



EPA “Assumption of No Personal Protective Equipment (PPE)” in TSCA Risk Determinations

Background

The 2016 amendments to the Toxic Substances Control Act (TSCA) authorizes the Environmental Protection Agency (EPA) to determine whether a chemical presents a risk under the chemical’s “conditions of use.” Under TSCA, EPA must identify and make “risk determinations” for each condition of use of a chemical that presents “unreasonable risk” as well as those that “do not present unreasonable risk.” Both the inherent toxicity of a chemical and the likely exposures under its *conditions* of use must be evaluated to determine whether a chemical poses unreasonable risks to humans or the environment.

TSCA chemicals are important building block chemicals for industrial, commercial, and consumer uses. Therefore, EPA’s consideration of the specific conditions of use of these chemicals is important.

Until recently, an important condition of use EPA took into consideration and recognized—as part of its risk evaluations and determinations—was workplace requirements and protocols to use Personal Protective Equipment (PPE), including PPE legally required by the Occupational Safety and Health Administration (OSHA). This commonsense approach is critical given that workplace-required PPE can significantly impact and minimize potential workplace exposure risk.

EPA has now made a policy change and decided that it is no longer taking into account the use of PPE in its risk determinations. The Agency now is assuming that workplace requirements and protocols to use PPE, including PPE required by OSHA, are not actually being used in the workplace.

Problem

- PPE (e.g., protective clothing, helmets, gloves, face shields, goggles, facemasks, and respirators) is an integral part of the conditions of use of manufacturing and processing and must be considered when making risk determinations.
- PPE is designed to protect employees from exposure to workplace hazards and reduce the risk of injury.
- By assuming PPE is not used in any condition of use, EPA is ignoring applicable OSHA requirements and industry-specific standards which employers and employees are utilizing to mitigate workplace exposure.
- EPA is treating workplace requirements and protocols to use PPE, including the Occupational Safety and Health Act (OSH Act) requirements, other OSHA mandatory standards, and standard industrial workplace practices, as irrelevant in TSCA risk determinations. This approach is inconsistent with TSCA's requirements to consider conditions of use.
- By ignoring the use of PPE, EPA is not complying with TSCA's statutory requirement to "describe the weight of scientific evidence for the identified hazard and exposure" and is painting an unrealistic and inaccurate picture of the workplace environment and overestimating the risk to workers.
- EPA's "no PPE assumption" could result in duplicative, inconsistent, unwarranted, and unnecessarily costly regulatory requirements.

Solution

PPE is an integral part of the conditions of use of manufacturing and processing, and it must be considered when making risk determinations.

EPA must take into account actual exposures to workers, including the use of existing workplace controls that are either industry practice or legal requirements, as well as PPE, when making a determination of risk. Moreover, in those cases where the existing workplace controls and standard practices, including PPE requirements, are protective, EPA should make a finding of no unreasonable risk.

EPA should not ignore, undervalue, or undermine existing worker protection practices in TSCA risk determinations and risk management actions.