

Twelve TSCA Developments to Expect in 2025



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With the election of Donald Trump, the implementation of the Toxic Substances Control Act (TSCA) in 2025 will differ significantly from the pre-election expectations. Here are our projections on the likely developments in the coming year.

Summary

1. EPA will continue to implement TSCA, so companies must continue focusing on their TSCA obligations.
2. TSCA legislation is coming, at least with respect to fee authority and appropriations.
3. Personnel and staffing changes will affect TSCA implementation.
4. Policy changes, such as those recommended in Project 2025, are likely.
5. The Trump EPA will try to expedite new chemical reviews, but reduced resources will make that challenging.
6. EPA will continue to issue significant new use rules.
7. The Trump EPA may not prioritize all the chemicals proposed for designation by the Biden EPA.
8. The Biden EPA risk evaluations will be reconsidered, but the Trump EPA will have to deal with a consent decree mandating deadlines for completion of those risk evaluations.
9. Pending risk management rules will likely be revised.
10. The final risk management rules under judicial review will be remanded for reconsideration.
11. EPA may face reductions in TSCA fees.
12. Staying abreast of developments in 2025 will be important.

1. TSCA Implementation Will Continue

TSCA and its obligations are not going away. The 2016 amendments imposed requirements on the U.S. Environmental Protection Agency (EPA) that only Congress can alter. Further, EPA has adopted regulations that implement those amendments. Most of these can only be changed by notice-and-comment rulemaking, which can take years.

This means, for example, that manufacture of a chemical substance that is not on the TSCA Inventory and not covered by an exemption will still be prohibited under section 5(a)(1) until EPA completes the premanufacture notice (PMN) process for that substance. Until EPA completes the significant new use notice (SNUN) review process for a substance, engagement in significant new uses under a significant new

use rule (SNUR) will also still be prohibited under section 5(a)(1). Risk evaluations and rulemaking under section 6 will continue, thanks to the statutory deadlines in section 6(b)(4)(G) for completing risk evaluations and 6(c)(1) for risk management rules after completing risk evaluations. EPA is currently working on risk evaluations for some 20 high-priority or manufacturer-requested substances; all must be completed. As both the first Trump EPA and the Biden EPA did, the incoming EPA may miss those deadlines – but work will continue because TSCA requires this. Reports for the PFAS Reporting Rule, mandated by section 8(a)(7), will still be due by January 11, 2026, unless the Trump EPA grants further extensions through rulemaking.

Companies will still need to staff their organizations in order to meet their TSCA obligations. They will also need to stay alert for changes in those obligations that the Trump EPA may adopt.

2. TSCA Legislation Is Coming

Under TSCA section 26(b)(6), EPA's authority to collect fees to support the TSCA program expires on June 22, 2026. Thus, Congressional action on fees will be the subject of legislation in the 119th Congress, with bills likely to be introduced in 2025.

Republicans will control both houses of Congress, as well as the presidency. This will make amending TSCA, such as revising aspects of the 2016 amendments, more feasible than in the past administrations.

Amending the statute may also be attractive to Congressional Republicans in light of the Supreme Court's June 2024 [Loper Bright](#) decision. Potential administrative changes would not receive judicial deference. One example is the Biden EPA's policy of reading section 6(b)(4) to require a single risk determination for the chemical substance as a whole, rather than on the basis of individual conditions of use as under the first Trump EPA. To avoid the potential for a subsequent administration embracing the Biden EPA interpretations again, Congressional Republicans may want to cement their readings of TSCA through enacting legislation.

On the other hand, it is important to recognize that the 2016 amendments resulted from seven years of active legislative consideration. They incorporated many compromises. Fundamentally altering them could be difficult. Democrats (supported by NGOs) may seek their own amendments to further strengthen EPA's authority. Senate Democrats would have the option of a filibuster, requiring 60 votes to proceed – a high barrier. Thus, amendments of TSCA other than renewal or modification of the fees provision are by no means certain.

More likely are restrictions on the use of EPA appropriations. For example, the July 11, 2024 House Appropriations Committee [report](#) on the bill to fund EPA and other agencies called for riders prohibiting the expenditure of funds to adopt worker exposure limits under section 6 that did not meet prescribed criteria.

Appropriations for the TSCA program, as part of EPA's appropriations, will likely continue under a continuing resolution until the Republican Congress can enact appropriations for FY 2025. That appropriation will almost certainly cut TSCA funding. The House Appropriations Committee report recommended \$2.25 billion for Environmental Programs and Management (which include TSCA program), down 29% from the FY 2024 appropriation of \$3.18 billion.

3. Personnel and Staffing Changes Will Affect TSCA Implementation

It is a given that the political appointees at EPA will change after January 20, 2025, starting at the top.

EPA Administrator-designate [Lee Zeldin](#) is a former Republican Congressman from Long Island, NY, and a long-time Trump ally. While he had been a member of the Climate Solutions Caucus and Conservative

Climate Caucus, he was not a member of the House Energy and Commerce Committee, which has jurisdiction over EPA. EPA is in the crosshairs of Republican strategists for substantially cutting regulations and resources. Accordingly, Zeldin will arrive with a mandate to make big changes. TSCA, however, is low on the list, with air and water requirements being the top priorities.

Assistant Administrator Michal Freedhoff, who helped draft the 2016 amendments and who has greatly impacted their implementation under the Biden EPA, will depart. At this point, no successor to lead the Office of Chemical Safety and Pollution Prevention (OCSPP) has been named. Whoever it is, that person will have a mandate to take a fresh look at the implementation of TSCA.

It is foreseeable that some career EPA staff in OCSPP will choose to retire or be forced out in headcount reductions. Preliminary indications are that headcount reductions across EPA will be steep. Such reductions would handicap the processing of section 5 notices and the development of risk evaluations and risk management rules.

4. Policy Changes Are Coming

The second Trump EPA will plan to reorient the Biden EPA's approach to TSCA, in part by returning to the policies of the first Trump EPA, and likely by introducing new changes. Insights into that reorientation may be found in the [EPA chapter of Project 2025](#) and the House Appropriations Committee report. Their recommendations include:

- Developing an improvement plan for new chemical reviews and revising the applicable regulations to expedite the review process.
- Ensuring that risk evaluations are risk-based, rather than relying on hazard-based approaches like the Integrated Risk Information System (IRIS).
- Focusing risk evaluations on exposure pathways not covered by other environmental statutes.
- Applying real-world use of chemicals when assessing conditions of use for risk evaluations.
- Revising the proposed framework rule for risk evaluations (since finalized) to assume that workers are using OSHA-required personal protective equipment (PPE) and to maintain the definitions of "best available science" and "weight of scientific evidence."
- Developing a framework rule for risk management rulemaking.
- Limiting TSCA's fees rule so that it does not cover the costs of EPA inefficiency or overreach.

Notably, PFAS is not mentioned in either source with respect to TSCA, but it is likely to remain an important topic. During the first Trump Administration, EPA issued its first [PFAS Action Plan](#) (February 2019) and [reported](#) on "significant progress" under that plan (January 2021). When in Congress, Lee Zeldin was a member of the Congressional PFAS task force and was one of 23 Republicans to support Rep. Debbie Dingell's PFAS Action Act of 2021 (H.R. 2467). It would have directed EPA to set aggressive drinking water standards for at least PFOA and PFOS and to designate them as hazardous substances under CERCLA, actions later taken by the Biden EPA (those actions may be vulnerable under the new administration).

5. New Chemical Reviews May Be Quicker (But No Guarantees)

Under the Biden administration, EPA has blamed its delays in review of PMNs and SNUNs on inadequate funding. As noted above, the Republican Congress will likely cut EPA funding rather than increase it. The

New Chemicals Program, along with other TSCA programs, will have to make do with less. This will further slow the processing of PMNs, SNUNs, and exemption applications.

Subject to those resource constraints, expect the second Trump EPA to try to process section 5 notices more quickly. The first Trump EPA made risk determinations for 1,193 notices (604 “presents” or “may present” determinations and 589 “not likely to present” determinations) from the enactment of the 2016 amendments through the end of fiscal year (FY) 2020. Since then, EPA has made less than half that number of risk determinations. From FY 2021 (including the last 3½ months of the Trump administration) through FY 2025 to date, EPA made only 557 risk determinations (384 “presents” or “may present” determinations and 173 “not likely to present” determinations). During that time, the proportion of determinations resulting in restrictions rose from around 50% to around 69%. See PMN statistics as of November 1, 2024, [here](#). The second Trump EPA will probably be less precautionary in its risk determinations, which should speed up the review process.

To process section 5 notices more efficiently, in May 2023, the Biden EPA [proposed](#) changes to its section 5 regulations. The draft final regulations have been under review at the Office of Management and Budget (OMB) since May 2024. If finalized but not published in the Federal Register before Inauguration Day, the new administration would certainly pull those regulations back for review. If published but not yet effective, they would be covered by a 60-day freeze. However, some form of those regulations will likely become effective since they are intended to reduce the time needed by EPA to review new chemical notices.

6. EPA Will Continue to Adopt Significant New Use Rules

EPA will continue to propose and then adopt new SNURs. Section 5(f)(4) requires EPA to consider SNUR rulemaking for section 5 chemical substances for which it makes a “presents” or “may present” risk determination. EPA must then either initiate that rulemaking or publish a Federal Register notice explaining why it should not be initiated. Generally, PMN submitters support SNUR rulemaking for their restricted substances since SNURs apply their restrictions to others, thus leveling the playing field.

Recipients of section 5(e) orders with limitations on distribution in commerce have a further reason for supporting the promulgation of SNURs for their substances. Those limitations usually prevent distribution beyond the immediate customer until after a SNUR becomes final, resulting in potentially years of inability to market the substance broadly.

7. Prioritization May Slow

In July 2024, the Biden EPA [proposed](#) to designate five chemicals as high-priority substances (acetaldehyde, acrylonitrile, benzenamine, vinyl chloride, and MBOCA). Since the prioritization process must take 9-12 months, by July 2025, the Trump EPA may designate some or all of them as high-priority substances – or it may not.

Under section 6(b)(3)(C), after designating the initial 20 high-priority substances (which happened in 2019), EPA must continue to designate high-priority substances “at a pace consistent with the ability of the Administrator to complete risk evaluations in accordance with the deadlines” (3 to 3½ years after designation). Given that both the first Trump EPA and the Biden EPA exceeded those deadlines with their risk evaluations, the second Trump EPA may decide not to designate new high-priority substances at that time.

8. Biden EPA Risk Evaluations May Be Reconsidered

Early in the Biden administration, EPA [announced](#) that it planned to reconsider the Trump EPA's risk evaluations of the initial 10 chemical substances. The same thing may happen with respect to the Biden EPA's risk evaluations.

So far, the Biden EPA has completed supplemental risk evaluations for two of the initial 10 substances ([1,4-dioxane](#) and [legacy uses of asbestos](#)) and a risk evaluation for one of the 20 high-priority substances (TCEP). It has issued proposed risk evaluations for [formaldehyde](#), [DIDP](#), [DINP](#), [1,3-butadiene](#), and [1,1-dichloroethane](#), and released a draft human health hazard assessment for [1,2-dichloroethane](#). These and the other pending risk evaluations incorporate or are expected to incorporate the "whole chemical" approach and reject the assumption that workers wear OSHA-required PPE. They consider or are expected to consider exposure pathways for which other EPA offices administer media-specific statutes. Both the *Project 2025* EPA chapter and the House Appropriations Committee report called for the abandonment of those policies.

Reconsideration is not certain, however. In a late development, EPA is now subject to a November 22, 2024 consent decree obligating it to complete three risk evaluations for high-priority substances in 2024 (TCEP (already final), formaldehyde, and 1,1-dichloroethane); 7 additional ones in 2025 (including 1,3-butadiene); and the other ten by the end of 2026. Under a related consent decree, EPA must complete risk evaluations for two manufacturer-requested substances (DIDP and DINP) by January 2025.

Once the second Trump EPA publishes final risk evaluations without a "whole chemical" approach, NGOs are expected to seek judicial review of any section 6(i)(1) orders finding that particular conditions of use do not present an unreasonable risk. That is what happened following the publication of final risk evaluations by the first Trump EPA.

9. Pending TSCA Risk Management Rules Will Be Reconsidered

EPA recently published in the Federal Register a [final rule](#) amending its regulations on two persistent, bioaccumulative, and persistent substances (PBTs), decaBDE and PIP (3:1), effective January 21, 2025. As is common during presidential transitions, the Trump administration is expected to freeze this and other finalized but not-yet-effective federal agency rules on January 20. On day one of the first Trump administration, the new President's office issued a [regulatory freeze memorandum](#) that postponed by 60 days the effective dates of regulations published in the Federal Register but that had not yet taken effect. That memorandum also directed agencies to propose a rule to delay effective dates beyond this 60-day period and consider further action in coordination with OMB "for regulations that raise substantial questions of law or policy." However, since the PBT amendments extended the October 31, 2024 compliance deadline for several uses of PIP (3:1), that rule (or parts of it) may be allowed to take effect after the freeze ends.

The Biden EPA may finalize additional TSCA rules prior to Inauguration Day (January 20) that are currently under review by the Office of Information and Regulatory Affairs (OIRA) in OMB. They include draft final risk management rules on:

- Perchloroethylene ([proposed](#) in June 2023, under review since May 2024)
- Carbon tetrachloride ([proposed](#) in July 2023, under review since July 2024)
- Trichloroethylene ([proposed](#) in October 2023), under review since July 2024)

If published in the Federal Register prior to Inauguration Day, they too will likely be subject to the anticipated freeze. If not published in the Federal Register by then, the Trump EPA can simply pull them back.

The other two Biden EPA proposed risk management rules, on [n-methylpyrrolidone](#) (proposed in June 2024) and 1-bromopropane ([proposed](#) in August 2024), will certainly be reconsidered prior to being finalized.

All five proposed rules would impose OSHA-type restrictions in a Workplace Chemical Protection Program (WCPP). The House Appropriations Committee report called for EPA to consider asking OSHA under section 9(a) to enact worker protection requirements instead of EPA doing so. If not, the report advised EPA to take several steps before adopting an occupational exposure limit. The EPA chapter of *Project 2025* called for EPA to assume that employers comply with OSHA's PPE standards (and thus may not need supplemental PPE requirements). In light of those recommendations, the Trump EPA may revise those rules significantly prior to finalization.

Once they become final, all the risk management rules will likely be challenged on judicial review. That may not happen in 2025, however, if the extent of changes means that supplemental proposed rules will be needed before the Trump EPA can promulgate final rules.

10. Final TSCA Rules Under Judicial Review Will Be Remanded

Three final TSCA section 6 rules, all published in the first half of 2024 and thus beyond the reach of the Congressional Review Act, are under judicial review. They include the asbestos and methylene chloride risk management rule cases in the Fifth Circuit and the risk evaluation framework rule case in the D.C. Circuit. None of those cases have been scheduled for oral argument, so they are unlikely to be resolved prior to Inauguration Day. The Trump Justice Department will likely move for voluntary remand so the Trump EPA can reconsider those rules. The courts are likely to grant the motions.

Those cases include challenges to the "whole chemical" approach and the PPE assumptions of the Biden EPA risk evaluations. Rather than allow courts to decide the legality of those issues, the second Trump EPA is likely to prefer to have the opportunity to revise the rules to follow the approaches and assumptions of the first Trump EPA. Look for each of them to be reconsidered starting in 2025.

Notice-and-comment rulemaking will be required to effectuate any changes. Expect NGOs and others to challenge the revisions on judicial review.

11. EPA May Face Reduced Fee Payments

The EPA chapter of *Project 2025* called for changes to "right-size the TSCA fees rule so that it is consistent with the tasks that the agency is actually completing within the timelines of the statute and is not covering the costs of EPA inefficiency or overreach." Those changes could come administratively or through legislation.

The current TSCA fees rule, [published](#) in February 2024, established fees for FY 2024 through FY 2026. Rulemaking to revise the rule could begin in 2025.

The 2016 TSCA amendments increased EPA's ability to collect fees under section 26(b) for a period of 10 years. That authority expires in June 2026. Thus, legislation to reauthorize fees is expected in 2025, as mentioned above. That legislation may seek to impose conditions on EPA's rules setting fees.

The bottom line is that the TSCA program may face both reduced appropriations and reduced fees in the coming years.

12. Stay Alert for TSCA Developments

Much remains unclear at this point about how the Trump EPA will implement TSCA in 2025. What is clear is that companies in all industries potentially face new or changed TSCA requirements to be developed or finalized in 2025 and the following years. It will be necessary for companies to maintain or improve their current TSCA compliance programs; monitor regulatory and legislative developments; advocate for or against proposed changes (directly or through their trade associations); and be prepared to implement appropriate changes to their programs.

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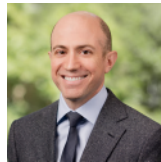
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