

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF CHEMICAL SAFETY AND POLLUTION PREVENTION
OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE
AND
THE U.S. DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION**

I. Purpose

The purpose of this interagency Memorandum of Understanding (MOU) is to set forth principles of the working relationship between the United States Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA) of the United States Department of Labor with respect to existing chemical substances that are subject to prioritization, risk evaluation, and risk management by EPA under section 6 of the Toxic Substances Control Act (TSCA) (15 U.S.C. § 2605).

EPA and OSHA together have the statutory responsibility to ensure the safety and health of the public and the nation's workforce through the timely and effective implementation of several federal laws and implementing regulations, including TSCA (15 U.S.C. § 2601 et seq.) and the OSH Act (29 U.S.C. § 651 et seq.). Section 6 of TSCA requires EPA to prioritize and evaluate TSCA chemicals to identify unreasonable risks to health or the environment, and to take action to address the unreasonable risks. Under the OSH Act, OSHA evaluates risk to workers prior to promulgating new or revised standards and OSHA standards addressing chemical hazards must reduce significant risk to the extent feasible. TSCA differs from the OSH Act in several respects including jurisdiction and covers a wider range of workers (e.g. self-employed workers, military personnel, certain state and local government workers). The standards for chemical hazards that OSHA promulgates under the OSH Act and that EPA promulgates under section 6(a) of TSCA share a broadly similar purpose, and the control measures OSHA and EPA require to satisfy the objectives of their respective statutes may overlap or coincide.

EPA and OSHA intend to work together to maximize the efforts of both agencies to ensure the efficient and effective protection of workers, the public, and/or the environment. The objective of this MOU is to facilitate information sharing in the form of notification, consultation, and coordination where appropriate between EPA and OSHA, in the exercise of EPA's authorities and responsibilities under section 6 of TSCA, and of OSHA's overlapping authority under the OSH Act. The parties anticipate that the coordination and synergies achieved here will result in improved workplace health and safety protections for workers using existing chemical substances and allow for effective implementation of our national workplace and environmental protection statutes.

It is anticipated that, within EPA, the offices involved in implementing this MOU will be the

Office of Chemical Safety and Pollution Prevention (OCSPP) and the Office of Enforcement and Compliance Assurance (OECA). Within the Department of Labor, it is anticipated that OSHA's Directorate of Standards and Guidance (DSG), Directorate of Enforcement Programs (DEP), and regional offices will be most involved in implementing this MOU.

II. Authorities

EPA responsibilities include the protection of human health and the environment by assuring compliance with federal environmental statutes and regulations. EPA assures compliance with federal environmental statutes and regulations through standard-setting and rulemaking; technical reviews; audits and studies; public hearings; issuance of permits and licenses; investigations; enforcement of environmental laws; and evaluation of operating experience and research.

TSCA section 6(b)(4) (15 U.S.C. § 2605(b)(4)) requires EPA to evaluate "whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by the Administrator, under the conditions of use." The statutory definition of "potentially exposed or susceptible subpopulation" in TSCA section 3(12) (15 U.S.C. § 2602(12)) identifies "workers" as an example of such a group. Under TSCA section 6(a) (15 U.S.C. § 2605(a)), if EPA determines through a TSCA section 6(b) risk evaluation that a chemical substance or mixture presents an unreasonable risk of injury to health or the environment under the conditions of use, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by EPA, EPA must by rule apply one or more requirements listed in section 6(a) "to the extent necessary so that the chemical substance or mixture no longer presents such risk." TSCA sections 9(d) and 26(a) provide for coordination and cooperation between Federal agencies related to the administration and enforcement of TSCA. Pursuant to TSCA section 9(c), EPA regulations under TSCA do not displace OSHA jurisdiction or preempt OSHA regulation. *See* 15 U.S.C. § 2608(c) ("In exercising any authority under this chapter, the Administrator shall not, for purposes of section 653(b)(1) of Title 29, be deemed to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health."); *see also* 29 U.S.C. § 653(b)(1) ("Nothing in this Act shall apply to working conditions of employees with respect to which other Federal agencies exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.").

EPA may conduct inspections of any establishment, facility, or other premises in which chemical substances, mixtures, or products subject to TSCA are manufactured, processed, stored, or held before or after their distribution in commerce, in accordance with TSCA Section 11. When violations are identified, EPA is authorized to issue civil penalties and seek criminal penalties, in accordance with TSCA Section 16, and seek injunctive relief in a judicial action, in accordance with TSCA Section 17.

The OSH Act provides broad authority for a variety of activities and programs designed to reduce occupational safety and health hazards at places of employment. Under section 6(b) of the OSH Act (29 U.S.C. § 655(b)), OSHA has the statutory authority to develop and promulgate occupational safety and health standards for the purpose of assuring, so far as possible, safe and healthful working conditions for every worker in the nation. Under section 5(a)(1) of the OSH Act (29 U.S.C. § 654(a)(1)), every employer has a general duty to furnish employment and a place of employment which are free from recognized hazards that are causing, or likely to cause, death or serious physical harm to their employees (the “General Duty Clause”). Every employer is also required, under section 5(a)(2), to comply with occupational safety and health standards promulgated by OSHA (29 U.S.C. § 654(a)(2)). In addition, employers must comply with regulations prescribed by OSHA under section 8 of the OSH Act (29 U.S.C. § 657), which include occupational injury and illness recordkeeping obligations, the requirement to furnish records to the Secretary or designee, and requirements related to the conduct of workplace inspections. In addition to recordkeeping obligations authorized under section 8(c), employers must provide such information as may be requested under section 24 of the Act (29 U.S.C. § 673). OSHA has the statutory authority under sections 8, 9 and 10 (29 U.S.C. §§ 657, 658, 659) to enforce the General Duty Clause and its standards and regulations.

OSHA conducts inspections of workplaces to determine compliance with the OSH Act and with specific OSHA standards. When violations are found, OSHA is authorized to issue citations to employers, propose penalties, and require abatement of hazards. In cases involving imminent dangers, OSHA is authorized to seek injunctive relief in U.S. district court. In states that have elected to administer State occupational safety and health programs, or “State Plans,” the Act requires OSHA to conduct a continuing evaluation of State operations to ensure that they are “at least as effective as” federal OSHA.

III. Coordination During Regulatory Development under TSCA Section 6

As EPA carries out TSCA section 6 efforts, EPA and OSHA agree to communicate in a manner consistent with each agency’s respective needs, resources, and authorities in order to align effectively and provide greater clarity to the regulated community regarding section 6 prioritization, risk evaluation, rulemaking and implementation efforts as it pertains to chemical hazards in the workplace. The parties acknowledge that EPA bears sole responsibility for TSCA section 6 prioritization, risk determination, and rulemaking decisions, and that OSHA’s input in these matters is purely consultative. It is anticipated that EPA’s Office of Chemical Safety and Pollution Prevention and OSHA’s Directorate of Standards and Guidance will coordinate the agencies’ communication regarding regulatory development under TSCA section 6.

EPA and OSHA intend to establish procedures for performing activities covered by the MOU to align with each agency’s respective needs and resources. With respect to regulatory activities:

- EPA recurring updates: The EPA point of contact will provide to the appropriate OSHA point of contact regularly scheduled updates on EPA’s activities related to workplace

exposures identified during TSCA section 6 prioritization, risk evaluation, rulemaking, and implementation efforts.

- OSHA recurring updates: The OSHA point of contact will provide to the appropriate EPA point of contact updates on OSHA's activities related to chemicals that are subject to TSCA section 6 prioritization, risk evaluation, or risk management efforts. Specifically, for those chemicals with completed section 6 risk evaluations that are regulated by OSHA chemical-specific standards or Permissible Exposure Limits (PELs), OSHA intends to indicate whether efforts are underway to review or update chemical-specific standards or other intended regulatory actions that relate to multiple chemicals in OSHA's regulatory agenda on a semi-annual basis.

IV. Outreach and Communications Materials

EPA and OSHA acknowledge that their respective regulatory jurisdictions relating to TSCA-regulated chemicals may impact some of the same workplaces or workers. Both agencies resolve to communicate the separate requirements of new EPA rules and relevant OSHA requirements in outreach and communications materials to relevant stakeholders. Both agencies also plan to coordinate with one another on the development and updating of stakeholder communication materials about EPA TSCA section 6 rules and OSHA rules that regulate the same chemical hazards.

EPA intends to coordinate with OSHA's Office of Federal Agency Programs, as applicable, on outreach to federal facilities about EPA TSCA Section 6 rules and OSHA standards that regulate the same chemical substances.

Specifically, EPA intends to develop outreach to regions, states and tribes on the roles of EPA, federal OSHA and states, including states with OSHA-approved State Plans, in the workplace and on rule familiarization for TSCA section 6 rules, in consultation with OSHA. EPA further intends to develop outreach materials for regulated communities, including but not limited to small businesses, general industry, and federal facilities regarding TSCA Section 6 rule familiarization, in consultation with OSHA. EPA expects to make this material available online as part of EPA's resources.

V. Inspections and Enforcement

EPA and OSHA agree to share information between the two agencies based on each agency's respective resources, expertise, and authorities, including but not limited to the following:

- Information on each agency's focus areas (e.g., national emphasis areas) for inspections and enforcement, as appropriate to areas of mutual interest pertaining to EPA's TSCA section 6 rulemaking efforts and enforcement.

- Information on complaints, inspections, potential violations and EPA's planned enforcement, as appropriate, related to TSCA section 6 activities in workplaces where areas of mutual interest exist. Each organization will exercise its independent jurisdiction to enforce applicable regulations and laws. EPA and OSHA agree to mutually refer potential violations under TSCA section 6 and OSHA standards in workplaces within their respective jurisdictions, and, for cases of joint interest, take other cooperative steps to share information on such potential violations.
- Regarding coordination with states with OSHA-Approved State Plans:
 - OSHA intends to share this MOU with State Plans and encourage State Plans to refer applicable potential violations to EPA.
 - OSHA intends to encourage states with OSHA-Approved State Plans to participate in all information-sharing activities established under this MOU.

VI. Protocols for Information Exchange and Confidentiality

EPA and OSHA will utilize appropriate methods for transferring or sharing confidential information in accordance with governing authority, including but not limited to TSCA confidential business information (CBI) (see TSCA section 14(a) and 40 CFR 703.5) (release of this information to other federal agencies is covered by TSCA section 14(d)(1), 40 CFR §§ 2.209(c) and 2.306, and EPA's TSCA CBI Protection Manual); Trade Secrets covered by section 15 of the OSH Act and 29 CFR § 1903.10; confidential employee information covered by 29 CFR §§ 1910.1020 and 1913.10 and the Privacy Act; and information covered by government informer, attorney-client, and attorney work-product privileges.

Confidential information obtained by the agencies pursuant to this MOU is intended only for use and access by the receiving agencies for the limited official purpose of carrying out activities pursuant to any law for the protection of health or the environment under the MOU, or for specific law enforcement purposes. The information shall not be disclosed externally without a federal court order, a formal request from a federal oversight entity, a subpoena from a congressional committee, or the supplying agency's written authorization stating that there is no basis for withholding it, including but not limited to, the confidentiality requirements of the Privacy Act. It will be presumed that any confidential business information shared by EPA with OSHA under this MOU was acquired under the authority of TSCA and is therefore subject to protection from disclosure by the confidentiality provisions of TSCA section 14 (15 U.S.C. § 2613). Any transfer of TSCA CBI will be handled in accordance with applicable regulations at 40 CFR 2.209(c), 2.306, and 40 CFR part 703, and will be accompanied by appropriate markings. Any knowing and willful unauthorized disclosure of TSCA CBI may subject the officers and employees of either agency to the penalties in TSCA section 14(h) (15 U.S.C. 2613(h)).

If either EPA or OSHA is subject to a public proceeding, such as a trial, in which certain records from the other agency may be used or testimony of the other agency's employees is sought, the agencies intend to provide each other advance notice.

Should either party receive a request or subpoena that would, fairly construed, seek production of privileged information that it received pursuant to this MOU, the receiving agency shall notify and confer with the supplying agency prior to duplicating or disclosing information, and shall take other reasonable measures, including but not limited to asserting the common interest privilege, to preclude or restrict the production of such information, so that the supplying agency may file any appropriate objections or motions, or take any other appropriate steps, to preclude or condition the production of such information. Neither party shall have authority to waive any applicable privilege or doctrine on behalf of the other party.

If either agency receives a Freedom of Information Act (FOIA) request for which there are responsive records that originated with the other agency, to the extent practicable, it will refer that request to the other agency for it to respond directly to the requestor regarding whether the information may be released. In such cases, the agency making the referral will notify the requestor that a referral has been made and that a response will issue directly from the other agency.

VII. Limitations

- A. Nothing in this MOU alters the statutory, regulatory or other authority or responsibilities of EPA or of OSHA. This MOU supplements existing agreements between EPA and OSHA. This MOU does not restrict any future agreements between EPA and OSHA. This MOU is a voluntary agreement that expresses the good-faith intentions of the parties, is not intended to be legally binding, does not create any contractual obligations, and is not enforceable by any party.
- B. This MOU does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this agreement, against OSHA or EPA, their officers or employees or any other person.
- C. All commitments made by EPA and OSHA in this MOU are subject to the availability of appropriated funds and budget priorities. Nothing in this MOU, in and of itself, obligates EPA or OSHA to expend appropriations or to enter any contract, assistance agreement, interagency agreement, or incur other financial obligations. Any transaction involving transfers of funds between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.

VIII. Duration of Agreement, Amendments or Termination

- A. This MOU will take effect immediately once signed by both parties and shall continue in force for five years, unless both agencies agree in writing to extend the length of the MOU. The MOU may be terminated by either party upon 90 days written notice to the other agency. Except as expressly provided in this agreement, this MOU constitutes the entire agreement between OSHA and EPA with respect to the matters set forth herein.
- B. This MOU may be modified at any time per the mutual written consent of the parties.
- C. Obligations under section VI. Protocols for Information Exchange and Confidentiality shall survive termination of this MOU.

IX. Approval

**MICHAL
FREEDHOFF**

Digitally signed by
MICHAL FREEDHOFF
Date: 2024.12.17
13:58:39 -05'00'

Dr. Michal I. Freedhoff
Assistant Administrator
Office of Chemical Safety and Pollution
Prevention
U.S. Environmental Protection Agency

Date: _____



Douglas L. Parker
Assistant Secretary of Labor for Occupational
Safety and Health

Occupational Safety and Health Administration
U.S. Department of Labor

Date: 12/17/2024

David M. Uhlmann
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

Date: _____