New TSCA Regulations, New TSCA Risks

By Laura Smith

At a time when federal regulations are being frozen, delayed, or repealed, Toxic Substance Control Act (TSCA) reform continues to march on. Last summer, the United States Environmental Protection Agency (EPA) fulfilled its one-year statutory obligation to promulgate regulations outlining prioritization procedures and TSCA inventory notification requirements. Short on its heels, though, came challenges from the Environmental Defense Fund (EDF) and other organizations, arguing that the final rules are inconsistent with TSCA's requirements and overly favor the chemical industry to the detriment of the public.[1]

Should courts agree with EDF and set aside some or all of the new regulations, the uncertainty of when and how EPA will regulate chemicals will have a detrimental effect on chemical manufacturers, importers, and downstream users. Even if courts affirm the new regulations, there will still be additional challenges, risks, and potential liability associated with the amendments. First, the TSCA changes may negatively affect corporations that manufacture, import, use, distribute, and/or dispose of chemicals, especially if those chemicals are found to present an unreasonable risk to health and the environment. Second, despite EDF's assertion that the rules overly favor corporations, TSCA's changes and the recent rules promulgated thereunder will still make it more burdensome and costly to get new chemicals approved for the U.S. market. Third, increased scrutiny may increase potential liability in the form of personal injury cases, impacts on remediation programs, and environmental justice issues. Last, as of the writing of this article, neither EPA nor the reviewing court has postponed the effective date of the regulations. Unless otherwise exempt, all manufacturers and importers were obligated to submit a Notice of Activity to EPA by February 7, 2018.

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Background

The Frank R. Lautenberg Chemical Safety for the 21st Century Act (the "TSCA Amendments"), enacted in June 2016, was the first major TSCA overhaul since its enactment in 1976. The TSCA Amendments modify how existing chemicals are and will be evaluated; change USEPA's authority to test and review new chemicals before they can be manufactured, distributed, or imported into the United States; expand EPA's authority to order companies to test chemicals they manufacture or import; and establish when and how TSCA will pre-empt state regulations.

Regulation of Existing Chemicals

The 2016 TSCA Amendments introduced four (4) new ways by which EPA will regulate existing chemicals:

- ***Manufacturers and importers must identify all chemicals in active commerce***. Manufacturers and importers must notify EPA by February 7, 2018 of each chemical substance in the TSCA Chemical Substance Inventory (the "TSCA Inventory") that the manufacturer/importer has manufactured, imported, or processed for a non-exempt commercial purpose from June 21, 2006 to June 21, 2016.[2] Any chemical substance on the TSCA Inventory for which EPA receives a notice will be designated an "Active Substance."[3] Any chemical substance on the TSCA Inventory for which EPA does not receive a notice will be deemed an "Inactive Substance."[4]
- ***EPA must prioritize chemicals as high- or low-priority***. EPA must establish a risk-based screening process to designate which chemical substances are "high-priority" or "low-priority" for risk evaluations.[5] "High-priority substances" are chemical substances that EPA concludes, without consideration of costs or other non-risk factors, may present an unreasonable risk of injury to health or the environment because of: (1) a potential hazard; and (2) a potential route of exposure under the conditions of use, including an unreasonable risk to a potentially exposed or susceptible subpopulation.[6] "Low-priority substances" are chemical substances that EPA identifies, without consideration of costs or other non-risk factors, as not meeting the standard for "high -priority."[7] This process is expected to be ongoing—once EPA finalizes a risk evaluation for a chemical substance, it must designate at least one new high-priority chemical substance to then work down the pipeline.[8] As described in more detail below, USEPA promulgated regula-

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tions on July 20, 2017 to establish the process and criteria by which it will identify high- and low-priority chemicals.

- ***EPA must undertake a risk evaluation for high-priority chemicals.*** EPA was required to commence evaluations on ten (10) chemicals by the end of 2016,[9] and must continue to conduct risk evaluations on at least twenty (20) high-priority and at least twenty (20) low-priority substances by the end of 2019.[10] The risk evaluations cannot consider costs or other non-risk factors, and must include whether it presents an unreasonable risk to a potentially exposed or susceptible subpopulation EPA identifies as relevant.[11] As described in more detail below, EPA promulgated regulations on July 20, 2017 to establish a process for conducting risk evaluations to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment.
- ***EPA must issue regulations regarding all evaluated chemicals.*** Within two (2) years after publication of a chemical substance's final risk evaluation, EPA must publish a final rule regarding that chemical.[12] When regulating chemicals, EPA may consider costs and non-risk factors, such as the magnitude of the exposure to humans, the benefits of the chemical substances or mixtures used, and the reasonably ascertainable economic consequences of the rule.[13]

Regulation of New Chemicals

Prior to the 2016 TSCA Amendments, the statute only required chemical manufacturers and importers to provide a Pre-Manufacture Notice (PMN) to EPA at least ninety (90) days before they manufactured or imported a new chemical.[14] The statute did not require PMNs to include health or environmental safety data.[15] Unless EPA could determine within the ninety (90) day timeframe that the new chemical could present an unreasonable risk, EPA could not act to preclude that chemical. Not having enough information was not a sufficient basis for EPA to delay production.[16]

Under the TSCA Amendments, EPA now must review and approve new chemicals before they can be manufactured, imported, distributed, used for the first time, or used as a "significant new use."[17] If EPA cannot make a determination in ninety (90) days, EPA will now return the fee (with some exceptions) but will still be required to make a determination.[18] EPA will not "drop" review of a chemical.

Expanded Authority to Require Testing

The TSCA Amendments grant EPA broader authority to test chemicals. Prior to its 2016 passage, EPA could only require testing if it demonstrated that the chemical substance may present an unreasonable risk of injury to health or the environment and there was insufficient information available.[19] Under the TSCA Amendments, EPA can now require testing by rule, order, or consent agreement if it is needed to: (1) review a PMN or to perform a risk evaluation; (2) implement a requirement imposed in a rule, order, or consent agreement; (3) comply with a request of a federal implementing authority under another federal law; (4) determine whether a chemical substance intended for export presents an unreasonable risk; or (5) develop new information to prioritize a chemical substance.[20]

Addressing Preemption Issues

No new state laws, rules, or other regulations may be passed prohibiting or restricting a high-priority chemical substance during EPA's risk evaluation of that substance.[21] However, the TSCA Amendments specifically allow states to:

- Continue to enforce laws/regulations already in place;
- Require the development of information for chemical substances that are not the subject of a federal rule, order, or consent agreement;
- Prohibit or restrict any chemical that is not the subject of a federal risk evaluation or final action, even if that chemical was found to not present an unreasonable risk; and/or
- Require notification of a significant new use of a chemical substance for which EPA has not already required notification.[22]

Higher Thresholds for Confidential Business Information

Other changes in the TSCA Amendments include changes to the way companies can claim information is confidential. Prior to the TSCA Amendments, companies had more leeway in what they could claim was confidential and EPA would have to keep that information confidential indefinitely.[23] Now, a company must demonstrate that it has: (1) taken reasonable measures to protect the information's confidentiality; (2) determined that the information need not be disclosed or otherwise provided to the public under any other federal law; (3) a reasonable basis to conclude that the information's disclosure is likely to cause substantial harm to the company's competitive position; and (4) a reasonable basis to believe that the information is not readily discoverable through reverse engineering.[24] Confidential information is now only protected for ten (10) years from the date the confidentiality claim is asserted unless the company requests and EPA approves an extension.[25]

Expanded Authority to Charge Fees

The TSCA Amendments also changed the fee structure to establish a TSCA Service Fee Fund and to set fees that will, in the aggregate, provide a sustainable source

of funds to annually defray the cost of carrying TSCA (capped at $25 million).[26]

New Regulations and Current Litigation

EPA recently promulgated two sets of regulations regarding: (1) the Procedures for Prioritization of Chemicals and Procedures for Chemical Risk Evaluation; and (2) TSCA Inventory Notification Requirements.

Procedures for Prioritization of Chemicals and Chemical Risk Evaluation

EPA's two (2) final rules promulgated on July 20, 2017, established the agency's evaluation priorities and procedures. When selecting candidates for a high-priority designation, EPA will focus on chemical substances with the greatest hazard and exposure potential first, considering reasonably available information on the relative hazard and exposure of potential candidates.[27] Preference will be given to chemical substances listed in the 2014 update of the TSCA Work Plan for Chemical Assessments that: (1) have a persistence and bioaccumulation score of 3; and (2) are known human carcinogens and have high acute and chronic toxicity.[28]

To begin prioritization, EPA must publish a notice in the Federal Register and allow the public ninety (90) days to submit information on the chemical substance.[29] After evaluating the chemical substance (without considering costs and other non-risk factors), EPA will designate it as either high-priority or low-priority and publish the designation in the Federal Register.[30] Designation of a chemical substance as "high-priority" immediately triggers a risk analysis evaluation.[31] Interestingly, a high-priority designation is not considered a final agency action and therefore is not subject to judicial review.[32]

EPA must complete a final risk analysis evaluation as soon as practicable, but in no event later than three (3) years after the analysis' commencement.[33] If EPA determines that a chemical substance presents an unreasonable risk of injury to health or the environment under one or more of the analyzed conditions of use, EPA must issue regulations prohibiting or limiting the chemical substance's manufacturing, processing, and/or distribution in commerce.[34]

Six (6) petitions were filed in different circuit courts requesting the courts to review and vacate the July 20, 2017 rules because "changes have been made [to the final rule] that significantly weaken the proposed rules, in some cases in ways that are contrary to the new law."[35] Indeed, a review of the January 19, 2017 proposed rule authored under the Obama Administration and the July 20, 2017 final rules authored under the Trump Administration shows several changes, including:

- Companies are not required to submit, and EPA is not obligated to review, all circumstances in which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.[36]
- Companies are not specifically required to provide previously conducted risk assessments they may have undertaken or otherwise possess.[37]

The petitions challenging the procedures for prioritization of chemicals have been consolidated and are currently docketed in the Court of Appeals for the Ninth Circuit.[38] The petitions challenging the procedures for chemical risk evaluation have been consolidated and are docketed in the Court of Appeals for the Fourth Circuit.[39] As of the writing of this article, a briefing schedule has not been filed for the chemical risk evaluation challenge in the Fourth Circuit. The consolidated opening brief for the prioritization rule in the Court of Appeals for the Ninth Circuit is due January 23, 2018.[40]

TSCA Inventory Notification (Active-Inactive) Requirements

To facilitate the designation of all chemicals on the TSCA Chemical Substances inventory as "active" or "inactive," EPA promulgated regulations on August 11, 2017, requiring the following recordkeeping and reporting:

- By February 7, 2018, all manufacturers and importers *must* submit a Notice of Activity—Form A for any substance on the TSCA Chemical Inventory manufactured for non-exempt purposes between June 21, 2006 and June 21, 2016.[41]
- By October 5, 2018, all processors (i.e., any person who prepares a chemical substance or mixture, after its manufacture, for distribution in commerce[42]) *may* submit a Notice of Activity—Form A for any substance on the TSCA Chemical Inventory manufactured for non-exempt purposes between June 21, 2006 and June 21, 2016.[43]
- A request to maintain an existing claim of confidentiality must be made when the information is submitted.[44]
- Any person who intends to manufacture or process an inactive substance must notify EPA not more than ninety (90) days prior to the anticipated start of manufacturing.[45]
- All documents must be submitted electronically.[46]
- Companies must maintain records submitted to EPA for five (5) years.[47]

There are several exceptions to the Notice of Activity reporting requirements, including but not limited to:

- Chemicals manufactured, imported, or processed solely in small quantities for research and development (i.e., quantities that are not greater than reasonably necessary for such purposes).[48]

- Chemicals reported to EPA by another manufacturer, as evidenced by a Central Data Exchange receipt.[49]
- The import or processing of a chemical substance as part of an article.[50]
- The manufacturing or processing of substances that have no commercial use or by-products that's only commercial use is to burn it as fuel or dispose of it as a waste.[51]
- The manufacturing or processing of a chemical substance solely for test marketing purposes.[52]
- The processing of a naturally occurring chemical substance only by manual, mechanical, or gravitational means; by dissolution in water; by flotation; or by heating solely to remove water.[53]

It is important to note that if a manufacturer does not submit a Notice of Activity—Form A because it is relying on an exception, that manufacturer cannot maintain an existing claim of confidential business information (CBI).[54] Any chemical substance on the active list will be moved from the confidential portion to the public portion unless a new CBI request is received.[55]

EDF filed a petition in the United States Court of Appeals for the District of Columbia Circuit on September 1, 2017, for judicial review of the August 11, 2017 regulations.[56] Like the Procedures for Prioritization of Chemicals and Chemical Risk Evaluation rules, EDF believes the final TSCA Inventory Notification rule overly favors the chemical industry to the public's detriment.[57] A review of the Obama Administration's January 13, 2017 proposed rule and the Trump Administration's August 11, 2017 final rule shows several changes, including:

- The final rule includes an exemption for chemical substances manufactured or processed solely for export or for test marking purposes from the notification requirements.[58]
- More information was required in the Notice of Activity—Form A under the proposed rule. Under the final rule, companies no longer have to report the type of commercial activity for each reportable chemical substance, whether a chemical is domestically manufactured or imported, nor the first and last date each chemical was manufactured.[59]
- The final rule removed a list of specific questions corporations had to answer to substantiate a claim of confidentiality (e.g., "What harmful effects to your competitive position, if any, or to your supplier's competitive position, do you think would result from the identity of the chemical substance being disclosed in connection with reporting under this part?" "Has the identity of the chemical substance been kept confidential to the extent that your competitors do not know it is being manufactured for a commercial purpose by anyone?" "What measures have been taken to prevent undesired disclosure of the fact that the chemical substance is being manufactured for a commercial purpose?").[60]

As of the writing of this article, EDF has not submitted a merit's brief but has raised several questions to the court, including whether the final rule violates TSCA because it: (1) allows submitters to assert claims of CBI without meeting all of the requirements of TSCA; (2) exempts chemical products solely for export from the reporting requirements; and/or (3) allows EPA to designate substances as "active" regardless of whether the intended manufacturing or processing actually occurs.[61] EPA will have sixty (60) days from the filing of EDF's merits brief to file its brief.[62]

If the court holds that the rule is unlawful and sets it aside, EPA would have to promulgate new regulations and postpone implementation of the TSCA Amendments. Of particular note, however, is the fact that neither EPA nor the court has postponed the effective date of the notification rule. As such, unless otherwise exempt, all manufacturers and importers were required to submit the Notice of Activity—Form A on or before February 7, 2018. Moreover, as noted above, if a manufacturer has confidential business information but would otherwise fall into a reporting exemption, that manufacturer should have filed a Notice of Activity—Form A by February 7, 2018 or it risked losing a claim to CBI.

Areas of Risk and Potential Liability

With any new law and regulation comes new risk and potential liability. This is compounded by the TSCA Amendments' importance and the uncertainty surrounding the current administration's enforcement priorities. Although not intended to be exhaustive, the following areas of risk and potential liability may arise, particularly for corporate clients:

- ***Negative affect on production and use of chemicals that are limited or banned***. EPA's determination that a chemical should be limited or banned would have a tremendous effect on those that produce and/or use the chemical. Affected companies will need to spend more money on production due to the limitations and/or other controls, and may need to invest in developing and testing alternative chemicals.
- ***Companies may have environmental liability long after a chemical is limited or banned.*** A determination by EPA that a chemical manufactured, imported, used, distributed, and/or disposed of by corporate clients should be limited or banned would not only affect production, but could also result in further liability if that chemical is found to have impacted the environment (e.g., polychlorinated biphenyls were banned under TSCA in 1979

but are still a major issue at many hazardous waste disposal sites).

- ***Companies will incur more costs when introducing new chemicals.*** Now that EPA must approve new chemicals before they enter the U.S. market, it will be harder and more expensive to introduce new chemicals. The TSCA Amendments place a higher burden on corporations, require more time, and add EPA fees and other costs to get a new chemical approved. Additionally, it may take EPA several years to finalize and fine-tune its new approval process, adding another level of uncertainty and potential for transaction costs.
- ***Any effect on production would also impact the supply chain.*** Downstream users who rely on chemical manufacturers or importers should be aware of the TSCA Amendments and monitor whether their suppliers are in compliance.
- ***Increased scrutiny could lead to more personal injury cases.*** As EPA more systematically determines whether chemical substances pose a risk of injury to health or the environment, companies that manufacture, import, use, distribute, and/or dispose of those chemical substances may see an increase in personal injury litigation and occupational exposure cases resulting from new or more widely disbursed information.
- ***Potential for new and previously "unknown conditions" under remediation programs.*** Increased testing could drive new standards for contaminants in soil, sediment, water, and air, and/or increased awareness of chemicals not otherwise regulated (e.g., similar to the recent activity surrounding perfluorooctanoic acid).[63] Increased scrutiny and new standards could bring with it new enforcement issues under clean-up programs, and may also affect otherwise closed and settled enforcement cases if they trigger re-opener statutes under state and federal laws.[64]
- ***Potential for new environmental justice issues***. The TSCA Amendments specifically include considerations of unreasonable risk to a potentially exposed or susceptible subpopulation, which includes but is not limited to infants, children, pregnant women, workers, or the elderly. Previously unknown liability could emerge if evaluations show a particular risk to a subpopulation.
- ***Disconnect between state and federal regulations***. Although the TSCA Amendments attempted to address pre-emption issues, the new law could also present more confusion on what and when states can regulate. This area may become especially complicated if certain states (e.g., California already has an active Department of Toxic Substances Control) determine that more stringent state regulations would be more effective than EPA oversight under the current administration.

Next Steps

Attorneys should continue to review their client's risk profiles as TSCA Amendments are implemented and refined, including:

- Determine whether clients use, manufacture, distribute, process, import, and/or dispose of any of the ten (10) chemicals currently under review (i.e., Asbestos; 1-Bromopropane; Carbon Tetrachloride; 1, 4 Dioxane; Cyclic Aliphatic Bromide Cluster (HBCD); Methylene Chloride; N-Methylpyrolidone; Perchloroethylene; Pigment Violet 29; and Trichloroethylene). If so, attorneys should monitor EPA's process and consider submitting public comment(s) if regulations, limitations, and/or prohibitions are considered.
- Review active chemicals that clients have manufactured and/or imported for non-exempt purposes between June 21, 2006 and June 21, 2016, and ensure Notices of Activity—Form A were submitted by February 7, 2018. Remember that any chemical substance currently on the active list will be made public unless a new CBI request is received, so a Notice of Activity should be considered to protect CBI even if the chemical may otherwise be exempt.
- Participate in EPA's process for prioritizing, evaluating and regulating chemicals.
- Continue to be mindful of touchpoints that could affect liability vis-a-vis employees, customers, and consumers, such as labelling, reporting, safety data sheets, employee training, and personal protection equipment.

Endnotes

1. *See* EDF Files Lawsuits to Defend Reforms to Chemical Safety Law, Envtl. Def. Fund (Aug. 14, 2017), https://www.edf.org/media/edf-files-lawsuits-defend-reforms-chemical-safety-law ("Notably, the changes [to the final rules] from January's proposed rules were directed at EPA by Dr. Nancy Beck, freshly arrived from the chemical industry's main trade association, where she had authored industry comments on the proposed rules. She now serves as the top political official in EPA's TSCA office.").
2. 15 U.S.C. § 2607(b)(4)(A); 40 C.F.R. § 710.30(a)(1).
3. *Id*.
4. *Id*.
5. 15 U.S.C. § 2605(b)(1).
6. *Id*.
7. *Id*.
8. 15 U.S.C. § 2605(b)(3)(c).
9. 15 U.S.C. § 2605(b)(2)(A). The 10 substances currently under review are: Asbestos; 1-Bromopropane; Carbon Tetrachloride; 1, 4 Dioxane; Cyclic Aliphatic Bromide Cluster (HBCD); Methylene Chloride; N-Methylpyrolidone; Perchloroethylene; Pigment Violet 29; and Trichloroethylene. Scopes of the Risk Evaluations to be

Conducted for the First Ten Chemical Substances Under the TSCA, 82 Fed. Reg. 31,592, 31,593.

10. 15 U.S.C. § 2605(b)(2)(B).
11. 15 U.S.C. § 2605(b)(4).
12. 15 U.S.C. § 2605(c)(1).
13. 15 U.S.C. § 2605(c)(2).
14. *See generally*, Richard A. Denison, *A Primer on the New Toxic Substances Control Act (TSCA) and What Lead to It*, Envtl. Def. Fund (April 2017), http://blogs.edf.org/health/files/2017/04/Denison-Primer-on-Lautenberg-Act-FINAL.pdf).
15. *Id*.
16. *Id*.
17. 15 U.S.C. § 2604(a)(3).
18. 15 U.S.C. § 2604(a)(4).
19. 15 U.S.C. § 2603(a)(1).
20. 15 U.S.C. § 2603(a)(2).
21. 15 U.S.C. § 2617(b).
22. 15 U.S.C. § 2617(a)(1); 15 U.S.C. § 2617(c).
23. *Denison, supra* note 14, at 7.
24. 15 U.S.C. § 2613(c).
25. 15 U.S.C. § 2613(e).
26. 15 U.S.C. § 2625(3); 15 U.S.C. § 2625(4).
27. 40 C.F.R. § 702.5(a).
28. 40 C.F.R. § 702.5(c).
29. 40 C.F.R. § 702.7.
30. 40 C.F.R. § 702.11.
31. 40 C.F.R. § 702.17.
32. *Id*.
33. 40 C.F.R. § 702.49(b).
34. 40 C.F.R. § 702.49(c).
35. Final TSCA Framework Rules "Significantly Weakened," Envtl. Def. Fund (June 22, 2017), https://www.edf.org/media/final-tsca-framework-rules-significantly-weakened-edf.
36. *Compare* 40 C.F.R. § 702.37(a), with Procedure for Chemical Risk Evaluation Under the Amended TSCA, 82 Fed. Reg. 7562, 7576 (to be codified at 40 C.F.R. pt. 702) (to be codified at 40 C.F.R. pt. 702).
37. *Compare* 40 C.F.R. § 702.37(b)(4), with Procedure for Chemical Risk Evaluation Under the Amended TSCA, 82 Fed Reg. 7562, 7576 (to be codified at 40 C.F.R. pt. 702).
38. *Safer Chemicals v. USEPA*, Case No. 17- 72260 (9th Cir. filed Aug. 10, 2017).
39. *All. of Nurses for Healthy Envts. v. USEPA*, Case No. 17- 1926 (4th Cir. filed Aug. 11, 2017). The Court of Appeals for the Ninth Circuit denied a motion to transfer the prioritization rule to the Fourth Circuit.
40. *Safer Chemicals v. USEPA*, Case No. 17- 72260 (9th Cir. filed Aug. 10, 2017) (order denying motion to transfer).
41. 40 C.F.R. § 710.25; 40 C.F.R. § 710.30(a)(1).
42. 15 U.S.C. § 2602(13) & (14).
43. 40 C.F.R. § 710.30(a)(1).
44. 40 C.F.R. § 710.37(a).
45. 40 C.F.R. § 710.30(b).
46. 40 C.F.R. § 710.39(a).
47. 40 C.F.R. § 710.35.
48. 40 C.F.R. § 710.4(c)(3); 40 C.F.R. § 710.27(a)(1).
49. 40 C.F.R. § 710.25(a).
50. 40 C.F.R. § 710.27(a)(2).
51. 40 C.F.R. § 710.27(a)(3).
52. 40 C.F.R. § 710.27(a)(5).
53. 40 C.F.R. § 710.27(b)(2).
54. TSCA Inventory Notification (Active-Inactive) Requirements, 82 Fed. Reg. 37,520, 37,524 (to be codified at 40 C.F.R. pt. 710).
55. *Id*.; 40 C.F.R. § 710.37(a).
56. *See generally Envtl. Def.Fund v. USEPA*, Case No. 17-1201 (D.C. Cir. 2017 filed Sept. 1, 2017). The following parties have also filed motions to intervene: American Chemistry Council, American Fuel & Petrochemical Manufacturers, American Petroleum Institute, Chamber of Commerce of the United States of America, Society of Chemical Manufacturers and Affiliates, American Coatings Association, American Coke and Coal Chemicals Institute, American Forest & Paper Association, EPS Industry Alliance, IPC International, Inc., doing business as IPC—Association Connecting Electronics Industries, National Association of Chemical Distributors, National Association of Manufacturers, National Mining Association, and Polyurethane Manufacturers Association. Certificate as to Parties, Rulings, and Related Cases at 1–2, *Envtl. Def. Fund v. USEPA*, No. 17-1201 (D.C. Cir. filed Nov. 8, 2017).
57. *See supra* note 1.
58. *Compare* 40 C.F.R. § 710.27(a)(4), and 40 C.F.R. § 710.27(a)(5), with TSCA Inventory Notification (Active-Inactive) Requirements, 82 Fed. Reg. 4255, 4266 (to be codified at 40 C.F.R. pt. 710).
59. *Compare* 40 C.F.R. § 710.29(b), with TSCA Inventory Notification (Active-Inactive) Requirements, 82 Fed. Reg. 4255, 4266 (to be codified at 40 C.F.R. pt. 710).
60. *Compare* 40 C.F.R. § 710.37(a)(2), with TSCA Inventory Notification (Active-Inactive) Requirements, 82 Fed. Reg. 4255, 4268 (to be codified at 40 C.F.R. pt. 710).
61. Petitioner's Nonbinding Statement of Issues to be Raised, *Envtl. Def. Fund v. USEPA*, No. 17-1201 (D.C. Cir. filed Nov. 9, 2017).
62. Unopposed Motion to Establish Extended Briefing Schedule at ¶5, *Envtl. Def. Fund v. USEPA*, No. 17-1201 (D.C. Cir. filed Nov. 7, 2017).
63. Drinking Water Health Advisories for PFOA and PFOS, U.S. Envtl. Prot. Agency, https://www.epa.gov/ground-water-and-drinking-water/drinking-water-health-advisories-pfoa-and-pfos (last updated August 30, 2017).
64. *See, e.g.*, 42 U.S.C. § 9622(f)(6)(A) (¶A] covenant not to sue a person concerning future liability to the United States [under Comprehensive Environmental Response, Compensation, and Liability Act] shall include an exception to the covenant that allows the President to sue such person concerning future liability resulting from the release or threatened release that is the subject of the covenant where such liability arises out of conditions which are unknown at the time the President certifies under paragraph (3) that remedial action has been completed at the facility concerned.).