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Outlook 2021 – The Biden Administration Sharpens TSCA's Sword

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Written by **Susan H. Richardson, Alexander M. Bullock**

The Toxic Substances Control Act (TSCA), enacted in 1976, authorizes the United States Environmental Protection Agency (EPA) to regulate the manufacture or importation of new and existing chemicals. TSCA's regulations include reporting, record-keeping, and testing requirements. TSCA's scope is very broad – reaching any "person" who manufactures, imports, processes, distributes in commerce, uses or disposes of a chemical substance, regardless of the industry sector. In June 2016, Congress enacted the Lautenberg Act, which sharpened TSCA's tools for assessment and regulation of both existing and new chemical substances in the marketplace. Consequently, the Trump Administration was the first administration with the opportunity to most fully implement the 2016 Amendments. In the view of its critics, Trump's EPA exercised its discretion often to the benefit of chemical companies, including a narrower scope for risk evaluation and procedures to accelerate the process of review and approval. The Biden Administration, in turn, has been urged by its supporters to exercise its discretion to broaden the scope of risk review and evaluation. Time will only tell whether such a change in course will have significant impacts on the industry going forward.

Related People



Susan H. Richardson

t 404.815.6330

srichardson@ktslaw.com



Alexander M. Bullock

t 202.824.1416

abullock@ktslaw.com