ILMA 2017 Management Forum

Safety, Health, Environmental & Regulatory Affairs Committee Meeting

Park Hyatt Aviara Resort
Carlsbad, CA

12:15 PM – 2:15 PM (PDT)
NAM Manufacturing Summit

• The National Association of Manufacturers Manufacturing Summit 2017 is a great opportunity to convey issues and concerns to elected officials specific to lubricant manufacturers

• Held: June 20-21, 2017 at the Grand Hyatt in Washington, DC

• More information on ILMA’s website
ILMA 2017 Management Forum
SHERA Committee

Proposition 65

Mike Pearce, CLS®, CMFS®, W.S. Dodge Oil Company
John K. Howell, Ph.D., GHS Resources Inc.
Outline

• Amendments to Article 6, “Clear and Reasonable Warnings”
• Living with Prop 65 and looking ahead
Notice of Adoption Article 6: Clear and Reasonable Warnings

Sep 2, 2016

On August 30, 2016, the Office of Administrative Law approved the adoption of amendments to Article 6, Clear and Reasonable Warnings, of the California Code of Regulations. This regulatory action repeals all the regulatory provisions of Title 27 of the California Code of Regulations, Article 6 (sections 25601 et seq), except those added via an emergency rulemaking in April 2016 related to warnings for exposures to bisphenol A in canned foods and beverages (Sections 25603.3(f) and (g)). The action will replace the repealed sections with a new regulation divided into two new Subarticles to Article 6. The repealed and new regulations provide, among other things, methods of transmission and content of warnings deemed to be compliant with the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

The regulation will be operative on August 30, 2018. In the interim, businesses may comply with the regulation in effect on August 30, 2016, or the provisions of the new regulation. This will allow for a reasonable transition period for businesses to begin providing warnings under the new provisions.

The regulatory text and the supporting rulemaking documents are available below.

Questions regarding this regulatory action can be directed to Monet Vela, at mvela@oehha.ca.gov, or Maria Fernandes, Staff Counsel at mfernandes@oehha.ca.gov.
Occupational and Consumer Exposures

• Occupational:

(a) A warning to an exposed employee about the chemical in question which fully complies with all information, training and labeling requirements of the federal Hazard Communication Standard (29 Code of Federal Regulations, section 1910.1200), the California Hazard Communication Standard (Title 8, California Code of Regulations section 5194), or, for pesticides, the Pesticides and Worker Safety requirements (Title 3, California Code of Regulations section 6700 et seq.) meets the requirements of this Article.
Occupational and Consumer Exposures

• Consumer:
WARNING: This product can expose you to chemicals including [one or more listed chemicals] which is [are] known to the State of California to cause cancer [and/or birth defects or other reproductive harm]. For more information, go to www.P65Warnings.ca.gov

• Pictogram:
Living with Prop 65 and Looking Ahead

• Over 960 chemicals on list
Source: https://oehha.ca.gov/proposition-65/proposition-65-list

• In 2015, 582 settlements as reported by CA Attorney General’s office with total settlement payments, $26,226,671, or average of $45,063/settlement, including civil penalties and attorney’s fees

• “60-day Notices” (prelude to bringing a Prop 65 action) in 2016 for lead: 464 (You can search for other chemicals here😊 https://oag.ca.gov/prop65/60-day-notice-search)

• Looking ahead...
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SHERA Committee

HCS 2012 Update
John K. Howell, Ph.D., GHS Resources Inc.
Outline

• Dates: no changes
• Top 10 OSHA violations
• Top 5 Hazard Communication violations
• Concentration ranges/Mixtures
• UN GHS Subcommittee update
• Future HCS Rulemaking
Dates: No changes

• June 1, 2016
  – Update alternative workplace labelling – (f)(6)
  – Update hazard communication programs as necessary – (h)(1), and
  – Provide additional employee training for newly identified physical or health hazards – (h)(3)

• Manufacturer or importer with existing stock:
  – Must use HCS 2012 compliant labels, unless
  – “reasonable diligence and good faith” efforts can be demonstrated

• June 1, 2017
  – All manufacturers and importers: products must be HCS 2012 labeled
  – During SCHC Q&A, Sven Rundman III advised compliance officers won’t likely enforce until January 1, 2018
Top 10 OSHA Violations - FY 2016

- Fall Protection
- Hazard Communication
- Scaffolding
- Respiratory Protection
- Lockout/Tagout
- Powered Industrial Trucks
- Ladders
- Machine Guarding
- Electrical – Wiring Methods
- Electrical – General Requirements
Top 6 Hazard Communication Violations

• 1910.1200(e)(1) – written program (4,109 violations)
• 1910.1200(h)(1) – information and training program (2,589)
• 1910.1200(h)(3) – training: shipped labels, workplace labeling & SDS (1,037)
• 1910.1200(g)(8) – maintain MSDS/SDS and readily accessible during each work shift (895)
• 1910.1200(g)(1) (827)
  – manufacturers and importers – SDS for each chemical they produce or import;
  – Employers – SDS in workplace for each chemical used
• 1910.1200(f)(6) – employer: all containers labeled, tagged, marked (826)
Use of Concentration Ranges

• A concentration range may be used:
  – When a trade secret claim has been made (for the exact percentage)
  – When there is batch-to-batch variability in the production of a mixture; or
  – For a group of substantially similar mixtures with similar compositions and hazards

• Trade secret status may be claimed for the exact percentage composition but not for concentration ranges

• When classifier uses a range of concentrations, they:
  – Must be sufficiently narrow to meet the intent of disclosing the actual concentration
  – And must be an accurate representation of the variation

Note: the classification must represent the highest degree of hazard that the mixture could present

(https://www.osha.gov/dsg/hazcom/hazcom-faq.html#collapse33)
Hazard Classification of Mixtures

- Some manufacturers seem to have a misunderstanding on proper hazard classification of mixtures, per Sven Rundman III (09/27/16):

- Products considered mixtures must be classified using the requirements for mixtures Appendix A.0.4
  - Each hazardous ingredient in a mixture must be listed in Section 3 of the SDS if the content is greater than the cut-off values.
  - Requirement to list ingredients that are themselves health hazards is found in Appendix D, and
  - the cut-off values for each health hazards are found in the individual hazard chapters in Appendix A.
GHS UN Subcommittee Update

- UN Sub-committee on GHS activities: met in December
  - Major updates:
    - Flammable gases: new subcategory 1b added (flammable liquids which have a low burning value or high flammability limit)
    - New example for small packages
    - Updates to precautionary statements
GHS UN Subcommittee: Small Package Example

• This example demonstrated how one can use the use of pull out labels:

![Diagram of pull out labels example]
GHS UN Subcommittee: Updates to Precautionary statements

• Changes to Annex 3 (Hazard Statements/Precautionary Statements and Pictograms):
  – Number of changes made to tables in Section 2 of Annex 3 (Codification of Precautionary Statements)
  – New text added in Section 3 of Annex 3 (Use of Precautionary statements)
    • Restructure to improve clarity
    • New text added under “flexibility in the use of precautionary statements”
  – Reformat “Matrix of precautionary statements by hazard class/category”
GHS UN Subcommittee:
Program of work – 2017-18 Biennium

• Continuation of on going work
  – Small packages
  – Global List
  – Review of Chapter 2.1 (Explosives)
  – Dust Explosion Hazards

• New work items
  – Non animal testing
  – Chemicals under pressure
Future HCS Rulemaking: Purpose

• Maintain alignment with GHS
• Address issues identified during implementation of HCS 2012
• Identify issues of concern for those complying with WHMIS 2015
Future HCS Rulemaking: Principles & Assumptions

- As with HCS 2012, OSHA plans to modify only the provisions of the HCS that must be changed to align with the GHS
  - Basic framework of the HCS will remain the same
- OSHA will maintain or enhance the overall current level of protection of the HCS
Future HCS Rulemaking: Maintaining Alignment with GHS

- Appendix A (health hazards): mostly editorial
- Appendix B (physical hazards):
  - Flammable gases – according to GHS Rev 6 & 7
  - Desensitized explosives
  - Aerosols – align with GHS Rev 6/7, include Category 3
- Appendix C (label elements)
  - New or updated hazards, updated guidance, and precautionary statements
- Appendix D (SDS)
  - Updates to SDS Sections 2, 5, 7, 9
Future HCS Rulemaking: Implementation Issues

• Hazard classification Issues
  • Health Hazards; Physical Hazards; Hazards not otherwise classified or Mixtures/cut-off values

• OSHA has provided guidance on labeling
  – Guidance versus Regulatory actions
    • Small packages; Kits; OSHA versus other Jurisdictions and Timing of updating labels
    • Example: How would a change to the (f)(11) provision requiring labels to be updated within six months affect your industry/company?
Future HCS Rulemaking: Implementation Issues

• Safety Data Sheet
• Other Jurisdictions
• Alignment with Canada
Future HCS Rulemaking: Questions to consider

• How the change will effect your company or Industry?
• What are the burdens your industry/company expects?
• Please provide information on potential feasibility issues
  – Technical – can not physically be done
  – Financial
  – Please provide examples/costs associated with issues
• Written comments should refer to Docket #: OSHA-2016-0005

Note: information on several slides abstracted from presentations of OSHA’s Dorinda Folse and Maureen Ruskin at Society for Chemical Hazard Communication Spring, 2017, meeting, New Orleans, LA, March 28 – 29, 2017
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WHMIS 2015 Update
John K. Howell, Ph.D., GHS Resources Inc.
Outline

• Transition Dates
• Technical Guidance
• Document Retention Requirements
• Protecting Confidential Business Information
• Bilingual Label Requirements
• Future Initiatives
## Transition to WHMIS 2015

<table>
<thead>
<tr>
<th>Phases</th>
<th>Timing</th>
<th>Manufacturers and Importers</th>
<th>Distributors</th>
<th>Employers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phase 2</td>
<td>June 1, 2017 to May 31, 2018</td>
<td>WHMIS 2015</td>
<td>WHMIS 1988 or WHMIS 2015</td>
<td>WHMIS 1988 or WHMIS 2015*</td>
</tr>
<tr>
<td>Phase 3</td>
<td>June 1, 2018 to November 30, 2018</td>
<td>WHMIS 2015</td>
<td>WHMIS 2015</td>
<td>WHMIS 1988 or WHMIS 2015*</td>
</tr>
<tr>
<td>Completion</td>
<td>December 1, 2018</td>
<td>WHMIS 2015</td>
<td>WHMIS 2015</td>
<td>WHMIS 2015*</td>
</tr>
</tbody>
</table>

*Consult Provincial jurisdiction for requirements and transition timelines*
Transition to WHMIS 2015

Approach:
• Implementation of WHMIS 2015 will take place over a four-stage transition period;
• The first deadline is approaching: **May 31, 2017**.
• This means that **manufacturers and importers** must be in full compliance with WHMIS 2015 by **June 1, 2017**.
  – WHMIS 1988 labels and MSDS(s) from **manufacturers and importers** will no longer be considered acceptable after that date.
  – Distributors have an extended period for transition.
WHMIS 2015 Technical Guidance

• 06/29/2016: Phase I published. Focused on:
  – classification principles,
  – hazard communication
  – CBI

• 12/02/2016: Phase II published. Focused on:
  – HPA,
  – Exceptions,
  – Physical Hazard and Health Hazard Classes.

• Phase I and Phase II content were combined to form one comprehensive Technical Guidance document.
Accessing a Copy

The Technical Guidance is now available upon request at the following link:


The Guidance is available in both official languages.

Health Canada has received over 640 requests for the Technical Guidance document.
Document Retention Requirements

• Section 14.3 of HPA contains document retention requirements for suppliers of hazardous products

• Suppliers who sell or import hazardous products intended for use, handling or storage in a work place in Canada must prepare and maintain:
  – true copies of labels and SDSs
  – sales and purchasing information
  – must be provided to the Minister of Health or an inspector upon written request
  – must be stored in Canada and retained for a specified period of time

• These requirements came into force on 02/11/2015
Document Retention Requirements

• Suppliers must prepare and maintain:
  – a true copy of a label in both official languages
  – a true copy of an SDS in both official languages.

• If the supplier has obtained the hazardous product from another person, the supplier must prepare and maintain a document containing the following information:
  – Name, address of person from whom the supplier obtained the hazardous product;
  – the quantity of the hazardous product obtained; and,
  – the month and year in which the supplier obtained it.

• For the sale of a hazardous product that results in a transfer of ownership or possession, the following additional information is required:
  – a document indicating the locations at which sales took place (i.e., address of the supplier’s place of business); and,
  – the period during which sales took place
Document Retention Requirements

• Documents must be maintained for six years after the end of the year to which they relate, unless regulations specify another time period.
• Time period aligns with existing document retention requirements that suppliers may already be required to meet, such as those under the federal *Income Tax Act*.
• Documents can be maintained in paper or electronic format, but they must be kept at a supplier’s place of business in Canada.
• Suppliers may determine the business location of those records, at their discretion.
• Documents must be accessible - suppliers be able to provide them to the Minister or an inspector upon written request and within the specified time period.

Note: Health Canada has developed a fact sheet: **Guidance on Document Retention Requirements for Suppliers of Hazardous Products** (December 20, 2016)  
In December, a proposal was received regarding protection of actual concentration ranges as CBI. Under WHMIS 1988, there were prescribed concentration ranges allowed to be used, e.g.:

- 0.1 to 1 per cent
- 1 to 5 percent
- 3 to 7 percent
- 5 to 10 percent, etc.

These prescribed concentration ranges were not retained in the HPR.
Proposal on Prescribed Concentration Ranges

- Under WHMIS 2015, industry is no longer able to use the ranges prescribed in the CPR to protect CBI
- Industry proposes that HPR be amended to include old or similar concentration ranges to protect CBI
- Comments are still being received
  - Decision *not expected* by May 31, 2017
  - Health Canada suggests industry file for protection of CBI and if Health Canada agrees with petition, they will refund application fees
Bilingual Label Requirement

• Requirement for bilingual labels can be met in several ways:
  – A single bilingual label, with the English and French text side by side or one on top of the other;
  – A single bilingual label, with the English and French text interspersed;
  – The English and French portions of the label could be separated into two parts and these could be affixed to, printed on or attached to the hazardous product or the container in which it is packaged, e.g., side by side or one on top of the other;
Bilingual Label Requirement

Product K1 / Produit K1

Danger
Fatal if swallowed
Causes skin irritation

- Wear protective gloves
- Wash hands thoroughly after handling
- Do not eat, drink or smoke when using this product
- Store locked up
- Dispose of contents/container in accordance with local regulations
- IF ON SKIN: Wash with plenty of water
- IF skin irritation occurs: Get medical advice or attention
- Take off contaminated clothing and wash it before reuse
- IF SWALLOWED: Immediately call a POISON CENTRE or doctor
- Rinse mouth

Danger
Mortel en cas d’ingestion
Provoque une irritation cutanée

- Porter des gants de protection
- Se laver les mains soigneusement après manipulation
- Ne pas manger, boire ou fumer en manipulant ce produit
- Garder sous clef
- Éliminer le contenu récipient conformément aux règlements locaux en vigueur
- EN CAS DE CONTACT AVEC LA PEAU : Laver abondamment à l’eau
- En cas d’irritation cutanée : Demander un avis médical/consulter un médecin
- Enlever les vêtements contaminés et les laver avant réutilisation
- EN CAS D’INGESTION : Appeler immédiatement un CENTRE ANTIPOISON ou un médecin
- Rincer la bouche

Compagnie XYZ, 123 rue Machin St, Mytown, ON, NON ON00 (123) 456-7890
Bilingual Label Requirement

• The English and French portions of the label could also be separated into two parts; these could be affixed to, printed on or attached to two different sides of the hazardous product or the container in which it is packaged.

• In this scenario, since it may not be possible to see both English and French text all at once, the required pictogram(s) must appear on each unilingual part of the label.
Future Initiatives

1. Continued discussions on guidance within HC-U.S. OSHA working group, related to:
   – Variances;
   – Coordination of future updates of guidance;
   – Alignment with GHS Purple Book.

2. Work with U.S. OSHA and stakeholders to identify issues/topics that may be considered for future joint Canada-U.S. guidance and future updates to the HPR and the U.S. Hazard Communication Standard, as per RCC commitments:
   Joint stakeholder meeting targeted for Spring 2017.

3. HC will continue to ensure alignment with the U.S., where appropriate, and ensure that the level of protection to workers is maintained.
Future Initiatives

4. UN Sub-Committee of Experts on the GHS has just completed another biennium of work. The 7th revised edition of the GHS Purple Book will be published this year.

5. Recommendation on publication of classifications on the Health Canada website.

6. Negotiations with Industry and Labour on how to protect concentration ranges that are CBI.

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REACH 2018

John K. Howell, Ph.D., GHS Resources Inc.
REACH 2018

- Last REACH deadline, May 31, 2018, for substances 1 – 100 m. tons
- Registration costs are large: 1 – 10, €20 – €40; 10 – 100, €150 - €250
- 145,299 substances pre-registered; only 15,469 registered as of 04/07/2017, including intermediates: where are the other 130,000 substances?
- If you export to the EU, BE SURE that your suppliers are in the process of registering all of your component chemicals. If you create salts in situ, you are the responsible manufacturer; consult your Only Representative for necessary action steps.
REACH 2018

If you or your supplier are part of a Substance Information Exchange Forum (SIEF), you can check on progress:

• 10,371 Joint Submissions as of 04/06/2017 with Lead Registrant identified:

• If you have recently entered the European market but have not yet registered a low volume, existing substance, there is still an opportunity but you must act by May 31, 2017, to get one more year to register.
Newcomer to the market? Act by 31 May to get one more year to prepare your registration

ECHA/NA/17/08

To benefit from the 31 May 2018 registration deadline for low volume, existing substances, you need to have pre-registered them. You can still do so if you have recently entered the European market. The last chance is on 31 May 2017. If you do not pre-register by that date, you will need to register your substance before you can manufacture or import it.

Helsinki, 5 April 2017 – If you have recently started to manufacture or import a non-CMR phase-in substance in amounts of 1 to 100 tonnes a year, you should pre-register it within six months after starting the activity. The last possibility is on 31 May 2017. Pre-registration enables you to continue supplying your low-volume chemicals legally on the EU/EEA market until the last REACH registration deadline on 31 May 2018.

If you do not have a valid pre-registration or registration for your substance after 31 May 2017, you will need to submit an inquiry to ECHA and register your substance before you can manufacture or import it. Preparing an inquiry with IUCLID will take you more time than pre-registering through REACH-IT, will need to contain more information, and will take more time for ECHA to process. You need to take this into account when planning your access to market to avoid delays.

If you manufacture or import your substance for research and development (PPORD), and only make it available to a limited group of customers, you may benefit from a specific PPORD exemption. In this case, you do not need to register or pre-register your substance.

Further information

- Last call to pre-register your low volume chemicals, News alert 16 November 2016
- Pre-registration
- Pre-registering your substance in REACH-IT
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Hazardous Waste
Generator Improvements
Final Rule
Brief History of the Rule

• Most of generator Rules were promulgated in the 1980’s
• 2004 Office of Resource Conservation & Recovery (ORCR) conducted evaluation to improve
  • Program Effectiveness
  • Reduction of Compliance Cost
  • Improve Relationships (Regulated / States)
Results of Evaluation

• Simplify regulations / Clarify ambiguities
• Eliminate cross-referencing
• Flexibility for episodic generators
• One page basic contingency planning
• Clarify satellite accumulation area (Conceptual)
Non-Regulatory Actions

• Attempt improvement of generator website
• Developed online guide - HWGR
• Released “Closed Container” guidance
• Issued memo for turnover of Haz Waste in Tanks
• Technical Corrections
• Other
Not Enough

• Existing issues could only be resolved by rule-making

  September 25, 2015 Proposed Rule
  Rule signed on October 28, 2016
  Federal Register – November 28, 2016
  Effective Date – May 30, 2017 (6 months)
State Generator Categories

[Image of a map showing the states of the United States with different categories highlighted.]

Legend:
- **Same as Federal Generator Categories**
- **Different than Federal Generator Categories**
Components of Rule

• Re-name Very Small Quantity Generator - CESQG
• Emergency Planning and Preparedness Requirements
• Labeling Changes
• SQG Re-notification
• Episodic Generation for VSQG (CESQG) and SQG
• Satellite Accumulation Areas
• Facility Closure Requirements
• 50-Foot Waiver
• Biennial Reporting Clarifications
## Total Hazardous Waste

<table>
<thead>
<tr>
<th>Generator Status</th>
<th>Number of Facilities (Approximate)</th>
<th>Total Waste Generated (tons)</th>
<th>% of Total Haz Waste Generated</th>
</tr>
</thead>
<tbody>
<tr>
<td>VSQG</td>
<td>353,400–591,800</td>
<td>46,000–148,000</td>
<td>&lt;1%</td>
</tr>
<tr>
<td>SQG</td>
<td>49,900–64,300</td>
<td>66,000–141,000</td>
<td>&lt;1%</td>
</tr>
<tr>
<td>LQG</td>
<td>20,800</td>
<td>35.2 million</td>
<td>99%</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>424,100–676,900</strong></td>
<td><strong>35.3–35.4 million</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>
# Changes by Category

<table>
<thead>
<tr>
<th>NEW PROVISION</th>
<th>VSQG</th>
<th>SQG</th>
<th>LQG</th>
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</thead>
<tbody>
<tr>
<td>Reorganization</td>
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<td>X</td>
<td>X</td>
</tr>
<tr>
<td>LQG Consolidation of VSQG</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Episodic Generation</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>50 Ft. Waiver</td>
<td></td>
<td></td>
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<tr>
<td>Marking &amp; Labeling</td>
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<td>X</td>
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<tr>
<td>Marking RCRA Waste Code</td>
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<tr>
<td>SQG Renotification</td>
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<tr>
<td>Contingency Plan Quick Ref. Guide</td>
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<tr>
<td>Closure Notification</td>
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<td></td>
<td></td>
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<tr>
<td>Closure as Landfill if can't Clean Close</td>
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<tr>
<td>Biennial Reporting</td>
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</tr>
</tbody>
</table>
Additional Resources

• [https://www.epa.gov(hwgenerators/final-rule-hazardous-waste-generator-improvements](https://www.epa.gov(hwgenerators/final-rule-hazardous-waste-generator-improvements)]

• ILMA Website
  – Contains EPA presentations
  – Awareness Presentations

End of Slides
TSCA Reform and Implementation
Overview

• Frank R. Lautenberg Chemical Safety for the 21st Century Act passed in June 2016
  – First substantive amendment to TSCA since its enactment in 1976

• Key changes made to testing, review of new and existing chemicals, and collection of fees.

• Focus on upcoming final implementation rules
  – Prioritization, evaluation, and inventory reset
Section 5 – New Chemicals

• Law maintains requirement that Pre-Manufacture Notices be submitted 90 days prior to commencement

• New requirements that Agency expressly consider impacts of new chemicals under intended conditions of use to susceptible and vulnerable subpopulations (e.g. the elderly, children) when makes its risk determination

• EPA must now make an affirmative finding
  – Presents an unreasonable risk, does not, or not enough info.
Section 6 – Existing Chemicals

• New laws adds express prioritization, risk evaluation, and risk management steps
• Requires consideration to susceptible and highly exposed subpopulations (e.g. the elderly) as well
• Will make it easier for EPA to regulate chemicals
  – Eliminates the “least burdensome” requirements during evaluation
• Allows industry-requested chemical evaluations
  – Can be 25-50% of chemical reviews
Prioritization

- Adds threshold prioritization phase that requires EPA to establish a risk-based screening process to review chemicals within one year of the law’s enactment
- Must take into account hazard/exposure potential, persistence, bioaccumulation, and volume of use
- EPA must then designate substances as “high priority” or “low priority”
  - Public comment period for EPA proposed designation
Prioritization

• Within three and one half years, at least 20 chemicals must be designated “high priority” 20 “low priority”
  – High priority-chemical may present an unreasonable risk of injury of injury to health or the environment due to potential hazard or route of exposure
  – Lower priority-not high priority

• EPA currently working on its final prioritization rule due by June 2017
  – ILMA commented on proposed rule
Prioritization

• ILMA commented
  – Need for greater clarity during pre-prioritization phase
  – Should place further emphasis on low-priority chemicals
  – Must not punish data rich chemicals
  – That conditions of use must be reasonable
  – Must incorporate Section 26 weight-of-the evidence approach into the rule
Risk Evaluation

• After the prioritization process, EPA is instructed to conduct risk evaluations of “high priority” chemicals.

• EPA is required to develop procedures for risk evaluations within one year of the law’s enactment (June 2017).

• EPA must publish within six months after commencing a risk evaluation the scope of the work to be done – “scoping document” (e.g. hazards, exposures, conditions of use).

• Evaluations must be completed within three years (although possible 6 month extension).
Risk Evaluation

• EPA published proposed rule in January
• ILMA commented on the proposed rule:
  – Reasonable with conditions of use
  – Need for clarification on risk management steps, only applicable to those conditions of use that result in unreasonable risk determination
  – Need for independent peer review
  – Clarification that EPA will not consider uses that it does not have jurisdiction to regulate
Risk Management

• If the determination is made from the risk evaluation that the chemical substance presents an unreasonable risk to the environment or human health, EPA must propose a risk management rule in the *Federal Register* within one year after evaluation is completed and publish a final rule within two years (although extensions under limited circumstances.)
Inventory Reset

• When TSCA enacted, all chemicals in commerce placed on Inventory

• New law instructs EPA to determine which chemicals are “Active” vs. “Inactive”

• Agency must publish by June 2017 a final rule that requires chemical manufacturers to give notice to EPA for any chemicals manufactured during the preceding 10 year period.
  – Within 180 days of publication
  – Voluntary processor notifications
Inventory Reset

- ILMA submitted comments on the proposed rule:
  - Processor notifications must remain completely voluntary
  - In the proposed rule, manufacturers are required to report within 180 days after publication in the Federal Register, processors have 360 days after publication.
    - Encouraged EPA to give 180 days from when draft inventory is published.
  - Also that processor costs were not representative
Engine Oil and Transmission Fluid Update
Legs and Regs Scorecard
Legs and Regs Scorecard

• President Trump and Republican-controlled Congress have been active in regulatory reform efforts
• Use of Congressional Review Act and Executive Orders and Memorandum
Congressional Review Act

- Congressional Review Act allows Congress to nullify federal regulations if acted upon within 60 legislative days
  - Prevents agencies from promulgating a similar regulation in the future
- Only used once before Trump administration
  - Been used 13 times thus far
- According to the Senate Republican Policy Committee, Congress has until approximately May 8 to override rules that were issued between June 13, 2016 and January 3, 2017.
  - Predicated upon the number of days Congress is in session, so it may move depending upon recesses.
Congressional Review Act

- **House Joint Resolution (H.J. Res.) 83 – OSHA** -- Congress passed a resolution of disapproval nullifying OSHA’s recordkeeping rule.

- OSHA, through its rulemaking, attempted to expand the time – to five years – within which an inspector could cite an employer for failure to create and preserve accurate injury and illness records.

- The Occupational Safety and Health Act (OSH Act) provides a six-month statute of limitations period, and the CRA resolution cements the six-month limitations period going forward.
Congressional Review Act

• **H.J. Res. 37** - This CRA action blocked implementation of the regulation commonly referred to as the “blacklisting rule.”

• It required contractors and subcontractors on any federal contract worth more than $500,000 to disclose even minor violations of regulations, including those covering safety and health, wage and hour, family and medical leave, and civil rights.
Executive Orders & Memos

• Trump very active since inauguration
• Frenzy of Executive Orders and Memorandums to reduce regulatory burdens
• Reince Priebus – Chief of Staff issued Regulatory Freeze Pending Review – January 20
  – Directed agencies to stop work until presidential appointee reviewed pending regulations
  – Directed rules that had not taken effect to have a 60 day postponement
Executive Orders & Memos

• Federal Hiring Freeze Memo – 1/23 – Within 90 days OMB Director must present plan to reduce size of federal government
  – Any existing positions as of 1/22 could not be filled and no new positions could be created
  – Lifted by OMB on April 12

• Trans-pacific Partnership – 1/23 – Trump directed the U.S. Trade Rep. to formally withdraw the U.S. from agreement
Executive Orders and Memos

• Memo – 1/24 - Authorizing Dakota Access Pipeline
  – Obtained permit to build in Feb.

• Memo -1/24 – Essentially asking TransCanada to resubmit its application for the Keystone XL
  – Approved in March – Connects Alberta’s massive tar sands crude with pipelines and refineries on the Texas gulf coast

• Executive Order – 1/24 – Expediting Environmental Reviews for High Priority Infrastructure Projects

• EO – 1/24 – Use of American steel and products in new pipeline construction
Executive Orders and Memos

• Memo – 1/24 – Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing
  – Directed Commerce to seek stakeholder input (ILMA submitted comments) on reducing regs

• EO – 1/30 – Reducing Regulation and Controlling Regulatory Costs
  – The “one in, two out” requirement that must identify two regs for elimination for any new rule
  – imposes a regulatory budget of zero for 2017
Executive Orders and Memos

• EO – 2/28 – Directed EPA and Army Corps of Engineers to review the WOTUS rule for consistency with principles to promote economic growth and environmental protection.
  – Supreme Court denied request to pause litigation during review (regarding proper venue)

• EO – 2/24 – Enforcing the Regulatory Agenda - required agencies to designate reform task force and officer to identify rules that inhibit growth and/or are outdated, or impose costs that exceed benefits
Executive Orders and Memos

• EO – 3/13 – Comprehensive Plan for Reorganizing the Federal Government – Directs the Director of OMB to devise a plan to combine, reorganize, and eliminate unnecessary agencies
  – Within 180 days each agency must submit its proposed reorganization plan
  – Opportunity for public comment
Executive Orders and Memos

- EO – 3/27 – Creates the White House Office of American Innovation
  - Led by his son-in-law Jared Kushner
  - Wide swath of issues to address from the opioid epidemic to IT inefficiencies in federal agencies
  - Overall, working with CEOs of major corporations to implement business principles to make government operate more efficiently and effectively
Executive Orders and Memos

• EO - Buy American, Hire American – 4/18
  – Promotes buying American goods and hiring Americans for jobs
  – Within 60 days the Department of Commerce is to issue guidance to agencies to assist in implementation of the EO
Next Steps

• In the future, information will be collected and compiled and recommendations will be presented

• Realistically though, many of these federal agency reorganizations require Congressional authorization and/or appropriations

• Removing regulations - must follow procedures of the Administrative Procedures Act
EPA’s Spill Prevention, Control, and Countermeasure Rule Expansion Hazardous Substances
SPCC Expansion

• In settlement, EPA agreed to regulate “hazardous substances” under SPCC program
• In February 2017 the Agency released its second bi-annual update that noted that it:
  – Established a workgroup
  – Continued research of hazardous substances and existing regulatory provisions
  – Began work on issue papers, briefing materials, background documents, language, and administrative requirements
  – Held three opportunities for public input on the regulatory action: one in-person meeting
SPCC Expansion

• In the next six months, EPA will continue to work on issue papers, briefing materials, and background documents.
  – Final Rule by mid to late 2019

• ILMA submitted responsive comments to the Commerce’s FR Notice on regulatory burden
  – Addressed SPCC expansion and issues with the current regulation