

EPA Releases Draft Scope Documents for 13 High-Priority Chemical Risk Evaluations: Now Is a Critical Time to Engage and Inform EPA

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As the challenges to businesses from the COVID-19 pandemic continue to mount, the U.S. Environmental Protection Agency (EPA) continues on course to meet its obligations under the Toxic Substances Control Act (TSCA). Last week, EPA published the draft scopes for 13 of the 20 high-priority chemical risk evaluations pursuant to TSCA and asked for comments by May 26. Under section 6(b)(4)(D) of TSCA, EPA is required to publish the scope of the risk evaluations to inform the public about the hazards, exposures, conditions of use, and the potentially exposed or susceptible subpopulations that EPA expects to consider. We strongly advise you to review these scope documents and determine whether your company's manufacture, processing, or use of these 13 chemicals is potentially impacted by EPA's risk evaluations. Failure to engage and inform EPA during this critical comment period is not an option. As companies who are affected by the first 10 risk evaluation can attest, paying close attention to these scope documents and EPA's information gaps right now could significantly help your businesses in the future.

For which high-priority chemical substances has EPA released the scope documents?

EPA has released the scope documents for the following 13 high-priority chemicals:

- p-Dichlorobenzene

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Practice Areas

Environment & Product Regulation
Toxic Substances Control Act (TSCA)

- 4,4'-(1-Methylethylidene)bis[2,6-dibromophenol]
- 1,2-Dichloroethane
- Tris(2-chloroethyl) phosphate
- trans-1,2-Dichloroethylene
- Phosphoric acid triphenyl ester
- o-Dichlorobenzene
- Ethylene dibromide
- 1,1,2-Trichloroethane
- 1,3-Butadiene
- 1,2-Dichloropropane
- 1,3,4,6,7,8-Hexahydro-4,6,6,7,8,8-hexamethylcyclopenta[g]-2-benzopyran.
- 1,1-Dichloroethane

What industries are affected?

EPA has identified the following industries and products that could be affected by the risk evaluations:

- Adhesives
- Insulation
- Air care products
- Laundry and dishwashing products
- Aircraft and aerospace
- Odor agents
- Automotive care products
- Paints and coatings
- Automotive lubricants and greases

- Paper products and sizing agents
- Batteries
- Petrochemical
- Building and construction materials
- Petroleum
- Chemical manufacturing
- Plastics
- Cleaning and furniture care products
- Plating and surface treating agents
- Coal
- Printing inks, toner and colorant products
- Degreasers
- Propellant and blowing agents
- Deodorizers and air fresheners
- Refrigerants
- Dyes and pigments
- Resin manufacturing
- Electrical and electronic products
- Rubber products
- Fabric, textile, and leather products
- Sealants
- Flame Retardants
- Solvents

- Foam seating and bedding products
- Spot cleaners and stain removers
- Fuel and fuel additives

When are comments on the draft scope documents due?

Comments are currently due on Tuesday, May 26. We are aware that some affected parties are already contemplating extension requests.

Will the public get the opportunity to comment on further refinements of these scope documents, as EPA did with the problem formulations for the first 10 chemicals?

Not likely. TSCA does not require EPA to issue further refinements of its scoping documents. We do not believe that EPA will issue problem formulations for the 20 high-priority risk evaluations. EPA issued those additional refinements for the first 10 chemicals because it did not release draft scope documents for these chemicals due to time constraints. Therefore, this comment period will likely be the only opportunity for you to provide input on whether and how EPA should evaluate particular conditions of use for these chemicals.

What should I look for when reviewing these scope documents?

You should check to see if EPA plans to evaluate your condition of use for each chemical substance. You should also pay careful attention to how EPA has characterized and categorized your use for purposes of assessing occupational and consumer exposures.

Regardless of whether EPA intends to evaluate your particular use, you should determine whether it makes sense for the agency to include your use in the risk evaluation. Factors for your consideration include whether (1) your company could benefit from TSCA preemption by inclusion in the risk evaluation and (2) your use is already adequately regulated under other environmental laws and therefore does not merit additional agency review.

Notably, the scope documents state that "EPA plans to efficiently use Agency resources, avoid duplicating efforts taken pursuant to other Agency programs, maximize scientific and analytical efforts, and meet the statutory deadline for completing risk evaluations." Therefore, the Office of Pollution Prevention and Toxics "is working closely with the offices with EPA that administer and implement the Clean Air Act (CAA), the Safe Drinking Water Act (SDWA), the Clean Water Act (CWA) and the Resource Conservation and Recovery Act (RCRA), to identify how those statutes and any associated regulatory programs address . . . exposure pathways falling under the jurisdiction of these EPA statutes." This may result in EPA deciding to exclude certain uses from the scope of the risk evaluations.

Finally, you should confirm that EPA is appropriately categorizing your use of the chemical substance and determine whether the agency needs to sub-categorize your use because there are significant differences among users in the general category.

What if I need help navigating these scope documents and drafting comments to EPA?

The attorneys at Wiley have been intimately involved in EPA's risk evaluations since the TSCA amendments were enacted. We know what information is helpful and persuasive during each stage of the risk evaluation process. In particular, we can help form a strategy for your company and industry to engage EPA and work towards an optimal outcome. Please contact Erik Baptist or Martha Marrapese for assistance.

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