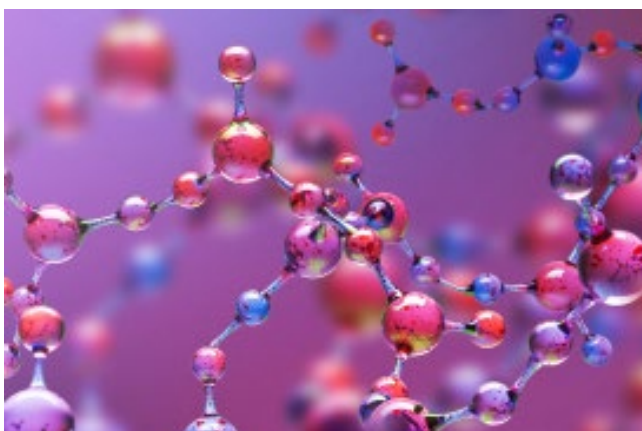




EPA Announces Reevaluation of the TSCA Risk Evaluation Framework Rule



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Last year, the U.S. Environmental Protection Agency (EPA) under the Biden administration finalized amendments to the procedural framework rule for conducting risk evaluations under the Toxic Substances

Control Act (TSCA) that the first Trump EPA had adopted. Now, EPA under the second Trump administration has announced that it plans to reevaluate the amended rule in its entirety.

The 2024 rulemaking – the [2024 Risk Evaluation Framework Rule](#), 40 C.F.R. Part 702, Subpart B, – made a broad range of adjustments to the [original](#) version of the rule and implemented policy considerations that generally expanded the scope of the risk evaluation process, which is the mechanism under TSCA through which EPA may find that a chemical poses an unreasonable risk to health or the environment and therefore warrants restrictions to control that risk.

On March 10, 2025, EPA [announced](#) its intent to reconsider the 2024 rule through notice-and-comment rulemaking. This new rulemaking will likely reign in the risk evaluation process, such as assessing whether the 2024 rule's approach of making a single risk determination for a chemical is consistent with TSCA. This announcement provides an initial window into how the new administration plans to administer TSCA. Interested stakeholders are therefore advised to follow this new rule's development, including submitting public comments when the rule is proposed, which is expected in June 2025.

Background on the Risk Evaluation Framework Rule

Under TSCA section 6(a), once EPA finds through a risk evaluation that a chemical poses an unreasonable risk under conditions of use, the statute requires the Agency to promulgate a risk management rule on a specified timeline to control that risk. To that end, section 6(b)(4) requires EPA to establish, by rule, a process for conducting risk evaluations. EPA first finalized a TSCA risk evaluation framework rule in 2017 under the first Trump administration, which was litigated and then replaced by the 2024 rule under the Biden administration. One important aspect of the 2024 rule is that rather than issuing risk determinations for each condition of use, EPA would make a single risk determination for each chemical evaluated. Moreover, the 2024 rule codified a number of other policy considerations that generally expanded the scope of the risk evaluation process, such as by requiring risk evaluations to be comprehensive in scope

and not exclude any conditions of use or exposure pathways. The 2024 rule also held that the use of personal protective equipment (PPE) would not be considered as part of the risk determination.

Current Litigation Challenging the 2024 Rule

In May and June 2024, industry groups filed petitions for judicial review of the 2024 rule which were consolidated into the present case of *United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO v. EPA*, Case No. 24-1151 (D.C. Cir. 2024). On February 14, 2025, the D.C. Circuit denied without explanation EPA's request to hold this case in abeyance while EPA under the new Trump administration reviews the 2024 rule.

On March 10, EPA filed a motion for voluntary remand and a renewed motion to hold the case in abeyance. The motion was accompanied by a [declaration](#) from Nancy Beck, EPA's newly appointed Principal Deputy Assistant Administrator for the Office of Chemical Safety and Pollution Prevention (OCSPP). That declaration explains that as a result of the court's denial of EPA's February 14 motion, "EPA promptly expedited its internal deliberations on the next steps for the 2024 Rule. As a result of these deliberations, EPA has decided to reconsider the 2024 Rule in its entirety." The declaration outlines several specific components of the 2024 rule that EPA plans to reevaluate, including the rule's requirement to make a single risk determination for each chemical, as opposed to on a condition-of-use basis.

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On March 19, EPA filed a [reply](#) in support of its motion for voluntary remand. The reply was accompanied by a [supplemental declaration](#) from Nancy Beck, which outlines EPA's anticipated timing for the new rulemaking. As stated in the declaration, EPA plans to propose a revised rule by June 2025, provide a 60-day public comment period on the proposed rule, and finalize a revised rule by April 2026. The supplemental declaration also provides examples of additional aspects of the 2024 Rule the Agency plans to reconsider.

The oral argument, which took place on March 21, suggests that the D.C. Circuit will proceed to judgment on at least some of the issues raised in the litigation without remand. Accordingly, any rulemaking may have to take into account a court opinion, depending on the timing.

EPA's Announcement to Reconsider the 2024 Rule

On the same day as the March 10 motion, EPA issued a press release announcing the Agency's intent to reconsider the 2024 rule. The press release explains that, consistent with President Trump's [Executive Order 14219](#) requiring review of Biden-era regulations, EPA determined that it intends to initiate a rulemaking in the near future to reexamine several aspects of the 2024 rule for consistency with the law and with Trump administration policy. Specific topics for reconsideration highlighted in the press release and specifically mentioned in Nancy Beck's March 19 supplemental declaration, include whether:

- ♦ The approach taken by the Biden administration to make a single risk determination for a chemical is consistent with TSCA;
- ♦ EPA must evaluate all conditions of use of a chemical at the same time in the three years generally allotted by Congress to conduct this review;
- ♦ The use of PPE and industrial controls in an occupational work environment should be incorporated into risk evaluations and, if so, how;

- ♦ Regulatory definitions expanded by the Biden administration are appropriate and whether the regulation should define terms more broadly than the definitions in the statute;

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- ♦ The requirements and process by which chemical manufacturers may request that EPA conduct a risk evaluation on a chemical substance in the 2024 Rule is appropriate;
- ♦ It is appropriate to reconsider the circumstances under which EPA will undertake substantive revisions to TSCA risk evaluations, as laid out in the 2024 Rule; and
- ♦ EPA should maintain its commitment in the 2024 Rule to make publicly available any risk-based occupational exposure values calculated as part of the risk evaluation.

Commentary

EPA's March 10 press release provides one of the first substantive indications of how the Agency under the new Trump administration plans to administer TSCA. Until now, EPA has mostly postponed actions under TSCA.

For example, EPA extended public comment deadlines for recent Biden-era draft risk evaluations, such as those for [1,3-butadiene](#) and [dicyclohexyl phthalate \(DCHP\)](#). Likewise, EPA [extended](#) the deadline for companies to report unpublished health and safety studies for certain chemicals under a Biden-era TSCA section 8(d) rule. EPA also asked for (and has been granted) short extensions under a judicial consent decree of deadlines to complete two draft risk evaluations (two phthalates) and a final risk evaluation (1,1-dichloroethane). Notably, a March 12 [press release](#) from EPA Administrator Lee Zeldin announced plans for 31 deregulatory actions, but none of those actions relate to TSCA.

One likely reason why EPA has been relatively quiet on TSCA so far is that no Assistant Administrator for OCSPP has been nominated yet. Two key staff positions are in place: Lynn Dekleva has been appointed as Deputy Assistant Administrator, and, as mentioned above, Nancy Beck has been appointed as Principal Deputy Assistant Administrator. More significant TSCA actions may be announced once an Assistant Administrator has been confirmed.

EPA's announcement about the reconsideration of the risk evaluation framework rule may have come earlier than otherwise planned because, on March 4, the D.C. Circuit refused EPA's initial requests for a stay in the judicial review proceedings and a delay in the date for the oral argument in the case. EPA may want an opportunity to prevent that court from ruling on the key issues. Those issues may also be addressed in judicial review proceedings for section 6(a) rules being held in the Third Circuit (trichloroethylene), Fifth Circuit (asbestos, methylene chloride, and perchloroethylene) and the Eighth Circuit (carbon tetrachloride) – unless EPA eventually files motions for voluntary remand in those cases as well. (On March 18, the D.C. Circuit denied EPA's renewed motion to postpone oral argument in the methylene chloride case, set for March 21. It directed the parties to address at oral argument the issues raised in the motion for voluntary remand and to hold the case in abeyance.)

Interested stakeholders should follow developments on EPA's reconsideration of the 2024 rule closely and submit public comments when the Agency releases the proposed rule, which is expected in June 2025. Beveridge & Diamond is actively monitoring developments in this area and is ready to assist interested stakeholders with preparation of comments to the proposed rule.

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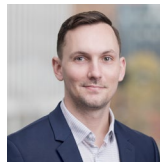
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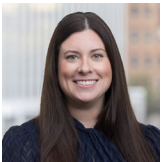
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