Toxic Substances Control Act (TSCA) vs. Lautenberg Act (FRL)

Flow charts depicting basic processes for:

- Existing chemicals under FRL
- Existing chemicals under old TSCA
- New chemicals under the old and new laws
How the Lautenberg Act works

Existing Chemicals

85,000 chemicals on TSCA Inventory

Inventory “reset”: EPA identifies active, inactive chemicals

- Safety standard: "No unreasonable risk to human health or the environment."
  - Based solely on risks to health/environment
  - EPA cannot consider costs
  - Eliminates "least burdensome" requirement

Key

- main process step
- final agency action
- interim info-collecting step

Enforceable Deadlines (can be extended up to 2 more years)

Prioritization

- High Priority
  - May present an unreasonable risk due to potential hazard and exposure path
  - EPA to designate at least 20 by 3.5 years

- Low Priority
  - Is not high-priority; can be judicially challenged
  - EPA to designate at least 20 by 3.5 years

- Not enough information
  - Request/require testing (can extend deadline by 90 days)
  - If information still insufficient, becomes high-priority

Risk Evaluation

- EPA must establish scope within 6 months

Determination

- Does present unreasonable risk
  - EPA must impose prohibitions or restrictions by rule necessary to eliminate the risk; cost used to select among options

- Does not present unreasonable risk
  - EPA imposes full ban of one or more uses; must also consider availability of viable, safer alternatives

- Not enough information
  - If information is insufficient or more is needed, can require testing and issue an order to get additional data

Risk Management

- First 10 Work Plan chemicals
  - Designate w/in 6 mos
  - Not preemptive until final EPA action

- Company-requested
  - Specific criteria
  - ≤ 50% of number EPA initiates
  - Company pays full cost (50% if drawn from Work Plan)
  - Not preemptive until final EPA action

Preemption Triggered

- During EPA review (3.5 years maximum)
  - New state restrictions on high-priority chemicals are prohibited except via waiver
  - Existing state actions remain in effect
  - Only applies to uses, risks within scope of EPA’s review. States can readily get waiver if basic criteria are met or if action was proposed before review began.

- After final EPA action (either no unreasonable risk or regulation if risk found)
  - State restrictions on production, distribution, processing or use taken after 4/22/16 are generally preempted if they apply to the same use/risk EPA addressed.
  - Other state actions (e.g., reporting or disclosure) remain in effect or can be taken. States can seek waiver.
How the original Toxic Substances Control Act worked

Existing Chemicals

62,000 chemicals in commerce when TSCA passed in 1976

All 62,000 chemicals presumed safe and "grandfathered in"

EPA lacks mandate to assess safety

Risk Assessment

Risk assessments conducted on less than 2% of chemicals

Determination

Does the chemical pose "unreasonable risk"?
EPA must find both:
1. significant risk AND
2. that the benefits of restricting the chemical outweigh the cost.

Chemical may remain on market without restrictions

Risk management
EPA may impose restrictions. But only "least burdensome" restriction, documenting inadequacy of all less burdensome restrictions.

In a small number of cases, EPA has identified a reason to conduct a risk assessment.

Only 5 chemicals (partially) restricted under TSCA. EPA's asbestos restrictions could not stand up to court challenge.
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**New Chemicals**

- New Chemicals (=1,000 notices received per year)

**EPA review of notice and risk determination:**

- **TSCA:** Discretionary
- **FRL:** Mandatory

**TSCA: No action by EPA within 90 day review period**

- FRL: Chemical is not likely to present an unreasonable risk

**Chemical presents an unreasonable risk**

- TSCA: Insufficient information and may present unreasonable risk or is produced in large amounts and significant release or exposure
- FRL: Insufficient information or may present unreasonable risk or is produced in large amounts and significant release or exposure

**EPA may issue order to require additional data**

**EPA must, by rule or order, prohibit or impose restrictions necessary to protect against the risk**

- TSCA: EPA may propose an order to prohibit or impose restrictions
- FRL: EPA must by order prohibit or impose restrictions necessary to protect against any risk, including pending receipt of additional information

**Chemical may commence manufacture and EPA must publish finding**

**Under TSCA only**