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# US EPA 'freezes' TSCA TCE rule, hints at regulatory changes

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## Congress separately introduces resolution to nullify rule

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The US EPA has placed a freeze on the effective date of the TSCA risk management rule for trichloroethylene (TCE) and signalled that the new administration may revisit the rule.

The 'regulatory freeze', together with a flurry of related court actions, sets in motion a process through which the Trump-led EPA could take steps to rework [the rule](#).

Meanwhile, a member of Congress has introduced a Congressional Review Act (CRA) resolution seeking to invalidate the rule entirely.

Together, the recent judicial, regulatory and legislative actions suggest that changes are likely to come in some form for the 17 December TSCA rule, which seeks to prohibit all uses of TCE.



However, with a variety of pathways and timetables to potentially overhaul the rule, there will be considerable uncertainty for the regulated community during the wait for more developments to unfold.

## Regulatory freeze

The EPA today announced it would freeze the TSCA TCE rule. The decision comes one week after Trump issued an executive order directing agencies to consider pausing for 60 days rules that had been published in the *Federal Register* but not yet taken effect.

The TCE rule was originally expected [to escape](#) the reach of a regulatory freeze, as it was due to take effect on 16 January, four days before Trump's inauguration.

However, industry litigants secured a court-ordered temporary stay of the rule before it took effect (see box), putting the regulatory freeze mechanism in play.

The freeze will delay the TCE rule's effective date until 21 March, giving the EPA officials "the opportunity for further review and consideration of new regulations", according to a 28 January *Federal Register* notice.

The underlying executive order directed agencies to use the 60-day time window to review "any questions of fact, law and policy that the rules may raise".

Concurrently, in the [litigation](#) over the rule, the US Court of Appeals for the Third Circuit agreed to an EPA request to pause legal proceedings for 60 days, to "brief new administration officials with decision-making responsibility about this case and the issues presented".

## Hurdles

Michael Boucher, a partner at Steptoe, said the EPA's recent activities "hint that more rulemaking" is on the way to address compliance dates or other requirements in the TCE rule.

However, pausing the rule's effective date is ultimately "an opening, and not a final move, by the agency" he said.

President Biden, for example, set out plans in the [first days](#) of the administration to [revisit a TSCA rule](#) for PIP (3:1) and four other persistent, bioaccumulative and toxic (PBT) substances, Boucher said.

The agency at the time had to deploy multiple "time-buying tactics" and formal rulemakings to first [pause enforcement](#) of the rule, then extend the [compliance dates](#), and finally adopt [substantive changes](#), he said.

All told, the EPA under Biden did not [finalise](#) an amended rule until nearly four years after initiating the rework.

Kelly Garson, senior associate at Bergeson & Campbell, offered a similar view.

Once a final rule has been published in the *Federal Register*, as is the case with TCE, "the impacts of any effective date postponement are limited", she said.

To amend or withdraw a final rule, an agency "cannot postpone indefinitely the rule's effective date, but must adhere to the rulemaking requirements under the Administrative Procedure Act (APA)".

## Legal proceedings

The pending litigation on the TCE rule opens other avenues for a potential rework of the rule, legal experts said.

"It would not surprise me for the Trump EPA to ask for the court to remand the rule to the agency, for the industry petitioners in the case to not oppose such a request, and for EPA to rework the existing rule to address its own concerns, which may well match or resemble the industry petitioners' concerns," Boucher said.

However, environmental and labour groups participating in the TCE lawsuit could push back on further delays to the rule.

Bob Sussman, an attorney for Center for Environmental Health (CEH), said he is concerned the EPA has taken "the first step toward suspending and reconsidering the rule and postponing and weakening the important health protections it provides to US consumers and workers".

He said CEH "will make every effort to oppose further stays of the rule and work toward reinstating its effective date so its protections are implemented as soon as possible and there is no additional delay in eliminating TCE's serious risks to public health".

## CRA resolution

Amid the administrative and legal proceedings, a member of Congress also took steps to potentially roll back the TCE rule by introducing a CRA resolution last week.

The resolution, if approved by both chambers of Congress and signed into law by the president, would invalidate the TCE rule entirely. Moreover, it would block the EPA from reissuing any future rule for TCE "in substantially the same form".

Diana Harshbarger (R - Tennessee), whose district is home to battery-separator manufacturer Microporous that is suing the agency over the rule, introduced the measure on 22 January, announcing the move in a [Congressional hearing](#) on TSCA.

"The Biden rule for TCE is one of many examples of the Biden Administration overregulation," Harshbarger told Chemical Watch News & Insight. "This regulation harms our national security, economy and critical infrastructure and will cost jobs in my district, so I introduced a CRA [resolution] to stop it."

Whether the resolution will gain traction, however, remains uncertain, given the limited successful deployment of lawmakers' CRA authority in the past.

While many joint resolutions of disapproval have been introduced since the act's enactment in 1996, it has only been used to overturn 20 rules in that time, according to the Congressional Research Service.

Moreover, the statutory directive under TSCA for the EPA to adopt risk management measures to address 'unreasonable risk' complicates the picture, attorneys from Morgan Lewis said.

"If the TCE rule is disapproved, EPA would need to navigate between TSCA requirements and CRA restrictions, a situation complicated by limited legal precedents," said partners Stephanie Feingold and Douglas Hastings, along with associate Debra Carfora.

## Court-ordered stay

The TSCA TCE rule triggered at least 12 separate legal challenges spread across multiple federal appeals courts, setting off a lottery to randomly select a venue for the litigation.

Before the various challenges were consolidated in the Third Circuit, industry challengers filed motions in different courts asking for emergency stays to pause the rule's effective date.

One such motion, filed in the Fifth Circuit by the Alliance for a Strong US Battery Sector, said a stay was needed to "protect battery-separator manufacturers from immediate, irreparable harm".

The trade group argued that the 20-year exemption for the use of TCE in the manufacture of battery separators is "in name only", as the rule still requires companies to comply with a workplace chemical protection programme (WCPP) and achieve an existing chemical exposure limit of 0.2ppm.

If allowed to take effect on 16 January, companies will incur "millions in immediate, nonrecoverable costs" trying to prepare to meet these requirements, it said.

The Fifth Circuit granted the motion for a temporary stay on 13 January in a split-panel decision, before hearing any response from the EPA.

The cases were then consolidated in the Third Circuit, where the EPA initially filed a 15 January request to lift the stay. The agency told the court there is "no immediate impending harm" to the petitioners while the court weighs the request for a pause.

The next day, the Third Circuit issued an order keeping the Fifth Circuit's stay in place and directing parties to file responses on 21 January - the day after the presidential inauguration.

Then, on 24 January, the EPA under Trump leadership filed a fresh request asking the court to put the case on hold for 60 days. The Third Circuit granted that request on 27 January.



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