

# Toxic Substances Control Act Developments

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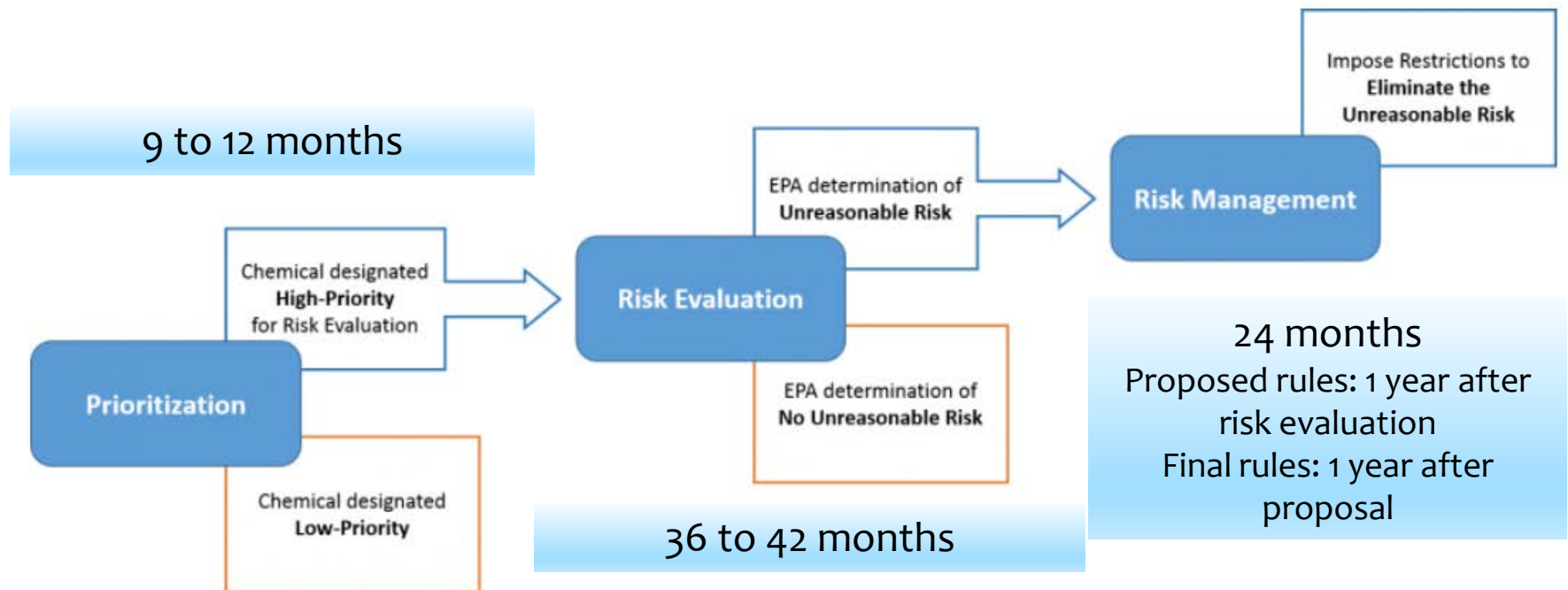
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# TSCA Chemical Risk Evaluation Process

## Statutory Timelines



Overall Process: 5 yrs 9 mos to 6 and ½ years

# TSCA Risk Management Process

- EPA **must** promulgate regulatory measures to address any “unreasonable risk” found in TSCA chemical risk evaluation
  - Unlike prioritization & risk evaluation, no process rule for risk management
  - Regulations can be broader than condition of use posing unreasonable risk
- Range of options from which EPA can choose, including:
  - Prohibition/restriction on manufacture/import, processing, and/or distribution in commerce;
  - Requirements for warnings/instructions re: use, distribution, disposal;
  - Recordkeeping, monitoring, or testing requirements;
  - Notification requirements to users and/or general public;
  - Prohibit or regulate manner or method of disposal of the chemical/articles;
  - Direct manufacturers and/or processors to give notice of unreasonable risk to distributors/users/public, and/or to replace/repurchase.

# What does this mean for utilities?

- Could face ban of, or other restrictions on, import and/or use of **chemicals** used in the utility operations
    - “Other restrictions” might include limitations on concentration or volume of chemical; reporting or recordkeeping obligations; storage or marking requirements; disposal obligations
  - Could face ban or restriction on manufacture, import, or sale of **articles** containing specific chemicals
  - Requirements could attach to **legacy** uses of chemicals/articles
- *How EPA will interpret and implement its authority under the statute—and how that approach will hold up under judicial scrutiny—remains to be seen.*

# TSCA Chemical Risk Evaluation:

## Risk Evaluation Groups

INITIAL TEN	TWENTY HIGH-PRIORITY		MFR-REQUESTED
Asbestos	Formaldehyde	1,2-Dichloropropane	DIDP
1-Bromopropane	1,2-Dichloroethane	1,1-Dichloroethane	DINP
Carbon tetrachloride	o-Dichlorobenzene	1,1,2-Trichloroethane	D4
Pigment violet 29	p-Dichlorobenzene	TBBPA	OTNE
Cyclic aliphatic bromide cluster	Dicyclohexyl Phthalate (DCHP)	trans-1,2-Dichloroethylene	
1,4-Dioxane	1,3-Butadiene	TCEP	
Methylene chloride	DBP	TPP	
N-methylpyrrolidone	DIBP	Ethylene dibromide	
Tetrachloroethylene	BBP	HHCB	
Trichloroethylene	DEHP	Phthalic anhydride	

# TSCA Risk Evaluation – Initial 10 Chemicals/What's Next

## ➤ Initial 10 chemicals

- June 2021: EPA announced new approach; revisiting initial 10 risk evaluations
- Moving forward with risk management for asbestos, HBCD, PV29
- Asbestos – Part 1 (ongoing uses) and Part 2 (legacy uses/assoc disposal):
  - **Part 1:** risk management regs proposed April 2022; final rule target Nov. 2023
  - **Part 2:** final scope doc issued June 2022; final risk evaluation target: Dec. 2024
  - Then: Revisiting asbestos risk evaluations and issue “whole chemical” finding?

## ➤ What's next

- 20 high priority chemicals – Draft risk evaluations overdue
- Next 20 high priority chemicals – Next batch will be identified any day

# Recent Timeline and Projections

	2019	2020	2021	2022	2023	2024
Initial 10 Chemicals		Final Risk Evaluations Completed	Revisit Risk Evals under New Criteria	Revised Risk Evaluations (Rolling)	Proposed Risk Mgmt. Rules?	Final Risk Mgmt. Rules?
Current 20 High-Priority	Final High Priority Designations (Dec.)	Scoping Docs Issued (Sept.)	Ongoing Risk Evaluations	DUE:Draft Risk Evaluations (mid/late year)	DUE: Final Risk Evals (Q3/Q4?)	<i>Likely still finalizing risk evaluations</i>
Next 20 High-Priority				Initiate Prioritization (by year end?)	Initiate Risk Evals?	Final Scope Documents – June-Dec?
Asbestos Pt 1 Ongoing Uses		Risk Eval. Finalized (Dec.)	Proposed Risk Mgmt Rule to OMB (Dec.)		Final Rule – November?	<i>Litigation likely</i>
Asbestos Pt 2 – Legacy Uses	9 <sup>th</sup> Cir. Decision		Draft Scoping Doc Issued (Dec.)	Final Scoping Doc (June)	Draft Risk Evaluation??	Final Risk Evaluation (Dec.)

# Asbestos Pt 1 (Ongoing Uses) Risk Evaluation: Proposed Risk Management Regulations

- Part 1 asbestos risk evaluation: Uses associated with ongoing manufacture/import, processing, distribution in commerce of asbestos and asbestos-containing articles (chrysotile asbestos)
  - **December 2020:** Final risk evaluation found **unreasonable risk to health** associated with several conditions of use
  - **April 2022:** EPA issues proposed risk management regulations:
    - **Effective 2 years from final rule:** Ban on manufacture/import, processing, distribution in commerce, and commercial use of chrysotile asbestos in diaphragms in the chlor-alkali industry, several other applications in chemical, oil, and automotive industries
    - **Effective 180 days from final rule:** Ban on manufacture/import, processing, distribution in commerce of applications for consumer use
- Could establish precedent for future risk management regulations, including for asbestos Part 2 (legacy uses)



# Asbestos Pt 2 Risk Evaluation (Legacy Uses/Associated Disposals)

- Part 2 asbestos risk evaluation: Uses where manufacture/import, processing, distribution in commerce of asbestos not ongoing; also considers associated disposals of chemical/articles
  - Final scope (June 2022) identifies specific conditions of use, including:
    - Pipeline wrap
    - Arc chutes
    - High-grade electrical paper
    - Building materials (vinyl flooring; felt roofing)
- EPA could propose regulatory program for some/all of these uses similar to that promulgated for PCBs in electrical equipment and gas pipelines

# Other TSCA Developments

## ➤ Revision to Risk Evaluation Procedures

- EPA considering proposing amendments to align with recent executive orders
- Proposal scheduled for September 2022 (not yet at OMB)

## ➤ TSCA Fee Rule

- Dec. 2020: Proposal would, among other things, exempt certain manufacturers:
  - Importers of chemical substance in article
  - Producers of chemical substance as a byproduct
  - Producers or importers of chemical substance as an impurity.
- October 2021 – Statutory deadline for final revisions
- October 2022 – Supplemental proposal expected per Regulatory Agenda (submitted to EPA July 1)

# PFAS Reporting Under TSCA – Regulatory Considerations for Articles

- TSCA defines “manufacture” to include import
- Historically, EPA programs imposing certain reporting, notification, and/or other obligations on manufacturers have included an exemption for **imported articles**
  - Chemical Data Reporting (CDR) – 40 C.F.R. 711.10
  - Toxics Release Inventory (TRI) articles exemption
- Proposal to impose reporting/recordkeeping on PFAS – TSCA § 8(a)
  - June 2021: Proposal to impose reporting requirements on manufacturers of PFAS chemicals in any year beginning January 1, 2011
    - Would include import of articles containing PFAS
    - Obligation would apply to extent information “is known or reasonably ascertainable by the manufacturer”
  - Final rule targeted for December 2022

# Questions?

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