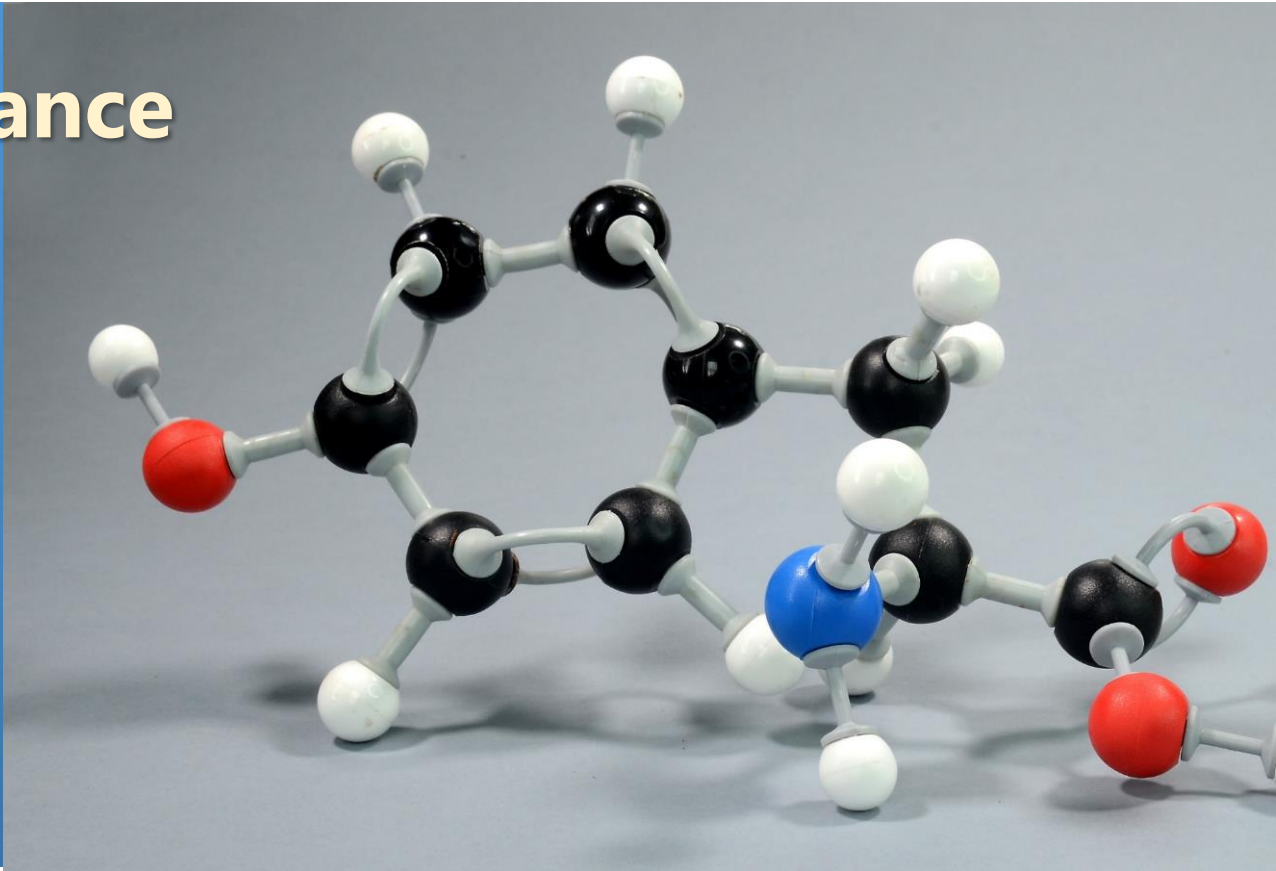


TSCA: At a Glance

- Three overarching goals:

TSCA: At a Glance

1. Adequate data on chemicals (responsibility of manufacturers and processors)



TSCA: At a Glance

2. Adequate authority to regulate chemicals



TSCA: At a Glance

3. EPA's authority is exercised in a way that does not impede unduly innovation



TSCA applies broadly to any “chemical substance”



TSCA applies broadly to: Chemical PRODUCERS (including importers)



TSCA applies broadly to: Chemical PROCESSORS



TSCA applies broadly to: Chemical DISTRIBUTORS TRANSPORTERS EXPORTERS



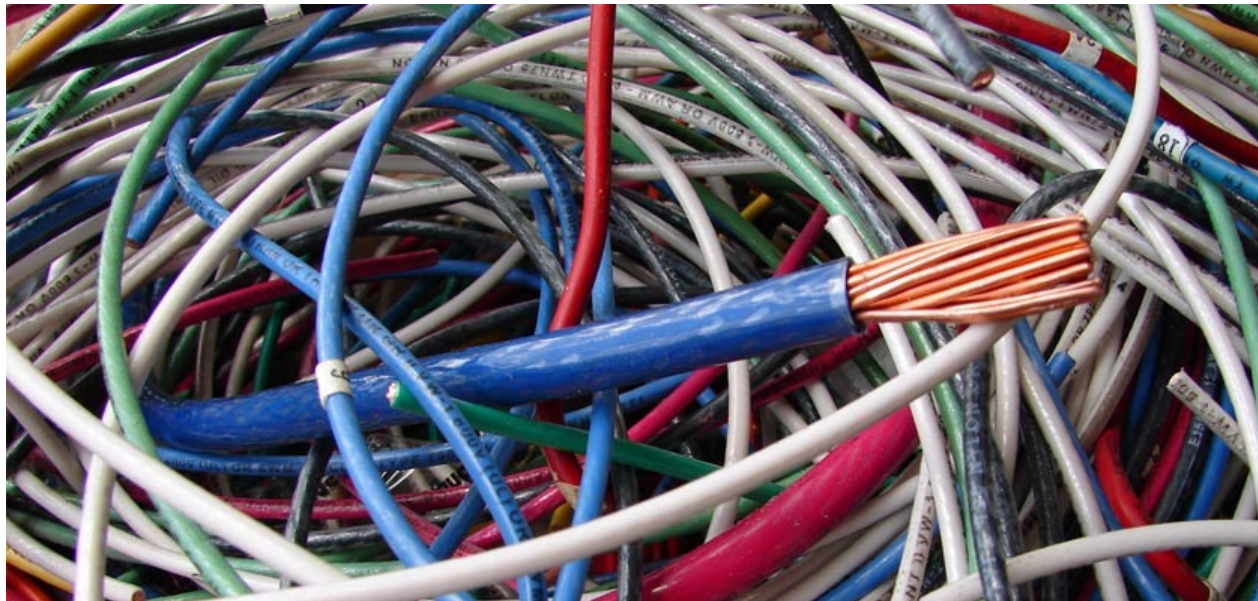
TSCA applies broadly to: Articles



Article

**A manufactured item
formed to a specific shape
that has an end-use function dependent upon its shape
and that has no change in chemical composition during
use***

(*That has commercial purpose separate from that of the article)









While TSCA regulates articles, certain provisions exempt them

- Listing of component substances on TSCA Inventory
- CDR reporting
- Significant New Use Rules (generally)

2.1 Step I: Is Your Chemical Substance Subject to the CDR Rule?

Under the CDR rule, reporting is generally required for a chemical substance that is manufactured (including imported), is on the TSCA Inventory as of the start of the submission period, and is not specifically exempted by 40 CFR 711.6(a). The term “CDR reportable chemical substance” will be used throughout this document to refer to a chemical substance that fulfills these requirements. Figure 2-1 presents a decision logic diagram to assist you in determining whether you manufacture a CDR reportable chemical substance. The following subsections explain each question in greater detail.

A CDR reportable chemical substance is a chemical substance that is domestically manufactured or imported into the United States, is listed in the TSCA Inventory, and is not specifically exempted by 40 CFR 711.6(a).

TSCA's Evolution

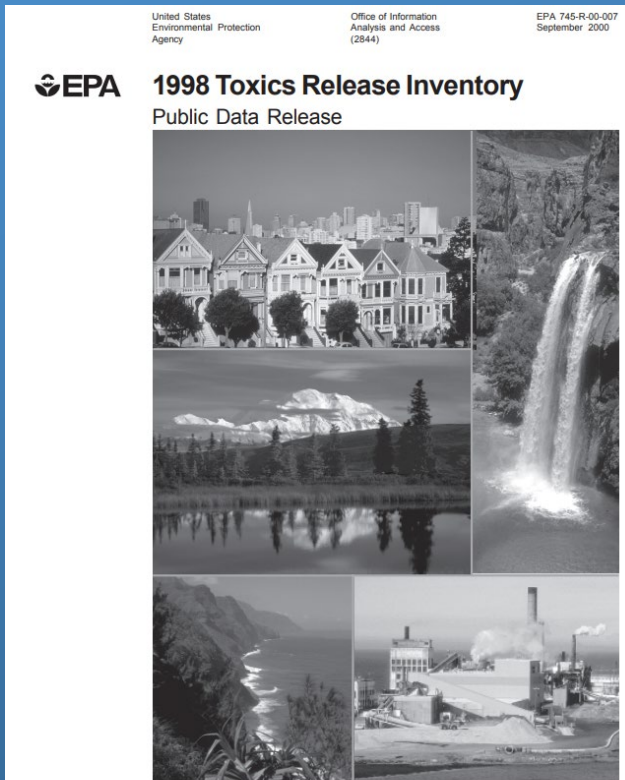
1976

2000

**Vast majority
of implementation measures
and enforcement actions focused
on the chemical producer community**

Growing Public Awareness of Chemical Toxicity

- Prop 65 (1986)
- EPCRA (1986)
- TRI (1986)
- Product Disclosure Laws



Disenchantment with TSCA (structurally) and EPA's implementation of it

Corrosion Proof Fittings v. EPA (1991)

Test rules were hard to issue and withstand review

PFOS/PFOA program highlighted limitations of “grandfathering chemicals”

**In 2007, REACH was enacted and
perceived to be tougher and more
inclusive than TSCA**



State laws were emerging with alarming speed and diversity

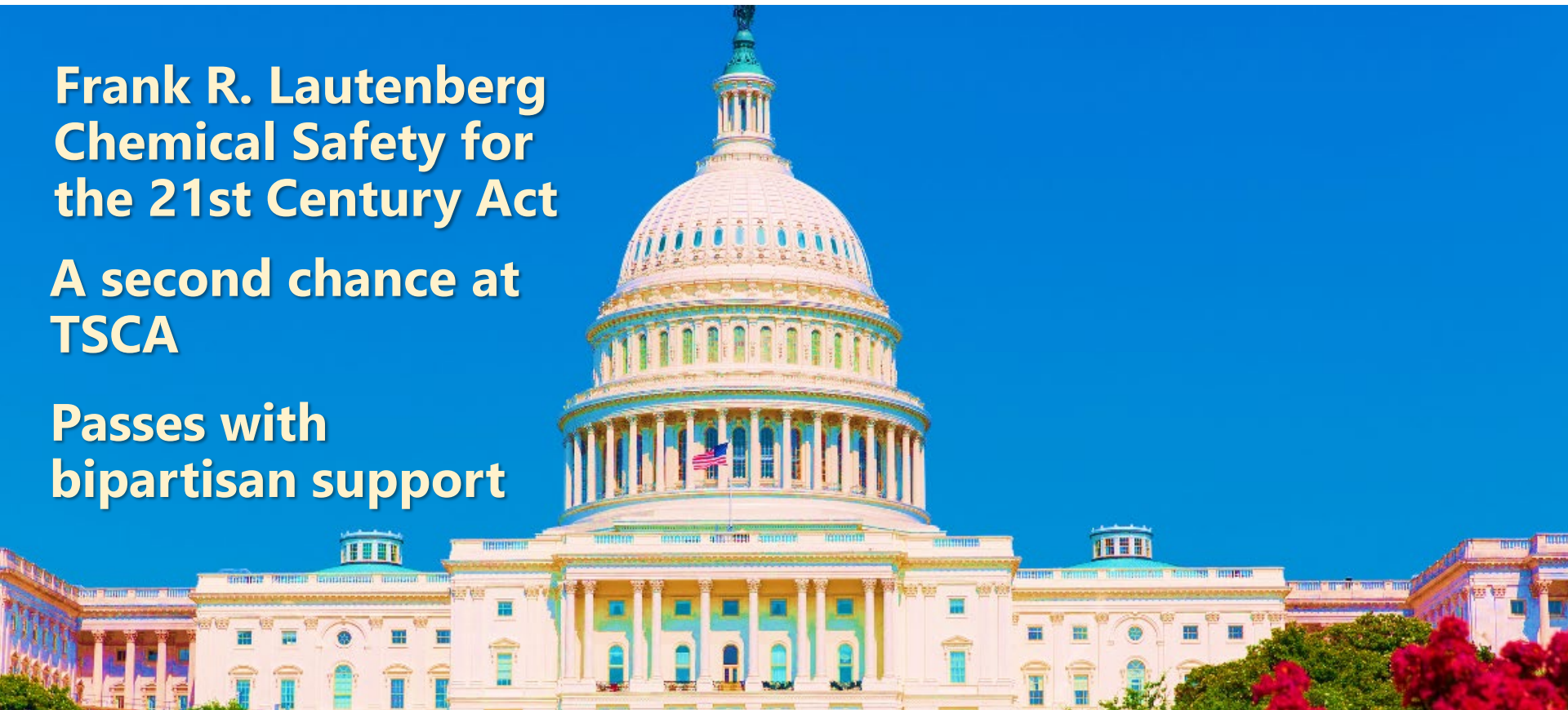
There was a growing sense EPA could no longer ensure the safety of chemicals in commerce, or the products from which chemicals evolve



Frank R. Lautenberg Chemical Safety for the 21st Century Act

A second chance at TSCA

Passes with bipartisan support



June 22, 2016



Fixes include but are not limited to:

**Empower
EPA to order
test rules**

**Reverse the
burden of
proof**

**Require risk
evaluation
of all high-
priority
chemical
substances**

Fixes include but are not limited to:

Protect potentially exposed or sensitive subpopulations



Fixes include but are not limited to:

**Diminish
animal
testing**



**Special rules for PBT
chemicals**

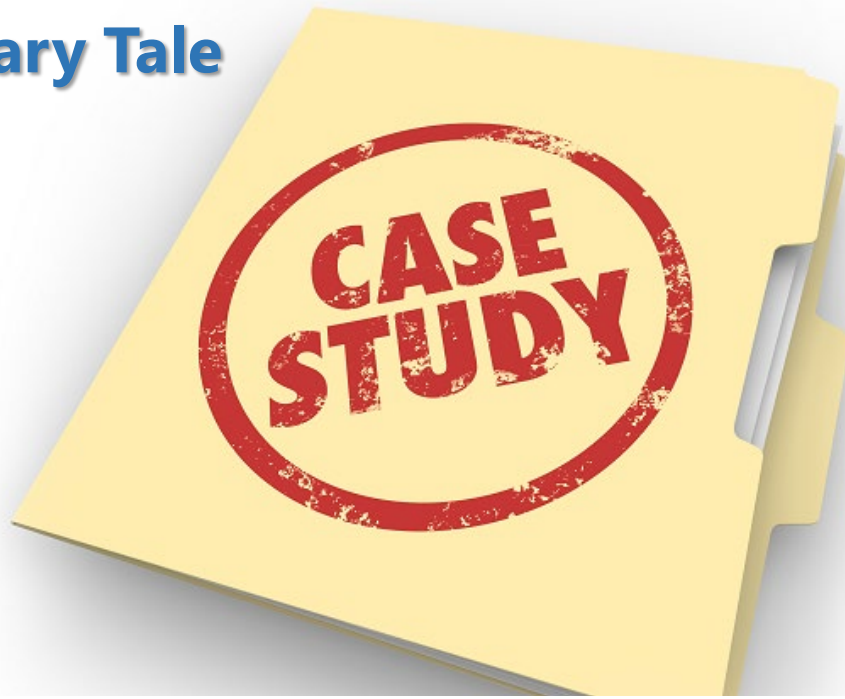
And more...

...but it is still not enough

**Over the past five years since
enactment, three different
Administrations have implemented the
law and significant policy and
implementation changes have occurred,
with many more to come**

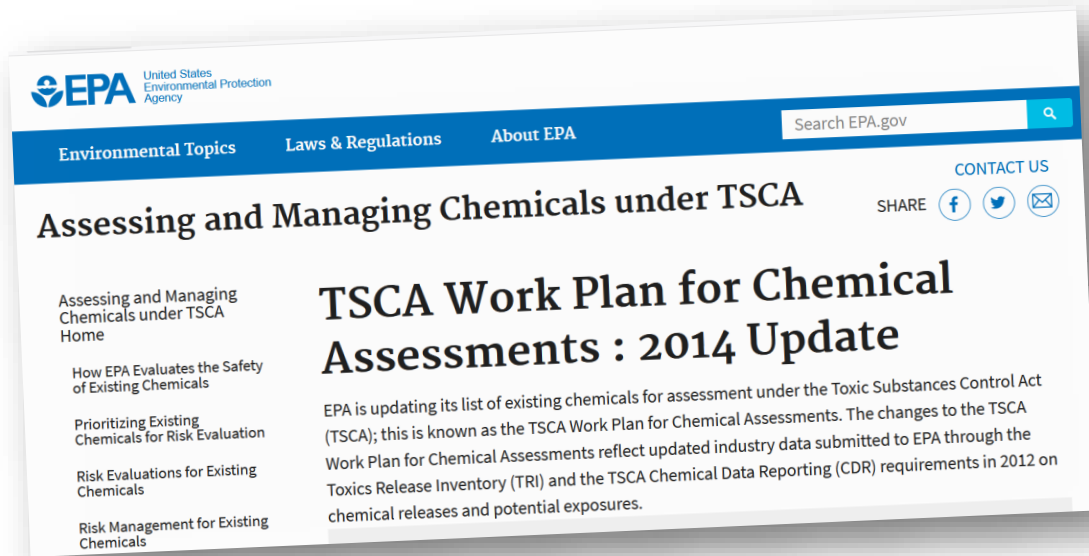
EPA's Final PBT Rules

The PIP (3:1) Cautionary Tale



EPA's Final PBT Rules

EPA developed its
“Work Plan for
Chemical
Assessments”
pre-Lautenberg



EPA's Final PBT Rules

Lautenberg requires EPA to **expedite** evaluation of PBT chemicals and to propose a rule by 2019

Public Law 114–182
114th Congress

An Act

To modernize the Toxic Substances Control Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Frank R. Lautenberg Chemical Safety for the 21st Century Act”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—CHEMICAL SAFETY

Sec. 2. Findings, policy, and intent.

Sec. 3. Definitions.

Sec. 4. Testing of chemical substances and mixtures

EPA's Final PBT Rules

	Chemical Name	When was the chemical added?	Hazard Criteria Met	Hazard Score	Exposure Criteria Met	Exposure Score	Persistence & Bioaccumulation Criteria Met	Persistence & Bioaccumulation Score	Use	Risk Assessment Status and Other Actions	CASRN
72	Octamethylcyclotetrasiloxane (D4)	Added 2012	Reproductive toxicity	2	Used in consumer products Present in biomonitoring, drinking water, indoor environments, and surface water Estimated to have high releases to the environment	3	Moderate environmental persistence High bioaccumulation potential	3	Consumer Dispersive Industrial	Initiated 2012	556-67-1
73	4-tert-Octylphenol (4-(1,1,3,3-Tetramethylbutyl)-phenol)	Added 2012	Aquatic toxicity	3 ¹	Used in consumer products Present in biomonitoring and drinking water Estimated to have moderate releases to the environment	3	High environmental persistence Moderate bioaccumulation potential	2	Consumer Industrial	Not yet initiated	140-66-1
74	p,p'-Oxybis(benzenesulfonylhydrazide)	Added 2012	Reproductive toxicity Mutagenicity	3	Used in consumer products Estimated to have moderate releases to the environment	3	Moderate environmental persistence Low bioaccumulation potential	2	Consumer	Not yet initiated	80-61-1
75	Pentachloro-thio-phenol	Added 2014	Acute and chronic toxicity	3	A mercaptan (sulfur) cross-linking agent that makes rubber more pliable	1	High environmental persistence High bioaccumulation potential	3	Industrial	Not yet initiated	133-49-3
76	Phenol, isopropylated, phosphate (3:1) (IPITPP)	Added 2014	Neurotoxicity Aquatic toxicity	3	Widely used as a flame retardant	3	High environmental persistence High bioaccumulation potential	3	Consumer Industrial	Not yet initiated	68937-41-1

EPA did so in July 2019, and drew all five PBT chemicals from the 2014 Work Plan list

EPA's Final PBT Rules

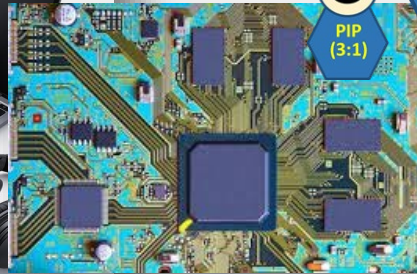
	Chemical Name	When was the chemical added?	Hazard Criteria Met	Hazard Score	Exposure Criteria Met	Exposure Score	Persistence & Bioaccumulation Criteria Met	Persistence & Bioaccumulation Score	Use	Risk Assessment Status and Other Actions	CASRN
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73	4-tert-Octylphenol (4-(1,1,3,3-Tetramethylbutyl)-phenol)	Added 2012	Aquatic toxicity	3	Used in consumer products Present in biomonitoring and drinking water Estimated to have moderate releases to the environment	3	High environmental persistence Moderate bioaccumulation potential	2	Consumer Industrial	Not yet initiated	140-66-
74	p,p'-Oxybis(benzenesulfonylhydrazide)	Added 2012	Reproductive toxicity Mutagenicity	3	Used in consumer products Estimated to have moderate releases to the environment	3	Moderate environmental persistence Low bioaccumulation potential	2	Consumer	Not yet initiated	80-51-
75	Pentachloroethoxyphenol	Added 2014	Acute and chronic toxicity	3	A mercaptan (sulfur) cross-linking agent that makes rubber more pliable	1	High environmental persistence High bioaccumulation potential	3	Industrial	Not yet initiated	133-49-
76	Phenol, (isopropylated, phosphate (3:1) (IPFP))	Added 2014	Neurotoxic Aquatic toxicity	3		3	High environmental persistence High bioaccumulation potential	3	Consumer Industrial	Not yet initiated	68837-41-

The list included PIP (3:1), a little-known, largely unrestricted chemical



EPA's Final PIP Rule

Industry commented that PIP (3:1) is in many articles as a plasticizer and as a flame retardant designed to meet flammability standards



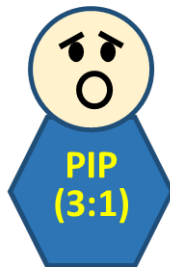
EPA's Final PIP Rule

EPA excluded or phased-in restrictions from the prohibitions for some or all uses of four of the PBT substances, including PIP (3:1), in response to comments



EPA's Final PIP Rule

The final rule,
issued in January 2021,
imposed a hard stop
on the processing and
distribution of PIP (3:1)
as of March 8, 2021



EPA's Final PIP Rule

Sell-through opportunities are prohibited for finished goods already in the channels of trade; manufacturers, processors, and distributors of PIP (3:1) are required to notify customers of the restrictions



EPA's Final PIP Rule

**EPA was persuaded to issue a No Action Assurance (NAA),
180 days in duration, averting commercial disaster**

*Keep it moving – we've
got 180 days to sell-
through*



Commercial Implications



Commercial Implications

But for the NAA, EPA imposed an effective stop-sale on a wide swath of products manufactured by the electric and electronic device industry



Commercial Implications

Because PIP (3:1) is a common component in wire coatings and wire harnesses, the impact was significant



Commercial Implications

The final rule imposes value chain notification requirements

- **Manufacturers, processors, and distributors of PIP (3:1) or PIP (3:1)-containing products must notify their customers of the restrictions**



Commercial Implications

Effectively imposes a “need to know” requirement on product distributors that their products and articles are in compliance with the PIP rule

Very challenging given the complexity of supply chain

Commercial Implications

EPA reopened for comment all five PBT rules, but did not scale back its authority under TSCA

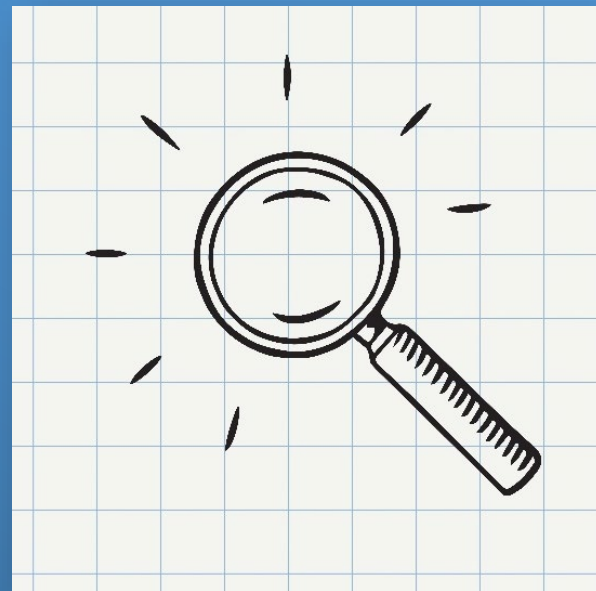
Take Away Messages

- EPA's authority under TSCA is broad



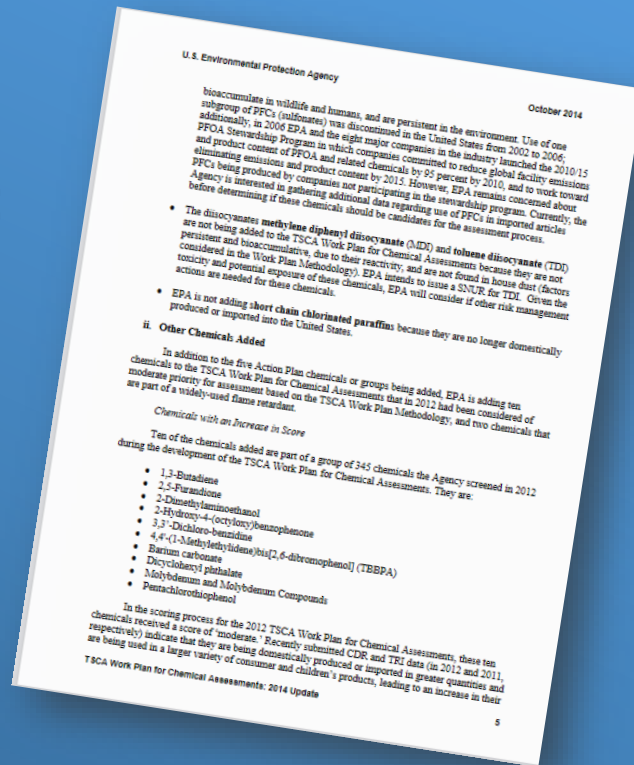
Take Away Messages

- **Chemicals and their uses and applications are being scrutinized**



Take Away Messages

- Review the 2014 Work Plan list for a sneak preview of what is next under review



Take Away Messages

- Retailers are squarely in the mix



Take Away Messages

- Know what is going on to avert the PIP (3:1) experience



Take Away Messages

- **Stay involved and engaged as EPA expands risk management actions, including engaging with suppliers**

Take Away Messages

- **Non-compliance could invite administrative penalties and business disruption**

THANK YOU

Lynn L. Bergeson

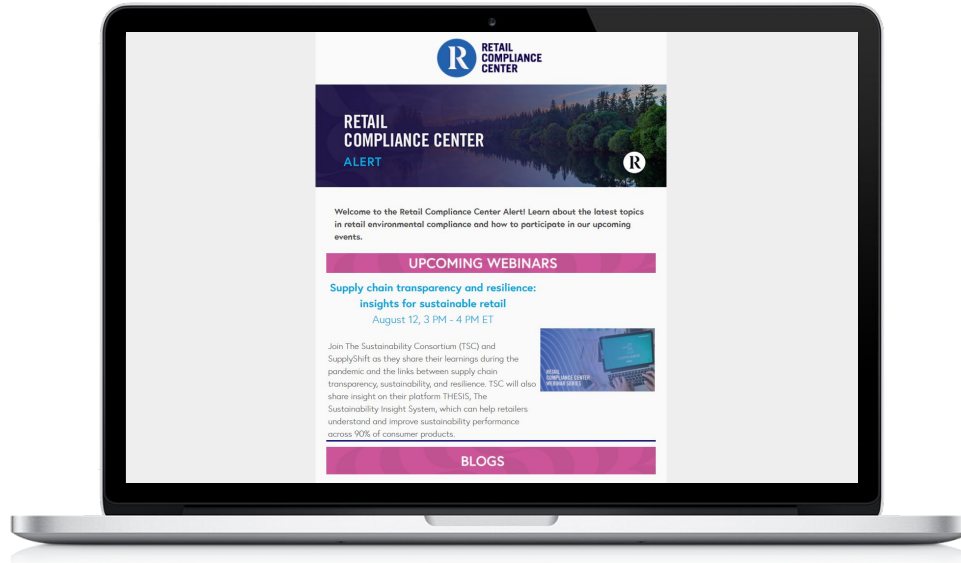
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QUESTIONS?

USE THE Q&A BOX TO SUBMIT YOUR QUESTIONS

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RETAIL COMPLIANCE CENTER – CONTACT US

THANK YOU