



# REGULATORY & LEGISLATIVE INSIGHT REPORT



**socma**

SOLUTIONS FOR SPECIALTIES



SOCMA Members,

In 2022, there were dramatic shifts in the regulatory and legislative landscape. Although the year began with a strong focus on the COVID-19 OSHA Emergency Temporary Standard (which was eventually abandoned), the remainder of the year saw other federal agencies and the legislature accelerate policy activity.

EPA started 2022 with internal policy changes announced through press releases, and initiated projects with long-term impacts in the second half of 2022; at the same time OSHA began to work toward significant changes that were foreshadowed at the beginning of the Biden Administration.

This year, chemical regulation, environmental impacts, safety, and trade are expected to be in the forefront. This report identifies specific activities that will impact both batch manufacturers and the specialty chemical industry.

While this report takes a high-level look at policy, compliance and business challenges facing the specialty chemical industry, SOCMA members who want a deeper dive into these issues are encouraged to join our Environment, Health and Safety or International Trade Committees.

Thank you for your support and engagement with SOCMA's Government Relations efforts in 2022. We look forward to continuing to advocate on your behalf throughout the year.

Regards,



A handwritten signature in black ink, appearing to read "Robert F. Helminiak".

Robert F. Helminiak

# Legislative and Regulatory Issues

## CHEMICAL REGULATION

### Risk Management Program (RMP) Rulemaking

- August 2022: EPA Administrator Michael Regan signed the “RMP Safer Communities by Chemical Accident Prevention” proposed rule.
- August 2022: SOCMA testifies before EPA on the RMP proposed rule.
- September 2022: SOCMA produced a guidance document and hosted a Town Hall to assist members in understanding the proposed rule.
- October 2022: SOCMA submitted comments on the proposed rule, focusing on problematic provisions like Safer Technology & Alternatives Analysis (STAA), third-party audits and information disclosure requirements.
- November 2022: SOCMA and Chemical Sector Coordinating Council partners discuss potential security impacts of information disclosure requirements.



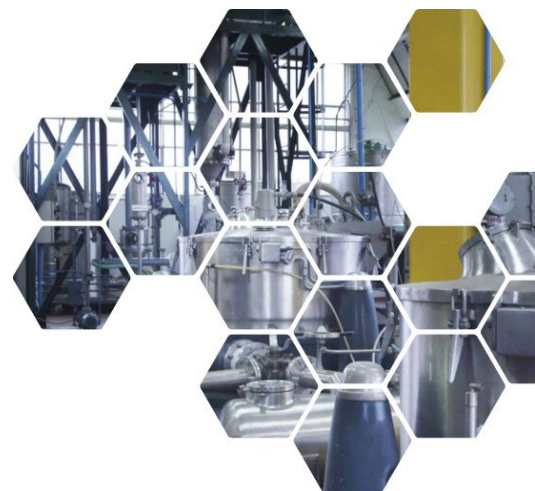
**Business Impact:** The proposed rule would expand compliance requirements and increase costs, as well as staff hours for planning and reporting, and create audit requirements that would be difficult to complete, without demonstrable improvements to preventing accidental releases. The rule may also open manufacturers to significant security breaches through information disclosure requirements.

**In 2023:** SOCMA, with the assistance of members and through coalition work, was able to ensure that fenceline monitoring was expressly excluded from the proposed rule and will continue to advocate to prevent the inappropriate inclusion of fenceline monitoring in the final rule. While the issue is in the proposed rule phase, SOCMA will hold a meeting with the White House, with members who will add specific manufacturing floor context and insight. SOCMA will also continue to work through a large coalition on the issue which could lead to legal action after the rule is finalized.

## Manufacturing Process Unit (MPU) Exclusion

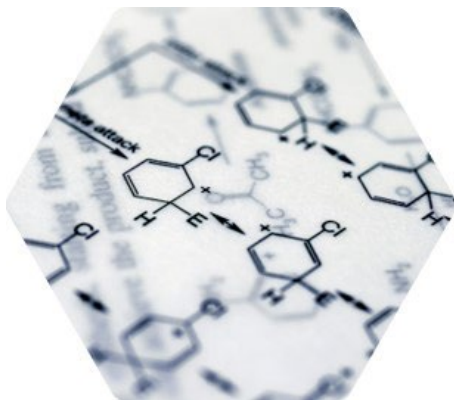
- July 2022: SOCMA was notified of potential new enforcement actions for the first time since 2018.

**Business Impact:** An MPU-related fine from EPA is estimated to be \$350,000. However, compliance requirements that EPA would force a batch manufacturer to incur dwarf the cost of a fine, because a company would likely need to relocate equipment and redesign aspects of the facility. Finally, new enforcement actions would cause a company to treat and label materials “hazardous” that were not previously considered hazardous, which creates additional compliance with RCRA regulations. This will put companies at a competitive disadvantage to those that have not had a RCRA inspection.



**In 2023:** SOCMA will continue to assist members who are incorrectly subjected to enforcement actions. Once appropriate political appointees are sworn in, SOCMA will engage them in seeking a more formal resolution. SOCMA will also reconvene its member task force. Additional guidance documents and other materials will be developed as necessary, to further educate members on this issue, including information on RCRA inspections.

## TSCA Fees Rule



- Early 2022: EPA began work on a revised TSCA fees proposal.
- Summer 2022: SOCMA formed member task force to spearhead SOCMA advocacy efforts on TSCA.
- September 2022: SOCMA and member companies met with the White House Office of Management and Budget to educate the White House on the negative impact of increased fees on innovation and growth of the chemical industry and broader US economy.
- November 2022: EPA released its proposed revisions to the “*Fees for the Administration of the Toxic Substances Control Act (TSCA)*” Rule. The proposal would double fees for new chemical submissions and nearly triple fees for existing chemical reviews.

**Business Impact:** An increase in fees would obviously increase the cost of bringing a new product to market. Higher fees also create additional barriers entry.

**In 2023:** SOCMA will further engage EPA, emphasizing the negative consequences of increasing fees on New Chemical submissions and continuing lobbying efforts. SOCMA and a group of member companies will also work to educate the White House about impacts to industry. A final rule is expected mid-year.

## TSCA New Chemical Reviews

- 2022: Throughout 2022, EPA failed to improve the review process of PMNs and LVEs and continues to miss legally mandated review deadlines potentially taking over a year to review PMNs (legal mandate is 90 days) and LVEs (legal mandate is 30 days).
- April 2022: EPA published a press release stating it is “unlikely” to grant LVEs for any new PFAS.
- May 2022: SOCMA secured meeting for members with Assistant Administrator Michal Freedhoff, who oversees the TSCA program.
- August 2022: EPA published a press release stating it will include “all exposures” (eliminating de minimis thresholds) for modeling thresholds.



**Business Impact:** EPA continually misses the legal review deadlines of PMNs and LVEs, which prevent specialty chemical manufacturers from bringing products to market, making it impossible to forecast new business. Additionally, the lack of consistency discourages companies from entering new markets and innovating new products. This is a substantial impediment to business growth.

**In 2023:** SOCMA will work with its TSCA Member Task Force and its Board of Governors to develop a new strategy to advocate for improvements to the New Chemicals Review Program.

## TSCA Existing Chemical Reviews

- July 2022: EPA published a revised risk determination for hexabromocyclododecane (HBCD).
- August 2022: EPA published a revised risk determination for Carbon Tetrachloride.
- September 2022: EPA published a revised risk determination for Pigment Violet 29 (PV29).
- November 2022: EPA published a revised risk determination for methylene chloride.
- December 2022: EPA published a revised risk determination n-methylpyrrolidone (NMP) and 1-bromopropane (1-BP).

**Business Impact:** Based on EPA’s findings that these chemicals present an “unreasonable risk” to human health, EPA will move forward with Risk Management. Member companies who use these chemicals in their manufacturing processes will need to comply with any additional restrictions or requirements that EPA implements in Risk Management.

**ROI:** Specialty chemical companies are disproportionately impacted because they often have unique use cases that do not fit easily into EPA’s often generic conditions of use. SOCMA has worked with impacted member companies on an individual basis to educate EPA on these unique use cases to ensure EPA understands and takes the information into account during Risk Management.

**In 2023:** EPA plans to publish Risk Management rules based on the revised risk determinations. SOCMA will keep members informed and assist them with compliance as these rules are finalized and implemented.

### **EPA Section 4 Test Orders**



- March 2022: EPA published additional test orders for nearly a dozen chemicals, including 1,2-Dichloroethane; 1,2-Dichloropropane; o-Dichlorobenzene; and p-Dichlorobenzene. Numerous specialty chemical manufacturers are identified as processors under these test orders.
- Spring 2022: SOCMA provided guidance and assistance to member companies who are subject to these test orders.

**Business Impact:** Member companies who are named as processors are required to conduct and submit relevant testing data to EPA, or join a consortium of other manufacturers and processors to collectively deliver the data and report(s) to EPA.

**In 2023:** EPA will continue work on these test orders and may request additional test orders on these or other existing chemicals currently subject to review.

**ROI:** Since test orders generally target manufacturers of these commodity chemicals, many specialty chemical companies are unfamiliar with the test order process. SOCMA is a valuable resource to assist member companies in navigating this complex process.

### **Addition of PFOS and PFOA to CERCLA**

- August 2022: EPA announced it will seek to designate Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS), including their salts and structural isomers, as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as Superfund.
- September 2022: EPA published the Notice of Proposed Rulemaking (NPRM) in the Federal Register.
- October 2022: SOCMA participated in a small business roundtable with EPA to discuss concerns with the proposal.



**Business Impact:** Chemical manufacturers would be required to immediately report releases of PFOA and PFOS that meet or exceed the reportable quantity to the National Response Center and to state and local emergency responders. They would not be required to report past releases of PFOA or PFOS as they were not yet listed as hazardous substances. The rule would also allow EPA to seek to recover cleanup costs from potentially responsible parties.

**In 2023:** EPA anticipates developing an Advance Notice of Proposed Rulemaking (ANPRM) to seek public comment on designating other PFAS chemicals as CERCLA hazardous substances. SOCMA will educate members on the addition of PFOS and PFOA to CERCLA and assist with compliance. SOCMA will also engage in the rulemaking process as EPA considers the addition of further PFAS chemicals to CERCLA.

### **TSCA Section 8(a)(7) Reporting Rule for PFAS**

- August 2022: SOCMA member companies Halocarbon and ICT Chemical participated in SBA's SBREFA panel to discuss the negative impacts of the reporting requirements on the specialty chemical industry.
- November 2022: EPA published its SBREFA report, which highlighted several issues raised by SOCMA members, such as a more workable structural definition of PFAS or alternatively a list of affected CAS numbers, the need for exemptions for uses such as research and development, and difficulties with obtaining older information to comply with the 12-year lookback period.



**Business Impact:** Companies who have manufactured PFAS substances since January 1, 2011, will be required to report information regarding PFAS uses, production volumes, disposal, exposures, and hazards. As currently written, the rule would be difficult and costly to comply with, as it does not include exemptions for *de minimus* quantities, for research and development or for PFAS produced as impurities or byproducts.

**In 2023:** EPA anticipates publishing a final reporting rule in spring or early summer. SOCMA will produce guidance resources to help members affected by the rule.

**ROI:** SOCMA resources will save companies an estimated 28 hours of staff time by helping them easily and efficiently familiarize themselves with the rule and its structural definitions of PFAS.<sup>1</sup>

### **EPA HFC Phaseout Rule**

- February 2022: SOCMA produced an analysis of the final rule and assisted affected members with compliance.
- November 2022: EPA published “Allowance Allocation Methodology for 2024 and Later Years”, a proposed rule to develop the allocation methodology for 2024 and beyond.

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<sup>1</sup> Initial Regulatory Flexibility Analysis and Updated Economic Analysis for TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances U.S. Environmental Protection Agency, Office of Pollution Prevention and Toxics, November 2022.



**Business Impact:** Member companies who use any of the listed HFCs in their manufacturing process will need to comply with new reporting requirements and work with downstream customers to secure allocation credits for the manufacture of HFCs.

**In 2023:** By September, EPA plans to finalize a rulemaking with a new methodology to calculate allocations for 2024 and beyond. SOCMA will continue engaging EPA on the issue and assisting members with compliance.

## **Modernization of Cosmetics Regulation Act (MCRA)**

- December 2022: MCRA was included in the Fiscal Year 2023 Omnibus, signed into law on December 23, 2022.

**Business Impact:** MCRA requires cosmetic manufacturers to register all facilities within one year of enactment and renew registrations every two years; submit a “cosmetic product listing” for each cosmetic product and update annually; and maintain records supporting that there is an adequate substantiation of safety of the cosmetic product. While specialty chemical companies may not manufacture the finished cosmetic product, they will need to assist downstream customers with information requests that are required by MCRA.

**In 2023:** In advance of the December 23 effective date, SOCMA will assist members with compliance and engage with FDA on the rulemaking process.



## **Environmental Justice**

- September 2022: EPA announced the creation of a new office, the Office of Environmental Justice and External Civil Rights (OEJECR) to lead EPA’s environmental justice and external civil rights priorities.

**Business Impact:** The formal creation of a new Assistant Administrator role and Office in EPA signals the emphasis that EPA intends to place on environmental justice in all upcoming policy development.

**In 2023:** SOCMA will continue to engage with staff assigned to this office, and anticipates an Assistant Administrator will soon be appointed.



# STRENGTHENING THE GLOBAL CHEMICAL SUPPLY CHAIN

## Section 301 Tariff Exclusion Process



- January 2022: SOCMA developed a member task force to work on the issue.
- January 2022: The Senate passed the U.S. Competition and Innovation Act (USICA), which contained language to reopen the exclusion process.
- February 2022: The House of Representative passed the America COMPETES Act, the companion bill to USICA, which did not include language to reopen 301 exclusions.
- Summer 2022: SOCMA lobbied for inclusion of reopening the 301 tariff exclusion process in a final bill.
- Summer 2022: A final legislative package passed, and did not include language to reopen the 301 exclusion process.
- August 2022: USTR opened a four-year review process for the 301 tariffs.

**Business Impact:** The significant tariffs on inputs that are not available from countries other than China increases the cost of production for SOCMA members and hurts the competitiveness of U.S. manufacturers in the global market.

**In 2023:** SOCMA will continue to pursue both regulatory and legislative methods to reopen the 301 tariff exclusion process.

## Miscellaneous Tariff Bill (MTB) Reauthorization

- January 2022: The Senate passed the U.S. Competition and Innovation Act (USICA), which contained language to reauthorize MTB with some retroactivity.
- February 2022: The House of Representative passed the America COMPETES Act, the companion bill to USICA, with language to reauthorize MTB with more generous retroactivity.
- Summer 2022: SOCMA lobbied to include MTB reauthorization in a final compromise bill.
- Summer 2022: A final legislative package passed, which did not include MTB reauthorization.
- November 2022: SOCMA lobbied the “lame duck” Congress to include MTB reauthorization in the year-end spending package.
- December 2022: A year-end omnibus bill was passed without language to reauthorize MTB.



**Business Impact:** The lapse of MTB has increased the cost of domestic production and decreased global competitiveness. Restoration of tariff relief under MTB will reduce import costs and help level the playing field with countries that do not have similar tariff pressures.

**In 2023:** SOCMA will continue to lobby Congress to pass new MTB legislation with retroactivity to January 1, 2020.

### **Generalized System of Preference (GSP) Reauthorization**

- January 2022: The Senate passed the U.S. Competition and Innovation Act (USICA), which contained language to reauthorize GSP with full retroactivity.
- February 2022: The House of Representative passed the America COMPETES Act, the companion bill to USICA, with language to reauthorize GSP with full retroactivity.
- Summer 2022: SOCMA lobbied the conference committee to include GSP reauthorization in a final compromise bill.
- Summer 2022: A final legislative package passed and did not include GSP reauthorization.
- November 2022: SOCMA lobbied the “lame duck” Congress to include GSP reauthorization in the year-end spending package.
- December 2022: A year-end omnibus bill was passed without language to reauthorize GSP.

**Business Impact:** The lapse in GSP has increased the cost of importing raw materials from GSP countries because the duty rates which were reduced or eliminated under GSP are currently charged at the normal rate.

**In 2023:** SOCMA will continue to lobby Congress to pass new GSP legislation with retroactivity to January 1, 2020.

### **Trade Promotion Authority**

- 2022: Since [Trade Promotion Authority](#) (TPA) expired in July 2021, there has been no meaningful action by Congress to reauthorize this legislation.

**Business Impact:** Without TPA, the U.S. is limited in its effectiveness to both negotiate and ratify new trade agreements.

**For 2023:** SOCMA will continue to support the reinstatement of TPA, because TPA will facilitate trade agreements that reduce costs on inputs and raw materials, and open export markets for SOCMA members.

## Infrastructure Investment and Jobs Act

- February 2022: SOCMA analyzed the new legislation and created a [breakdown of potential opportunities for members](#) in the bill.

**Business Impact:** This legislation created direct financial incentives for SOCMA members through tax credits; It generated potential new business opportunities by dedicating significant financial support for downstream industries that rely on the specialty chemical industry.

**In 2023:** SOCMA will continue to identify and inform members of additional opportunities created by the implementation of this legislation.



## Ocean Shipping Reform

- February 2022: The Ocean Shipping Reform Act (OSRA) passed the Senate.
- April 2022: OSRA passed the House of Representatives.
- April 2022: SOCMA lobbied the conference committees to encourage swift passage of a final bill.
- June 2022: OSRA was signed into law.

**Business Impact:** This bill will prevent unreasonable charges by regulating detention and demurrage fees charged by ocean carriers. It will also create additional opportunities for specialty chemical manufacturers to export products, as the law prevents international ocean carriers from “unreasonably” declining US cargo.

**In 2023:** SOCMA will continue to monitor the implementation of the legislation and engage as needed.



## Superfund Excise Tax

- April 2022: SOCMA hosted an education session on Superfund Tax recoveries at the 2022 Specialty and Custom Chemicals Show.
- May 2022: SOCMA created a [guidance document](#) for members to understand the applicability and implementation of these taxes.
- June 2022: SOCMA hosted a Town Hall assisting members with compliance questions.
- July 2022: Full implementation of the excise tax came into effect.

**Business Impact:** Member companies who manufacture or import any of the 42 listed feedstock chemicals for use in their manufacturing process must pay excise tax via quarterly filings. Additionally, companies that import a “taxable substance” pay an import-specific tax.

**In2023:** SOCMA will continue to assist members with compliance questions and advise of changes or updates as needed.

**ROI:** SOCMA provided webinars and guidance material that saved member companies up to many hours of work and potential outside consulting fees in reviewing legislation and IRS codes.



## WORKER HEALTH AND SAFETY

### Process Safety Management (PSM) Standard

- October 2022: SOCMA testified on behalf of members highlighting concerns about alternations to the atmospheric storage tank exemption, additions to Appendix A, updating and defining RAGAGEP and concerns about STAAAs.
- November 2022: SOCMA followed the testimony with written comments to OSHA to educate on the unique challenges for batch manufacturers.



**Business Impact:** Changes to the existing PSM rule are likely to increase compliance requirements for SOCMA members including additional internal review and documentation while increasing subjectivity in PSM inspections.

**In 2023:** OSHA is working on a proposed rule anticipated to come in 2023. SOCMA will educate OSHA on the specific impacts to batch and specialty chemical manufacturers. When a proposed rule is published, SOCMA will also testify in front of OSHA and provide written comments.

### OSHA Emergency Temporary Standard (ETS) on COVID-19 Vaccination

- January 2022: SOCMA hosted virtual Town Halls to inform members about potential compliance requirements and litigation related to enforcement of the ETS.
- January 2022: The ETS was voluntarily retracted by OSHA after the Supreme Court placed a stay on the rule.

**Business Impact:** Potential new compliance rules will likely focus on industries outside of specialty chemical manufacturers that are more likely at a higher risk for exposure to a new pandemic.



**For 2023:** It is possible that OSHA will develop a proposed related to vaccination in the work place, but this will likely focus on the healthcare and other industries that are uniquely and acutely impacted by a potential pandemic.

**ROI:** SOCMA produced compliance assistance materials that saved EHS managers over 20 hours it would have taken to read, develop materials, and plan for implementation.

### OSHA Hazardous Communications Standard

- July 2022: SOCMA met with OSHA to educate on the importance of small package labelling and HazCom in general.
- December 2022: OSHA listed the Hazardous Communications Standard on the unified regulatory agenda, signaling its intention to move forward with the rulemaking in 2023.

**Business Impact:** This rule will likely mandate changes to the labeling and handling of all hazardous material, which would require SOCMA members to change labels and labeling processes. There will likely be a strong benefit related to small package labeling, providing SOCMA members better options for labeling and dissemination of information.

**In 2023:** OSHA intends to publish a final rule in 2023, though it is possible it will not be finalized until 2024. SOCMA will meet with the White House before the rule is finalized to educate about the impacts to the specialty chemical industry.



### OSHA Emergency Response Standard

- December 2022: OSHA listed the Emergency Response Standard on the unified regulatory agenda, signaling its intention to move forward with the rulemaking in 2023.

**Business Impact:** A more burdensome standard would add complexity and costs for facilities that have industrial fire brigades and plant emergency response teams, potentially creating such an economic burden that companies would be disincentivized from having such capabilities in-house.

**In 2023:** SOCMA will engage with OSHA as the rulemaking is finalized. SOCMA will also assist members with compliance once the final rule is published.



## Heat Illness Prevention



- April 2022: OSHA announced the National Emphasis Program on Outdoor and Indoor Heat-Related Hazards
- May 2022: SOCMA produced member guidance to assist facilities with compliance.

**Business Impact:** All companies that fall under NAICS code 3251 (Basic Chemical Manufacturing) are included in the list of entities eligible for inspection to evaluate and ensure that employees in high-hazard industries are protected from heat hazards in the workplace.

**In 2023:** OSHA plans to initiate a SBREFA panel soliciting small business input on a proposed rule.

## Lock-Out/Tag-Out

- December 2022: OSHA lists the Lockout/Tagout Standard on the unified regulatory agenda, signaling its intention to propose a draft rulemaking in 2023.

**Business Impact:** OSHA acknowledges that computer-based controls of hazardous energy conflict with OSHA's existing lockout/tagout standard, and these types of controls are more prevalent in modern equipment. A new standard could benefit manufacturers by encouraging the use of safer, computer-based controls and could harmonize U.S. standards with those of other countries.

**In 2023:** SOCMA will analyze the proposal and engage with OSHA as the rulemaking process.

## FACILITY SECURITY

### DHS Chemical Facility Anti-Terrorism Standards (CFATS)

- June 2022: The chemical industry coalition was reactivated to support reauthorization of the CFATS program.
- November 2022: SOCMA and Chemical Sector Coordinating Council (CSCC) discussed reauthorization with DHS.
- December 2022: Chemical Sector Coordinating Council met with DHS for in-depth discussion of various provisions of CFATS.

**Business Impact:** Without new reauthorization legislation, the CFATS program will lapse on July 27, 2023, which could lead to other federal agencies developing rules, or taking more aggressive enforcement actions.



**In 2023:** SOCMA will work through the chemical industry coalition, as well as participating in CSCC which includes DHS and other federal agencies to lobby and ensure the continued authorization of CFATS.

## **SOCMA'S 2023 ADVOCACY PROGRAMMING**

In 2023, SOCMA's Government Relations team will bring a variety of educational and informative meetings and events, both virtually and in-person, to enhance the value of your SOCMA membership.



### **SOCMA Virtual Policy Town Hall Series**

In April, SOCMA will host a series of virtual town halls giving members access to legislators and regulators to learn about upcoming compliance, regulatory and other policy initiatives, and to educate policy makers on industry concerns and needs.

#### **Other Highlights:**

- Monthly Environment, Health and Safety Committee Meetings
- Semi-Monthly International Trade Committee Meetings
- SOCMA Summit, Fall 2023