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CLIENT ALERT | April 6, 2026

# Toxic Substances Control Act in Transition: EPA, Courts, and Congress Race to Define TSCA's Future

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***As EPA works to finalize a new existing chemicals risk evaluation framework rule, pending Fifth Circuit decisions and legislation introduced to amend TSCA could complicate the Agency's plans.***

## **Executive Summary:**

For the third time since the Toxic Substances Control Act (TSCA) Section 6 was amended in 2016 to mandate existing chemical risk evaluations, the US Environmental Protection Agency (EPA or the Agency) is working to finalize a new iteration of its "Framework Rule" that establishes risk evaluation procedures. The newest proposal would reject the Framework Rule adopted during the Biden administration and its "whole chemical" comprehensive risk evaluation approach. The new proposed rule would allow EPA to narrow the scope of risk evaluations by excluding both particular conditions of use and exposures unlikely to result in unreasonable risk. EPA plans to publish a final rule in April 2026.

EPA's efforts arise at a time when Fifth Circuit Court of Appeals decisions are pending on the legality of two TSCA risk management rules promulgated in 2024 for methylene chloride and chrysotile asbestos. Each case raises, in part, the statutory interpretations that underpin EPA's rationale for replacing the current Framework Rule. Some might argue that these cases also raise the specter of the Fifth Circuit's 1991 Corrosion Proof Fittings decision, which led EPA to deprioritize using TSCA Section 6 authority for existing chemicals risk management and was a contributing factor to Congress' decision to change that authority substantially with the 2016 TSCA amendments. Whether or not one agrees with this viewpoint, these two currently pending Fifth Circuit decisions may end up figuring heavily in the future of EPA's Section 6 authority under the 2016 TSCA amendments.

Meanwhile, both chambers of Congress are considering draft legislation to amend TSCA. In January, the House Committee on Energy and Commerce released a draft bill that, if enacted, would alter Section 6 in several material ways, including the addition of more explicit directions for how EPA should evaluate the risks existing chemicals pose and, for those chemicals that present unreasonable risk, how EPA should manage those risks through regulation. In February, the Senate Committee on Environment and Public Works released its own draft bill. The Senate's version focuses much less on Section 6 than the House version, and the proposed amendments generally seem intended to increase the efficiency of EPA's review of new chemicals under Section 5. Comparatively, the Senate bill's proposed changes appear

more modest overall than the House version. Together, these three developments suggest that 2026 may well be a year of transition for TSCA.

## **Latest Framework Rule Proposal**

In 2016, Congress significantly amended TSCA Section 6 to mandate that EPA must engage in existing chemicals risk evaluation and risk management. In short, under this mandate, EPA must identify “high-priority” existing chemical substances, evaluate the risks presented by those substances to human health and the environment (the “risk evaluation”), determine whether the risks presented are unreasonable (the “risk determination”), and regulate any substances that present “unreasonable risk” by imposing risk management measures “to the extent necessary” to eliminate the unreasonable risk. The 2016 TSCA amendments instructed EPA to promulgate a procedural rule to govern the risk evaluation stages of the process, which has come to be known as the “Framework Rule.” The Agency promulgated the [original rule in 2017](#) (the 2017 Framework Rule). Seven years later, EPA finalized a new, significantly changed version (the 2024 Framework Rule). In 2025, EPA proposed yet another version that reverts to many, but not all, of the legal interpretations underpinning the 2017 Framework Rule, and the Agency has indicated that it plans to finalize this rule in April 2026.

### **1. Narrowed Scope of Conditions of Use**

The proposed rule would give EPA more discretion to “scope” conditions of use. The 2024 Framework Rule requires EPA to evaluate all conditions of use and exposure pathways for the chemical in question, regardless of potential risk. The proposed rule would scrap this requirement and allow EPA discretion to exclude certain conditions of use or exposure pathways from its evaluation. The Preamble to the proposed rule justifies this approach as one that allows the Agency “to focus its risk evaluations on the conditions of use that have greatest potential for risk and thereby effectively evaluate and manage risks while also meeting the statutory deadlines.”<sup>1</sup>

### **2. Shift in Risk Determination Focus**

The proposed rule would also replace the “whole chemical” approach of the 2024 Framework Rule, whereby EPA evaluates all conditions of use for a given chemical and then reaches a single risk determination for the chemical as a whole. Instead, EPA has proposed an individual conditions-of-use approach, whereby EPA would make a separate risk determination for each condition of use that it evaluates.

### **3. Consideration of Occupational Exposure Control Measures**

The proposed rule would also shift how EPA accounts for occupational exposure control measures, including engineering and administrative controls and the use of personal protective equipment (PPE). For the first 10 existing chemicals designated as “high priority” after the 2016 TSCA amendments, EPA incorporated assumptions into its risk evaluations regarding the existence of, and adherence to, occupational exposure controls, based on its professional judgment and reasonably available information. But the 2024 Framework Rule generally prohibited EPA from doing so, on the grounds that “the assumed

use of PPE in a risk determination could lead to an underestimation of the risk to workers[.]”<sup>2</sup> The proposed rule would once again allow EPA to incorporate consideration of PPE use and other occupational exposure controls when determining the risk posed by each condition of use.

#### **4. De-Emphasis of “Overburdened Communities”**

The 2016 TSCA amendments modified Section 6 to require that EPA must consider “potentially exposed and susceptible subpopulations” (PESS) during risk evaluations and defined the term as “a group of individuals within the general population identified by the Administrator who, due to either greater susceptibility or greater exposure, may be at greater risk than the general population of adverse health effects from exposure to a chemical substance or mixture, such as infants, children, pregnant women, workers, or the elderly.”<sup>3</sup> The 2024 Framework Rule included a definition of PESS that also added the term “overburdened communities,” with the rationale that some chemical substances “may disproportionately impact communities already experiencing disproportionate and adverse human health or environmental impacts,” and with the acknowledgement that some of those communities may have “environmental justice concerns.”<sup>4</sup> The proposed rule would remove this term from the regulatory definition of PESS.

### **Public Response to the Proposed Rule**

EPA’s public comment period for its proposal closed in November 2025. Several industry-aligned commenters largely supported the proposed rule and criticized the 2024 Framework Rule for not “allow[ing] EPA to meet its statutory requirements efficiently and effectively for risk evaluations, and ... not provid[ing] appropriate focus and direction for subsequent risk management actions.”<sup>5</sup> These commenters also contended that the 2024 Framework Rule is out of step with the best reading of the statute, a point which is also raised in the pending Fifth Circuit cases discussed below. The US Chamber of Commerce also submitted comments that were generally supportive of the proposal. In addition to reiterating several of the points described above, the Chamber’s comments also argued that the proposal would re-align EPA’s reading of Section 6 with “TSCA’s design as a gap-filling statute rather than a duplicative regulatory overlay.”<sup>6</sup> In other words, the Chamber contended that the proposed rule, if implemented, would better allow EPA to tailor the scope of its risk evaluations and “coordinate with other federal programs such as the Clean Air Act (CAA), the Clean Water Act (CWA), and the Occupational Safety and Health Administration (OSHA).”<sup>7</sup>

But there was also opposition to the proposed rule. Environmental groups called EPA’s proposal “legally baseless” and argued that if the Agency effectively reverts to much of the structure articulated in the 2017 Framework Rule, EPA’s future risk evaluations would rest on unlawful policies and understate human exposures to toxic chemicals.<sup>8</sup> Labor groups, meanwhile, took issue with the aspects of EPA’s proposal relating to occupational exposure control measures, saying that exposure controls, such as PPE, are non-risk factors that would be more appropriately addressed during risk management, not during risk evaluation when EPA’s focus should be on whether “exposure to a chemical presents an unreasonable risk based only on health consequences.”<sup>9</sup> The attorneys general of 15 states — including Illinois, New

York, and Washington — and the District of Columbia, as well as the Corporation Counsel of the City of New York, alleged that the proposed rule “deviates from EPA’s legal mandate under TSCA—to look comprehensively at whether a chemical substance presents an unreasonable risk to health or the environment.”<sup>10</sup> Like the environmental and labor groups, the attorneys general also predicted that “EPA’s approach will lead to flawed risk evaluations that arbitrarily underestimate significant risks from chemical exposures, undermining the Agency’s mandate under TSCA to protect human health and the environment.”<sup>11</sup>

Notably, criticism of the proposed rule also came from some members of the “Make America Healthy Again” (MAHA) movement, a constituency that has historically been aligned with Health and Human Services Secretary Robert F. Kennedy, Jr. When EPA published the proposed rule, the advocacy group MAHA Action launched a grassroots social media campaign urging its supporters to oppose it.<sup>12</sup> On its Facebook account, for example, MAHA Action posted graphics with text characterizing EPA’s proposal as a test of whether EPA will be governed by science or industry influence.<sup>13</sup> In the lead-up to the public comment deadline, MAHA Action convened weekly webinars, issued social media calls to “STOP CHEM,” and sought meetings with senior EPA chemicals officials, presumably to lobby them to keep some or all of the 2024 Framework Rule in place.<sup>14</sup>

These public comments suggest that if EPA proceeds with finalizing the proposed rule, litigation will likely follow. Indeed, it was environmental group challenges to the 2017 Framework Rule in a case called *Safer Chemicals* that led, in part, to some of the changes embodied in the 2024 Framework Rule, particularly those dealing with how to address legacy uses and associated disposals (and, in its recent proposal, EPA acknowledged this history and stated that it “does not propose to revisit or revise its position on the matter”<sup>15</sup>).

Setting aside future litigation, pending challenges in the Fifth Circuit to previously completed risk management rules could substantially impact EPA’s TSCA Section 6 existing chemicals program under the 2016 TSCA amendments.

## **Pending Fifth Circuit Litigation and EPA’s TSCA Section 6 Authority**

In January 2026, final briefs were submitted in *Texas Chemistry Council, et al. v. EPA*, a case pending in the US Court of Appeals for the Fifth Circuit challenging the legality of EPA’s chrysotile asbestos risk management rule. The court has “tentatively scheduled” oral argument for the first week of June 2026.<sup>16</sup> The *Texas Chemistry Council* case follows on the heels of *East Fork Enterprises, et al. v. EPA*, a case also pending in the Fifth Circuit that challenges the legality of EPA’s methylene chloride risk management rule. Taken together, these cases could help to shape the future of the TSCA Section 6 existing chemicals program.

EPA finalized the rules on chrysotile asbestos and methylene chloride in the spring of 2024, making them two of the first existing chemicals<sup>17</sup> to finish the risk evaluation and risk management pipeline mandated by the 2016 TSCA amendments. Each Section 6 risk management rule imposed certain prohibitions. The chrysotile asbestos rule would, among other things, ultimately ban the importation of chrysotile asbestos into the United States after a phase-out period, while the methylene chloride rule would ultimately ban manufacturing, processing, and distribution of the chemical for all consumer uses. Both rules garnered multiple petitions for review in various circuits of the federal courts of appeal. The Judicial Panel on Multidistrict Litigation’s lottery system consolidated both sets of petitions in the Fifth Circuit.<sup>18</sup>

Both Fifth Circuit cases center around questions of statutory interpretation. TSCA Section 6 directs EPA to evaluate whether a given chemical “presents an unreasonable risk of injury to health or the environment,” and, if so, to regulate the chemical “to the extent necessary so that the chemical ... no longer presents such risk[.]”<sup>19</sup> A key dispute in each case concerns the meaning of “to the extent necessary.” The industry petitioners have argued that the phrase creates a ceiling that EPA’s regulations cannot extend beyond. For example, the chrysotile asbestos rule includes a phase-out period that will allow certain commercial uses of chrysotile asbestos to continue until those uses are ultimately banned. For most uses, the ban will take effect within two years, but other uses have a much longer phase-out period — with the longest period being until 2037 for chrysotile asbestos-containing sheet gaskets used by the Department of Energy at its Savannah River Site to ensure the safe disposal of nuclear materials.

During the phase-out periods, the EPA rule sets workplace protections — including a workplace exposure standard known as an existing chemical exposure limit (ECEL) — that the Agency established to help mitigate unreasonable risk posed to workers. The industry petitioners argue that the very existence of the ECEL and associated workplace protections prove that EPA went too far in banning some chrysotile asbestos uses, and that regulated entities should be allowed to continue certain commercial uses so long as they demonstrate that their operations can meet the ECEL. Put another way, the industry petitioners argue that if EPA can mitigate unreasonable risk to workers by imposing workplace protections, that alone proves that an outright ban goes beyond what is “necessary.”

Additionally, many of the legal issues at play in the different iterations of the Framework Rule between 2017 and the present also arise in the two pending Fifth Circuit cases. One issue is how EPA makes TSCA Section 6(b) risk determinations. The statute directs EPA “to conduct risk evaluations . . . to determine whether a chemical substance presents an unreasonable risk ... under the conditions of use.”<sup>20</sup> But *how* EPA conducts those risk evaluations — and whether they culminate with one single risk determination for a given chemical (the “whole chemical” approach described above) or separate risk determinations for each condition of use (the individual conditions-of-use approach, also described above) — has changed over time.

Although the 2017 Framework Rule appeared to contemplate the individual conditions-of-use approach, and litigants challenged that approach in the Ninth Circuit *Safer Choice* case — arguing that TSCA’s plain language requires EPA to evaluate risks associated with a chemical’s use *collectively* before determining

whether a chemical presents unreasonable risk<sup>21</sup> — the Ninth Circuit declined to rule on the merits of that argument, finding that it lacked jurisdiction because the 2017 Framework Rule was ambiguous enough to give discretion to the Agency to use *either* the whole chemical or the individual conditions-of-use approach for a given chemical.

In the 2024 Framework Rule, which was promulgated at roughly the same time as the chrysotile asbestos and methylene chloride risk management rules, EPA adopted the whole chemical approach. In the *East Fork Enterprises* case, the litigants briefed this issue extensively. Industry petitioners and supporting amici argued that EPA's decision to switch to the whole chemical approach for the methylene chloride rule contravened the statutory text, which they contend requires individual conditions-of-use risk determinations. They also argued that the very concept of the whole chemical approach leads to arbitrary and capricious decision-making, because the approach allows EPA to make an unreasonable risk determination for conditions of use that do not, in isolation, actually present an unreasonable risk just because "a 'substantial amount' of the [other conditions of use] actually [do] present such risks."<sup>22</sup> EPA, meanwhile, defended its whole chemical risk determination approach, in part by noting that the statutory text can be read to require it, and in part by noting that the Ninth Circuit in its *Safer Chemicals* opinion had determined that the 2017 Framework Rule, which applied during the methylene chloride risk management rulemaking, was broad enough to allow for either the whole chemical or the individual conditions-of-use approach in a given context.<sup>23</sup> The briefs in the chrysotile asbestos case include similar arguments.

The two cases also raise the question of whether, and how, EPA should consider the use of PPE and other workplace exposure controls in its risk evaluations, with industry petitioners arguing that EPA should assume proper PPE usage and PPE efficacy in at least some scenarios, while labor, public health, and environmental petitioners argue PPE should generally be excluded from risk evaluations and only come into play at the risk management stage.

The Fifth Circuit is hearing the two cases separately; so, a decision will likely come on the methylene chloride rule first given that oral argument already occurred in that case in June 2025.<sup>24</sup> Although EPA informed the Fifth Circuit following the oral argument that it intends to initiate a new rulemaking to reconsider the whole chemical determination and the PPE issues for methylene chloride, the case was not stayed or held in abeyance, and hence, is still moving towards a decision. After the Fifth Circuit hears argument in the *Texas Chemistry Council* case challenging the chrysotile asbestos rule, the court will have not one, but two opportunities to shape the future of how EPA will implement the TSCA Section 6 existing chemicals risk management program established by the 2016 TSCA amendments.

## **Congressional Republicans Release Draft Bills to Amend TSCA**

After months of media reporting that some members of Congress planned to use unified Republican control of the House of Representatives, the Senate, and the White House as an opportunity to refine TSCA, the House Energy and Commerce Committee released [draft legislation](#) on January 15, 2026. The

Energy and Commerce Committee subsequently held a hearing on amending TSCA on January 22, 2026. Then, on February 26, 2026, the Senate Committee on Environment and Public Works (EPW) released its own [draft legislation](#), and subsequently held a hearing on March 4, 2026. We discuss each draft below.

### **The House Version**

The House's draft would change many aspects of TSCA, including significant changes to the Section 4 test order and Section 5 new chemicals provisions. But the draft legislation, if enacted, would also materially impact the Section 6 existing chemicals risk evaluation and risk management at issue in EPA's efforts to revise the Framework Rule and in the two pending Fifth Circuit cases.

While the draft legislation includes several provisions that would update Section 6(b), perhaps the greatest potential impact is reflected in proposed changes to Section 6(b)(4)(F)(ii). As currently written, the provision simply directs EPA to "describe whether aggregate or sentinel exposures to a chemical substance under the [conditions of use ] were considered, and the basis for that consideration[.]" The draft amendment, if enacted, would specifically direct EPA to consider "(I) only hazards and exposures that are more likely than not to result in an unreasonable risk of injury to health or the environment; (II) sentinel exposures to the chemical substance; and (III) aggregate exposures only if [EPA] issues a written determination that such consideration is necessary to provide greater clarity or precision in the risk evaluation."<sup>25</sup>

As with EPA's proposed Framework Rule changes that make it easier for EPA to exclude conditions of use and exposure pathways from the scope of a risk evaluation, clause (I) would limit the scope of what EPA must assess in its risk evaluations by requiring EPA to exclude hazards and exposures that have a less than 50% chance of resulting in an unreasonable risk of injury to health or the environment. In theory, clause (I) could allow EPA to expedite its existing chemical risk evaluations by narrowing their scope. Meanwhile, clause (III) appears aimed at addressing EPA's recently published risk evaluations for five phthalate chemicals, which included a cumulative risk assessment. The inclusion of that cumulative risk assessment was criticized by some commenters as being unnecessary, and clause (III) may be an attempt to limit EPA's future use of aggregate or cumulative risk analyses by imposing on EPA the procedural requirement to issue a written determination that such analyses are necessary.

The draft House legislation also includes provisions that would allow for longer public comment periods (from the current 30-day minimum public comment period for a draft risk evaluation up to a minimum of 60 days),<sup>26</sup> and specifically obligate EPA to engage in an interagency review period during which EPA's sister agencies can "submit information and feedback on critical uses, alternatives, and supply chain impacts[.]"<sup>27</sup> That latter provision seems aimed at preventing a recurring problem from EPA's first 10 high-priority substances where, relatively late in the risk evaluation and risk management processes, EPA had to add exemptions under TSCA Section 6(g) to allow certain critical government uses, which would have otherwise been prohibited, to continue.<sup>28</sup>

But the draft legislation would extend beyond existing chemical risk evaluations to amend Section 6(a) — the provision addressing the scope of EPA’s risk management authority. Section 6(a) directs that, if EPA determines that a chemical substance presents an unreasonable risk, then EPA should “apply one or more of” a specifically enumerated list of regulatory control measures, ranging from labeling to prohibitions on manufacture, processing and/or use, “to the extent necessary so that the chemical substance or mixture no longer presents such risk[.]” The draft legislation would amend this provision to read as follows: “apply, to the extent necessary, one or more of the following requirements to such substance or mixture in order to minimize, to the extent reasonably feasible, such risk of injury to health or the environment.”<sup>29</sup> In other words, instead of requiring EPA to eliminate all unreasonable risks, this draft legislation would require EPA only to minimize unreasonable risks “to the extent reasonably feasible.” Ostensibly, this language appears aimed at amending TSCA to endorse the arguments made in the pending Fifth Circuit cases that, for the methylene chloride and chrysotile asbestos risk management rules, EPA was too reliant on outright prohibitions rather than crafting approaches, such as workplace exposure control requirements, that would allow the chemicals to continue in commerce.

Notably, TSCA, as originally enacted in 1976, allowed EPA to consider non-risk factors like cost and effectiveness, and essentially created a risk versus cost-benefit paradigm. That paradigm arguably made it difficult for EPA to issue risk management rules under the original iteration of the law and ultimately resulted in the Fifth Circuit’s 1991 *Corrosion Proof Fittings* decision. That decision overturned a risk management rule EPA had spent 10 years promulgating based on the court’s finding that EPA did not consider less burdensome alternatives to bans and failed to perform an adequate cost-benefit analysis. The 2016 amendments eliminated this risk versus cost-benefit paradigm. Any return to that paradigm, as envisioned by the draft legislation, would once again put EPA in the challenging position of evaluating not just the efficacy of a proposed risk management solution, but also its cost, and making a judgment on whether that cost is justified, all of which could be challenged in court.

Also noteworthy is that the draft House legislation would specifically require EPA, in conducting its risk evaluations, to “consider any exposure limits or thresholds relating to the chemical substance developed by another Federal department or agency under any applicable law or regulation.”<sup>30</sup> This new language would require EPA to make its evaluations in consideration of work previously done by other agencies, and thereby, address an issue raised in the pending Fifth Circuit cases as to whether EPA erred in promulgating workplace protections above and beyond what OSHA has done under its regulatory authorities. Similarly, the draft legislation would require EPA to “not assume noncompliance with any such applicable law or regulation relating to the chemical substance, including any occupational safety and health standard promulgated under ... the Occupational Safety and Health Act[.]”<sup>31</sup> If enacted, this provision would clear the way for EPA to consider the use of PPE and other workplace exposure controls established by OSHA in its risk evaluations.

These changes in the draft legislation are not entirely unexpected given a recently issued [joint statement](#) from the House and Senate Committees on Appropriations outlining several procedural changes

committee members are seeking from EPA's TSCA program. Most notably, the directives in the statement instruct EPA "to revise [its Memorandum of Understanding with OSHA, which the two agencies entered in 2024] to meaningfully delineate between each Agency's role and clearly articulate the areas of collaboration between the agencies." The direction from Congress, in combination with the language from draft TSCA amendments, could be intended to minimize EPA's role in regulating chemical hazards in the workplace, and to put more emphasis on OSHA's authority over those workplace hazards.

### **The Senate Version**

Compared to the House version, the changes to the Section 6 existing chemicals authorities proposed in the Senate's draft legislation appear more modest. Instead, the Senate draft focuses much more on new chemicals, which are regulated under Section 5, rather than on Section 6's existing chemicals provisions. The comparable modesty of the Senate draft, and its focus on new chemicals, are perhaps both indicative of its drafters' desire to prepare something that would seem more palatable to congressional Democrats than the House's version. Indeed, around the time of a fall 2025 EPW hearing on the chemical industry, EPW Chairperson Shelley Moore Capito (R-WV) signaled her desire to craft bipartisan TSCA amendments.<sup>32</sup> Meanwhile, EPA's new chemicals program has been operating under a backlog of new chemicals awaiting approvals effectively ever since the 2016 TSCA amendments, and the backlog has grown in recent years — expanding from about 200 pending approvals at the start of the Biden administration to about 400 pending approvals at the start of the second Trump administration.<sup>33</sup> The Senate draft's focus on new chemicals may reflect a gambit on the part of Senate Republicans that focusing on the inefficiencies in EPA's new chemicals program may entice enough congressional Democrats for the legislation to have a chance to survive.

The only direct change in the Senate draft to Section 6 itself is the addition of language to Section 6(b)(4)(F) that would require EPA to submit risk evaluations for peer review to the Science Advisory Committee on Chemicals (SACC).<sup>34</sup> This modest change appears motivated by EPA's decision not to submit its full draft risk evaluation for 1,2-dichloroethane to the SACC. EPA's rationale for that decision, which garnered pushback from several trade associations, was that it had previously submitted part of that draft risk evaluation, the human health hazard assessment, to the SACC, along with its draft risk evaluation for 1,1-dichloroethane, and therefore, further peer review was unnecessary.<sup>35</sup>

Beyond Section 6 itself, the Senate draft would make other changes with potentially significant ramifications for EPA's existing chemicals work. Most notably, the draft would limit EPA's authority to shape the "conditions of use" covered by any risk evaluation by (1) defining "conditions of use" to exclude both "merely hypothetical circumstances"<sup>36</sup> and any use (or "misuse") of a substance that would constitute a violation of another federal law;<sup>37</sup> and (2) mandating that EPA must "have a cognizable basis to foresee [a] ... condition of use" in order to determine that the condition of use is "reasonably foreseen."<sup>38</sup> And, relevant to the debates about whether EPA should consider PPE or other workplace exposure controls, the Senate draft also would require that "[i]f a submitter provides information that demonstrates broadly applied and effective exposure control measures are routinely used, there shall be a rebuttable

presumption that the lack of such measures is not reasonably foreseen.”<sup>39</sup> The same as the House version, the Senate draft would not define “unreasonable risk,” but it would specify that “the term ‘unreasonable risk’ does not include risks that may arise from common, well-understood hazards, such as irritation, corrosion, flammability, unreactive dust, and other physical effects.”<sup>40</sup> These changes, if enacted, would circumscribe the scope of Section 6 risk evaluations, and similar to the House draft, could result in EPA being able to conduct risk evaluations more quickly.

Both the House and Senate drafts also aim to address an issue that EPA has been grappling with: Section 21 petitions that request EPA to promulgate TSCA Section 6 risk management rules. On the one hand, granting such a petition means that EPA must skip the formal risk evaluation step and proceed directly to developing a risk management rule. But, on the other hand, EPA would be doing so without the benefit of a formal risk evaluation for that chemical at a time when EPA may have numerous other chemicals with completed formal risk evaluations that are in the queue for risk management rules, which need to be completed in accordance with statutory deadlines. In other words, Section 21 petitions, if granted, can result in the chemical at issue “jumping the line,” so to speak, and could endanger the Agency’s ability to meet its statutory deadlines for other chemicals.

Currently, TSCA Section 21 allows a person to “petition the Administrator to initiate a proceeding for the issuance, amendment, or repeal of a rule under section 4, 6, or 8 of the title or an order under section 4 or 5(e) or (f) of this title.” Both draft bills would strike the reference to Section 6 from this general provision on petitions, but they differ in their replacement language to limit petitions for Section 6 action. The House draft would allow petitions for “the amendment or repeal of a rule issued under section 6(a), or the consideration of a chemical substance for designation as a high-priority substance under section 6(b) of this title.” In contrast, the Senate draft bill would allow petitions for “the commencement of a risk evaluation under section 6(b).” The Senate bill’s language on petitions appears to have attracted some bipartisan support, with the former Assistant Administrator of the Office of Chemical Safety and Pollution Prevention during the Biden administration coming out in support of it at the March 4, 2026, EPW hearing.<sup>41</sup>

The likelihood that either piece of draft legislation would gain traction and become law is uncertain. At both the House and Senate hearings on the drafts, testimony in opposition was given by environmental and other public advocacy groups.<sup>42</sup> Recent reporting suggests that, even as Senate EPW was working to finish its draft and making plans for its March 4, 2026, hearing, environmental and public health groups were lobbying congressional Democrats not to acquiesce to the efforts to amend the statute.<sup>43</sup> Moreover, limited time remains before members of Congress will need to turn their attention to the midterm elections. Still, if something like either piece of draft legislation was to be enacted, it would be a watershed moment and have significant implications for how EPA runs its TSCA program.

## Conclusion

Though it is still early in 2026, the year is already shaping up to be one of transition for TSCA. While EPA works to finalize a new take on the Framework Rule, the Fifth Circuit and Congress may reach decisions that could send EPA back to the drawing board, potentially with more explicit directives on how the Agency should implement TSCA.

Latham & Watkins will continue to monitor developments in this area.

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## Endnotes

<sup>1</sup> US Environmental Protection Agency, Proposed Rule, "Procedures for Chemical Risk Evaluation Under the Toxic Substances Control Act (TSCA)," FR Vol. 90, No. 282, 45690 at 45698 (quoting 2024 Framework Rule) (hereafter, "2025 Framework Rule Proposal").

<sup>2</sup> 2025 Framework Rule Proposal at 45704.

<sup>3</sup> 15 U.S.C. 2602(12).

<sup>4</sup> US Environmental Protection Agency, Final Rule, "Procedures for Chemical Risk Evaluation Under the Toxic Substances Control Act (TSCA)," FR Vol. 89, No. 87, 37028 at 37039 (May 2024).

<sup>5</sup> American Chemistry Council comments at 4, *available at* <https://www.regulations.gov/document/EPA-HQ-OPPT-2025-0260-0001/comment>.

<sup>6</sup> US Chamber of Commerce comments at 3, *available at* <https://www.regulations.gov/comment/EPA-HQ-OPPT-2025-0260-0123>.

<sup>7</sup> *Id.*

<sup>8</sup> See Alaska Community Action on Toxics, *et al.* comments, *available at* <https://www.regulations.gov/document/EPA-HQ-OPPT-2025-0260-0001/comment>.

<sup>9</sup> AFL-CIO comments at 2, *available at* <https://www.regulations.gov/document/EPA-HQ-OPPT-2025-0260-0001/comment>.

<sup>10</sup> State Attorneys General comments at 1, *available at* <https://www.regulations.gov/document/EPA-HQ-OPPT-2025-0260-0001/comment>.

<sup>11</sup> *Id.*

<sup>12</sup> See Ellie Borst, “Meet the MAHA Faction Targeting EPA Chemical Policies,” E&E News (Nov. 6, 2025), <https://www.eenews.net/articles/meet-the-maha-faction-targeting-epa-chemical-policies/>.

<sup>13</sup> See *id.*, citing <https://www.facebook.com/MAHA.Action/posts/pfbid02U48ncCh114UgsZiKtk55nmyku4hW19b5c84ePzezBYsc4meZbvRg5rxShFYi83FYI?rldid=wAAZFbWului0NJHt#>.

<sup>14</sup> See *id.*

<sup>15</sup> 2025 Framework Rule Proposal at 45678.

<sup>16</sup> *Texas Chemistry Council v. EPA*, No. 24-60193, “Important Notice” (5th Cir. Feb. 20, 2026).

<sup>17</sup> EPA also published risk management rules under TSCA for carbon tetrachloride (CTC), trichloroethylene (TCE), and perchloroethylene (PCE). Litigation over each is currently pending in the Eighth Circuit (*Olin Corp., et al. v. EPA*, No. 25-1014), the Third Circuit (*United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, et al. v. EPA*, No. 25-1055), and the Fifth Circuit (*FabriClean Supply & Technical Chemical Co., Inc., et al. v. EPA*, No. 25-60006), respectively. Each of those lawsuits commenced around the time of the transition of presidential administrations, and EPA has subsequently sought stays of varying lengths. In October 2025, the Eighth Circuit put the CTC case into abeyance indefinitely, with a requirement that the parties submit status reports every 90 days. As for the TCE rule, EPA has extended the compliance deadlines several times to maintain the status quo while the litigation proceeds and the Third Circuit resolves pending procedural requests. On February 11, 2026, the Third Circuit issued an order resolving many of those procedural issues and setting a briefing schedule, but on March 31, 2026, the court stayed the briefing schedule pending its resolution of a jointly filed brief to amend the schedule. Finally, for the PCE case, the Fifth Circuit stayed the case and has extended the stay at least three times, with the most recent extension lasting until June 2026. Accordingly, even if the CTC, TCE, and PCE rules are litigated to judicial decision, each of those cases will be well behind the schedules of the methylene chloride and chrysotile asbestos rules.

<sup>18</sup> The chrysotile asbestos litigation was consolidated under *Texas Chemistry Council*, while the methylene chloride litigation was consolidated under *East Fork Enterprises, et al. v. EPA*.

<sup>19</sup> 15 U.S.C. § 2605(a).

<sup>20</sup> 15 U.S.C. § 2605(b)(4)(A).

<sup>21</sup> *Safer Chemicals Healthy Families, et al. v. EPA*, 943 F.3d 397 (9th Cir. 2019).

<sup>22</sup> Industry Petitioners Final Opening Brief, *East Fork Enterprises, et al. v. EPA*, No. 24-60256, ECF # 213 at 35–36 (5th Cir.).

<sup>23</sup> See Final United States Brief, *East Fork Enterprises, et al. v. EPA*, No. 24-60256, ECF # 219 at 91–92.

<sup>24</sup> [40 C.F.R. Part 751, Subpart B](#)

<sup>25</sup> 119th Congress 2d Session H.R. \_\_ [Discussion Draft] at 15 (emphasis added).

<sup>26</sup> *Id.* at 16.

<sup>27</sup> *Id.*

<sup>28</sup> The asbestos-containing sheet gaskets exemption for the Department of Energy described above is one example; other examples include the methylene chloride rule’s exemptions for certain critical NASA uses and the trichloroethylene rule’s exemptions for critical Department of Defense uses, including some related to maintenance for naval vessels.

<sup>29</sup> *Id.* at 14 (emphasis added).

<sup>30</sup> *Id.* at 15.

<sup>31</sup> *Id.* at 16.

<sup>32</sup> See, e.g., Maria Hegstad, “As Senate GOP Readies Bill, Groups Urge Democrats to Keep TSCA ‘Intact,’” InsideTSCA (February 25, 2026), available at <https://insideepa.com/tsca-news/senate-gop-readies-bill-groups-urge-democrats-keep-tsca-intact>.

<sup>33</sup> See Lara Beaven, “EPA Making ‘Really Good Progress’ On Reducing New-Chemicals Backlog,” InsideTSCA (Feb. 24, 2026) available at <https://insideepa.com/tsca-news/epa-making-really-good-progress-reducing-new-chemicals-backlog>.

<sup>34</sup> 119<sup>th</sup> Congress 1st Session S. \_\_ [Discussion Draft] at 58–59.

<sup>35</sup> See Maria Hegstad, “Industry Warns 1,2-DCA TSCA Evaluation Vulnerable to Legal Challenge,” InsideEPA (Jan. 27, 2026), available at <https://insideepa.com/daily-news/industry-warns-12-dca-tsca-evaluation-vulnerable-legal-challenge>.

<sup>36</sup> 119<sup>th</sup> Congress 1st Session S. \_\_ [Discussion Draft] at 2.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 2–3.

<sup>41</sup> “Testimony of Michal Ilana Freedhoff, Ph.D. Senior Policy Advisor, Holland & Knight LLP Hearing before the United States Senate Committee on Environment and Public Works (Mar. 4, 2026); see also Maria Hegstad, “Biden Chemicals Chief Partly Backs GOP Calls To Revise TSCA Petitions” (Mar. 20, 2026).

<sup>42</sup> See, e.g., Testimony before the House Energy & Commerce Subcommittee on Environment hearing on “America’s Chemical Safety Law,” Tracey J. Woodruff, PhD, MPH UCSF Professor and Director, Program on Reproductive Health and the Environment and member of the National Academy of Medicine (Jan. 22, 2026); see also Lara Beaven, “Environmentalists Strongly Oppose Push for Legislative TSCA Changes,” InsideTSCA (June 27, 2025).

<sup>43</sup> See, e.g., Hegstad, “As Senate GOP Readies Bill, Groups Urge Democrats to Keep TSCA ‘Intact.’”