

# State of TSCA Progress Report



On May 10, 2022, ACC's [State of TSCA Report: Fix Implementation Now Before It Is Too Late](#) identified six key challenges to TSCA's performance and offered solutions to best address the problems and get TSCA implementation back on track.

Unfortunately, so far, the U.S. Environmental Protection Agency (EPA) has made little to no progress in correcting any issues with TSCA, and industry's solutions have not been adopted.

Following is a State of TSCA Progress Report spotlighting the continuing problems within the TSCA program and offering real-world solutions to help address the challenges with TSCA implementation. For the U.S. to remain a global leader in innovation, TSCA must be a reliable and fully functioning chemicals management program.

## Grading Scale:

PASSED

INCOMPLETE

FAILED

1

INCOMPLETE

### EPA Continues to Veer Out of Its Lane By Not Appropriately Deferring to Other Programs and Agencies

**Problem:** The TSCA program office too often fails to utilize, and transparently document how it is relying on and deferring to other agencies, program offices, and experts with relevant expertise to effectively and efficiently address potential risk. At best, its approach has been inconsistent and lacks transparency. In some instances, EPA will consider and defer to the analysis of other federal agencies (e.g., DOT) and in other instances, EPA appears to completely disregard the expertise and evaluations (e.g., OSHA).

**Solution:** For the TSCA program office to run efficiently and effectively, EPA must transparently consult and document where it relies on the expert analysis and evaluation conducted by the offices responsible for the regulation of air, water, waste, environmental justice and workplace safety. To assume anything not covered under TSCA is automatically not being adequately addressed is fundamentally flawed and undercuts the significant and important evaluations that have been conducted by EPA program offices and other agencies for decades. EPA should use this information to inform any TSCA risk evaluations.

2

FAILED

### The "Whole Chemical" Approach Fails to Clearly Outline a Consistent Framework and Method

**Problem:** Under the "whole chemical" approach EPA is classifying chemicals as presenting an unreasonable risk—even when it has identified safe uses—instead of making safety determinations on a use-by-use basis. Making this policy even more arbitrary, EPA continues to modify the parameters of its approach, for example, recently changing language from "majority of" to "substantial amount of" conditions of use that drive the unreasonable risk determination.

**Solution:** EPA should clearly document and outline the procedures and guidance it is using to make a whole chemical determination and provide a case study example of a substance that would be determined to have no unreasonable risk using this approach. The document should include and define what EPA means by "substantial amount of" and how that information is used to quantify conditions of use to reach a risk determination decision. If EPA is unable to sufficiently document and communicate the approach, it should abandon the "whole chemical" approach in its entirety.



## 3

FAILED

### EPA Continues to Incorrectly Assess Worker Safety and Fails to Incorporate PPE Usage as Part of the Condition of Use

**Problem:** EPA continues to disregard critical and essential occupational safety information, including actual workplace requirements and protocols to use personal protective equipment (PPE). The EPA Assistant Administrator noted before a Senate committee in June that they “know a lot of companies, especially the larger manufacturers, go beyond what OSHA requires them to do.” However, EPA continues to fail to adequately incorporate the use of PPE even when it may be an essential and necessary part of the condition of use and required by federal regulation.

**Solution:** In each risk evaluation, EPA should clearly outline all the federally mandated and voluntary occupational exposure limits applicable to the condition of use under evaluation, summarize the workplace safety requirements associated with those conditions of use, and incorporate the use of PPE in the risk evaluation stage when assessing and making decisions about whether unreasonable risk exists in the workplace.

## 4

FAILED

### EPA Continues to Use Flawed Science and Overestimate Risk

**Problem:** To date, all of EPA’s risk evaluations have overestimated the risks of the chemicals, mischaracterized workplace exposures, lacked consideration of real-world uses and exposures, required unnecessary and wasteful testing, and failed to fully apply the weight of the evidence approach required by Section 26 of the statute.

**Solution:** TSCA evaluations must demonstrate that they are risk-based, incorporate real exposure scenarios, use scientific information provided by industry and stakeholders for known conditions of use, adhere to statutorily mandated TSCA science standards, and are not unduly overestimating risk. In each risk evaluation, EPA should clearly document how it has utilized evaluations from other EPA program offices and federal agencies, how that information meets the TSCA scientific standards, and how EPA has applied a mode of action framework to determine human health risk. If EPA cannot do this, it should not utilize that information for its TSCA decision-making.

## 5

FAILED

### EPA Continues to Delay New Chemical Reviews, Stifling Innovation

**Problem:** EPA continues to miss the statutorily mandated 90-day deadline to review and approve new chemicals. EPA’s process suffers from lack of staff expertise, inconsistencies in evaluation methods, lack of clear guidance on data needs, and inadequate communication and engagement with stakeholders. In fact, in a survey of ACC member companies, respondents representing approximately \$97 billion, or nearly one-fifth of U.S. chemical sales, reported systemic delays, disregarded company-submitted data, and inconsistent reviews.

**Solution:** EPA has identified improving its new chemical review process as a top priority and has made some progress to improve. This has included its new collaborative research program to support new chemical reviews, and stakeholder outreach to discuss its evaluation process for engineering data and rework associated with new chemical submission. But, we have yet to see improvements to the timeliness for reviews. EPA must meet its 90-day deadline and should develop a comprehensive plan that identifies the steps it is taking to improve its processes to meet statutory requirements.

## 6

FAILED

### EPA Still has not Justified or Accounted for Increased Fees

**Problem:** EPA continues to state plans to increase the amount it charges chemical manufacturers while failing to provide any evidence of fiscal discipline or accountability. Industry continues to pay significant costs associated with the TSCA programs, but it remains unclear what EPA is doing with this money. At numerous Congressional oversight hearings, the EPA Assistant Administrator has been requested to submit a formal accounting for the funding already appropriated to the TSCA Program. While we await EPA’s issuance of the Supplement to its new fees rule, the EPA Assistant Administrator continued to inform industry to “prepare for sticker shock” while failing to provide Congress with a detailed report substantiating the use of Congressional funding and TSCA fees, as mandated by Section 26.

**Solution:** EPA must provide a clear substantiation of, and accountability for, any fee increases to the TSCA program and explain how it will utilize the funds to meet TSCA statutory requirements in a timely manner.