

# TSCA Articles Regulations—U.S. EPA Course Reversal?

## Publications

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In prepared remarks from U.S. EPA chemicals chief Michael Freedhoff that were presented at the Product Stewardship Society's annual meeting, Freedhoff clearly articulated an intent by the Agency to reverse course and aggressively seek to regulate finished articles under the Toxic Substances Control Act ("TSCA"). Historically, U.S. EPA has focused on the manufacture or import of chemicals and chemical mixtures as opposed to finished articles. However, in her written remarks, Freedhoff focused on articles, stating that the "law is very clear that when a chemical enters the United States, or is distributed or processed in the United States—whether in bulk form or in an article—it can be subject to regulation under TSCA".

Recent U.S. EPA actions have evidenced an intent by U.S. EPA to begin to regulate articles under TSCA. For example, in January 2021, U.S. EPA published final rules to regulate final persistent, bioaccumulative and toxic ("PBT") chemicals under Section 6(h) of TSCA—these final rules prohibited the use of some of these PBT chemicals in finished articles. Although U.S. EPA has indicated that it intends to initiate a new rulemaking for these five PBT chemicals and has extended the compliance deadline to March 8, 2022, Freedhoff's remarks certainly indicate that U.S. EPA intends to rely on its TSCA authority to regulate these finished articles. Another example of U.S. EPA's efforts to regulate articles can be found in the proposed TSCA reporting rule for manufacturers of per- and polyfluoralkyl substances ("PFAS") compounds. The proposed rule would require persons that manufacture (including import) or have manufactured PFAS chemical substances in any year since January 1, 2011 to report on PFAS uses, production volumes, disposals and hazards. Specifically, there is no exemption in the proposed reporting rule for PFAS in articles and Freedhoff specifically noted that the proposed rule "is another example of the Agency's use of its authority to propose regulatory requirements applicable to imported articles under TSCA".

Based on U.S. EPA recent regulatory actions coupled with Freedhoff's prepared comments, it seems clear that U.S. EPA intends to focus its TSCA regulatory authority on articles. We will continue to track these ongoing regulatory initiatives at the Corporate Environmental Lawyer blog.

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