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US EPA Proposes to Designate Five New Chemicals as 'High-Priority Substances' Under TSCA

On July 24, the U.S. Environmental Protection Agency (EPA) proposed that five chemicals be designated as high-priority substances for risk evaluation (the Proposed Designations) under the Toxic Substances Control Act (TSCA). The Proposed Designations are for vinyl chloride, acetaldehyde, acrylonitrile, benzenamine and 4,4-methylene-bis (2-chloroaniline) (MBOCA), which are used to manufacture a wide range of items and materials commonly used both in industrial processes and by consumers. The Proposed Designations were drawn from the 2014 TSCA Work Plan, a list of compounds identified by EPA for further study based on their potential for exposure and hazards. Previously, 20 substances of 40 candidates listed were designated as High-Priority Substances in 2019. Prioritization of the Proposed Designations is the first step in EPA's TSCA process to regulate the ways in which chemicals currently on the market and in use are manufactured and used. Even if a proposed designation is finalized, the designation of a chemical as a High-Priority Substance itself does not constitute a finding that the chemical substance presents an unreasonable risk (40 CFR § 702.17). Final designation of a chemical substance as a High-Priority Substance under 40 CFR § 702.11 initiates a risk evaluation under 40 CFR, Subpart B, of TSCA, which includes review of the scope of the risk evaluation, including potentially exposed and susceptible subpopulations (40 CFR § 702.39(b)(2)), as well as hazard and exposure assessments, risk characterization and, ultimately, a risk determination. The following is a non-exhaustive list of the Proposed Designations' common uses:

- Vinyl chloride is commonly used in plastic and resin manufacturing as well as in formulating other chemicals. Polyvinyl chloride (PVC) is among the more common plastics made with vinyl chloride. PVC piping is used for plumbing and drainage in the construction of almost all modern buildings.
- Acetaldehyde is used as a chemical intermediate in the production of other chemicals, such as herbicides, insecticides, fungicides, pharmaceuticals, flavors, fragrances, dyes, plastics, disinfectants, lacquers and varnishes, explosives and synthetic rubber.
- Acrylonitrile is used to manufacture paints, plastics, petrochemicals and other chemicals. Notably, acrylonitrile is used to create nylon and acrylic fibers for clothing and other textiles as well as to make nitrile rubber for protective gloves and acrylonitrile-butadiene-styrene plastics, which are hard plastics used for automotive components, toys, appliances and electronics.
- Benzenamine, commonly referred to as "aniline," is used to produce petrochemicals, resins, plastics, dyes and pigments in numerous colors, as well as other chemicals.
- MBOCA is widely used to create resins, plastics, rubbers and other chemicals, as well as particularly durable plastics which are made into gears, gaskets, wheels and drive belts for machinery.

If EPA finalizes the Proposed Designations, the agency will have three to three and a half years to evaluate the chemicals to determine whether they "present an unreasonable risk to human health or the environment" based on how they are manufactured and used. If EPA finds an unreasonable risk, the agency must undertake a risk management process to eliminate unreasonable risks. Based on EPA's own progress chart, which can be found at this link, the agency has had limited success meeting the three-to-three-and-a-half-year deadline to complete final risk evaluations. In an apparent acknowledgment, EPA stated in its July 24 press release on the Proposed Designations that it "now has a head start on risk evaluations" and "has a much fuller understanding of how these chemicals behave in the environment and their potential hazards…than in the previous prioritization cycle conducted in 2019." EPA posted the Notice of Availability for public

comment on July 25 and will accept comments on the Proposed Designations for 90 days (comments due October 24). Click here for a link to the *Federal Register* listing of the Proposed Designations. Click here for a link to the regulations.gov page where comments on the Proposed Designations can be posted. If you or your organization would like more information about how the prioritization of these chemicals could impact your business, please reach out to one of the attorneys listed in the sidebar.

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