Friday, November 2, 2018

On October 17, 2018, the Trump Administration published its Unified Agenda of Regulatory and Deregulatory Actions (Regulatory Agenda). There are many interesting entries, some of which are flagged here.

Not surprisingly, the U.S. Environmental Protection Agency (EPA) listed implementing Toxic Substances Control Act (TSCA) amendments to enhance public health and chemical safety as one of its top priorities. According to EPA, the amendments to TSCA that were enacted in June 2016 require EPA “to evaluate existing chemicals on the basis of the health risks they pose -- including risks to vulnerable groups and to workers who may use chemicals daily as part of their jobs.” If unreasonable risks are found, EPA must then take steps to eliminate these risks but, “during the risk management phase, EPA must balance the risk management decision with potential disruption based on compliance to the national economy, national security, or critical infrastructure.” The following TSCA items were included.

The rules in the proposed rule stage are:

- **Microorganisms: General Exemptions From Reporting Requirements; Revisions of Recipient Organisms Eligible for Tier I and Tier II Exemptions**, 2070-AJ65. The Regulatory Agenda states that EPA is still developing a revised proposal that will address concerns raised by commenters in response to its preliminary determination that certain strains of *Trichoderma reesei* and *Bacillus amyloliquefaciens* will not present an unreasonable risk of injury to health or the environment when used as a recipient microorganism, provided that certain criteria for the introduced genetic material and the physical containment conditions are met. EPA is also considering expanding the earlier proposal to prohibit the inclusion of antibiotic resistance genes in the introduced genetic material in microorganisms qualifying for the TSCA Section 5(h)(4) exemption. EPA was scheduled to issue a proposed rule by October 2018.

- **Long-Chain Perfluoroalkyl Carboxylate (LCPFAC) and Perfluoroalkyl Sulfonate Chemical Substances; Significant New Use Rule (SNUR)**, 2070-AJ99. The Regulatory Agenda states that EPA is developing a supplemental proposal for part of a SNUR under TSCA Section 5(a)(2) for LCPFAC chemical substances to make inapplicable the exemption for persons who import a subset of LCPFAC chemical substances as part of certain articles. This rule was scheduled to be proposed by October 2018 and issued in final by November 2019. EPA’s initial proposed rule was issued on January 21, 2015.

- **Procedural Rule: Review of Confidential Business Information (CBI) Claims for the Identity of Chemicals on the TSCA Inventory -- Amended TSCA Section 8(b)(4)(C)**, 2070-AK21. The Regulatory Agenda states that EPA is developing a proposed rule that establishes a plan to review all claims to protect the specific chemical identities of chemical substances on the confidential portion of the active TSCA Inventory. EPA is scheduled to issue the proposed rule by January 2019 and the final rule by December 2019, as TSCA
The rules in the final rule stage are:

- Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h), 2070-AK34. The Regulatory Agenda states that EPA is developing a proposed rule to implement TSCA Section 6(h), as amended, which directs EPA to issue regulations for certain persistent, bioaccumulative, and toxic (PBT) chemical substances that were identified in the 2014 update of the TSCA Work Plan. TSCA directs these regulations to be proposed by June 22, 2019, and issued in final form no later than eighteen months after proposal. According to the Regulatory Agenda, EPA will issue a proposed rule by June 2019.

- Technical Issues; Formaldehyde Emission Standards for Composite Wood Products, 2070-AK47. EPA is proposing to amend the regulations promulgated in a final rule published on December 12, 2016, concerning formaldehyde emission standards for composite wood products, specifically to address certain technical issues and further align the final rule requirements with the California Air Resources Board (CARB) Airborne Toxic Control Measures (ATCM) Phase II program. EPA issued the proposed rule on November 1, 2018, in the Federal Register; comments are due by December 3, 2018. EPA expects to issue a final rule by March 2019.

The rules in the final rule stage are:

- Review of Dust-Lead Hazard Standards and the Definition of Lead-Based Paint, 2070-AJ82. EPA issued a proposed rule on July 2, 2018, that would lower the current dust-lead hazard standards (DLHS) from 40 mg/ft² and 250 mg/ft² to ten mg/ft² and 100 mg/ft² on floors and window sills, respectively, per a final decision of the U.S. Court of Appeals for the Ninth Circuit. The Regulatory Agenda states that while EPA has proposed standards of ten mg/ft² and 100 mg/ft² for floors and window sills respectively, EPA encouraged public comment on the full range of candidate standards analyzed as alternatives to the proposal, including the option not to change the current standard or to reduce the floor dust standard but leave the sill dust standard unchanged, since reducing floor dust lead has the greatest impact on children's health. EPA is scheduled to issue the final rule by June 2019. More information on the proposed rule is available in our memorandum “Recent Federal Developments -- July 2018.”

- SNUR for Toluene Diisocyanates (TDI) and Related Compounds, 2070-AJ91. The Regulatory Agenda states that EPA is preparing the final version of a proposed SNUR issued on January 15, 2015, under TSCA Section 5(a)(2) for 2,4-toluene diisocyanate, 2,6-toluene diisocyanate, toluene diisocyanate unspecified isomers, and related compounds; and that there are no changes in the chemicals subject to the SNUR between the proposed and final rule. EPA is scheduled to issue the final rule in November 2018.

- Significant New Uses of Chemical Substances; Updates to the Hazard Communication Program and Regulatory Framework; Minor Amendments to Reporting Requirements for Premanufacture Notices, 2070-AJ94. On July 28, 2016, EPA issued a rule proposing changes to the applicable significant new uses of chemical substances regulations at 40 C.F.R. Section 721 to align EPA's regulations, where possible, with the final revisions to the U.S. Occupational Safety and Health Administration (OSHA) Hazard Communications Standards. The Regulatory Agenda states that EPA is reviewing the comments received and is planning to issue a final rule in February 2019.

- Certain Nonylphenols and Nonylphenol Ethoxylates; SNUR, 2070-AJ96. The Regulatory Agenda states that EPA is reviewing the comments received on the proposed SNUR issued on October 1, 2014, for certain chemical substances commonly known as nonylphenols (NP) and nonylphenol ethoxylates (NPE) and is planning to issue a final rule in September 2019. More information on the proposed SNUR is available in our memorandum “EPA Proposes SNUR for Nonylphenols and Nonylphenol Ethoxylates.”

- Methylene Chloride; Rulemaking Under TSCA Section 6(a), 2070-AK07. The Regulatory Agenda states that EPA is scheduled to issue the final rule prohibiting the consumer and commercial paint stripping uses for methylene chloride by December 2018. In a press release issued on May 10, 2018, EPA stated that it will not re-evaluate the paint stripping uses of methylene chloride and will rely on its previous risk assessments. See our memorandum “EPA Will Send Final Methylene Chloride Rule to OMB ‘Shortly’” for
Asbestos; SNUR, 2070-AK45. The Regulatory Agenda states that EPA’s proposed SNUR under TSCA Section 5(a)(2) for certain uses of asbestos that are no longer in use in the United States is scheduled to be issued in final by January 2019. The proposed SNUR was issued on June 11, 2018, and the comment period ended on August 10, 2018. More information on the proposed rule is available in our memorandum “Monthly Update for June 2018.”

The following Long-Term Action was also listed:

- N-Methylpyrrolidone (NMP); Regulation of Certain Uses Under TSCA Section 6(a), RIN 2070-AK46. The Regulatory Agenda states that EPA’s two co-proposals for NMP that were proposed on January 19, 2017 (as part of RIN 2070-AK07), will be issued in final with a future date “To Be Determined.” The first co-proposal would prohibit the manufacture, processing, and distribution in commerce of NMP for all consumer and most commercial paint and coating removal and the use of NMP for most commercial paint and coating removal. The second co-proposal would require commercial users of NMP for paint and coating removal to establish a worker protection program and not use paint and coating removal products that contain greater than 35 percent NMP by weight, with certain exceptions; and require processors of products containing NMP for paint and coating removal to reformulate products such that they do not exceed 35 percent NMP by weight, to identify gloves that provide effective protection for the formulation, and to provide warnings and instructions on any paint and coating removal products containing NMP. For more information on the proposed rule, please see our memorandum “Monthly Update for February 2017.”

For information on the TSCA items included in the Spring 2018 Regulatory Agenda, please see our blog item “EPA’s Spring 2018 Unified Agenda and Regulatory Plan Includes TSCA Rulemakings.”

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