

Handbook of Florida Water Regulation: Toxic Substances Control Act¹

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Preface

This handbook is designed to provide an accurate, current, and authoritative summary of the principal federal and state (Florida) laws that directly or indirectly relate to agriculture. This handbook provides a basic overview of the many rights and responsibilities that farmers and farmland owners have under both federal and state laws as well as the appropriate contact information to obtain more detailed information. However, the reader should be aware that because the laws, administrative rulings, and court decisions on which this handbook is based are subject to constant revision, portions of this publication could become outdated at any time. Several details of cited laws are also left out due to space limitations.

This handbook is distributed with the understanding that the authors are not engaged in rendering legal or other professional advice, and the information contained herein should not be regarded as a substitute for professional advice. This handbook is not all inclusive in providing information to achieve compliance with the federal and state laws and regulations governing water protection. For these reasons, the use of these materials by any person constitutes an agreement to hold harmless the authors, the Florida Cooperative Extension Service, the Institute of Food and Agricultural Sciences, and the University of Florida for any liability claims, damages, or expenses that

may be incurred by any person as a result of reference to or reliance on the information contained in this handbook.

TSCA Overview

The Toxic Substances Control Act (TSCA) of 1976 governs the manufacturing, disposal, importing, distributing, using, and processing of all toxic chemicals, with “toxic chemicals” being defined as those chemicals that present unreasonable risk of injury to public health or the environment.

TSCA requires that all such chemicals be inspected and approved by the United States Environmental Protection Agency (EPA) before they enter the market. EPA has the option to restrict the chemical, run tests, and gather data during its pre-approval determination of whether the chemical represents a threat to health or the environment.

TSCA does *not* cover the following:

- Pesticides, and mixtures used as pesticides, that are covered by Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)
- Tobacco or tobacco products
- Certain nuclear materials, source or byproduct materials covered by the Atomic Energy Act of 1954

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- Chemicals that are covered by the Food, Drug, and Cosmetic Act (FDCA)
- Any article the sale of which is subject to tax under the Internal Revenue Code of 1986

All other chemicals, if they are not already on EPA's approval list, are subject to review before they are released into the "stream" of commerce. TSCA specifically dictates that EPA must create restrictions for polychlorinated biphenyls (PCBs) as part of the mandate of TSCA. Although EPA has authority for certain exemptions to these regulations, most of those exemptions will expire in 2012. In addition, TSCA prohibits the transfer of any elemental mercury by a federal agency to any other federal, state, or local agency or to any private individual, except for transfers solely made for mercury storage or in relation to the transfer of coal.

TSCA has a whistleblower provision that protects employees from being fired or discriminated against by their employers because the employee has initiated or is about to initiate a TSCA hearing, has testified or is about to testify in a TSCA hearing, or has or is about to participate or assist in any manner in a TSCA hearing or in any other action to carry out the purposes of TSCA.

Who Enforces TSCA?

EPA is the sole authority for enforcement of TSCA, although TSCA specifically provides that the states are not prohibited from enacting their own legislation to regulate chemicals. TSCA limits the state's power only to the extent that the state may not test new chemicals if EPA is testing for the same purpose, and the state will be restricted from creating requirements that are different from those of EPA concerning chemicals that have already been regulated by EPA unless the state is given authority to do so by the Clean Air Act or other federal law or it restricts the use of that chemical in that particular state.

How Is TSCA Enforced?

EPA schedule involves gathering information about a vast number of existing chemicals, the most suspect of which are subject to more extensive fact-finding.

Anyone introducing, importing, or manufacturing a new chemical must notify EPA, as must anyone who obtains information that implies that a chemical represents a risk to health or the environment. All records, files, and documents are reviewed by inspectors to verify compliance.

EPA may enact a wide range of restrictions on suspect chemicals, including:

- Labeling/warning requirements
- Limits on concentrations of manufactured quantities
- Production/quality controls
- Record-keeping
- Disposal criteria

TSCA also gives EPA power to enforce its provisions by injunctions (i.e., bans), restraint orders (i.e., an order to refrain from certain activities), forced inspections, and seizure of a product, as well as other means. The courts also have the power to restrain or force action on the part of producers to enforce TSCA. These powers are broader with respect to chemicals that are identified as posing an imminent and unreasonable risk of serious or widespread harm. Also, EPA may require the cleanup of areas where violations resulted in environmental damage.

What Are the Penalties under TSCA?

EPA has authority to impose civil administrative fines of up to \$25,000 for each separate violation of TSCA. Each day that a violation continues represents a separate violation. Before imposing a civil penalty, EPA must provide the violator with notice of the intended fine and the opportunity for a hearing. Also, willful or knowing violators may be subject to criminal penalties of up to \$25,000 per day per violation and/or up to one year's imprisonment.

What Are the Exemptions under TSCA?

National Defense Waiver: The EPA Administrator will waive compliance with any provision of TSCA on the request and determination by the President of the United States that the requested waiver is necessary in the interest of national defense.

Source

15 United States Code, Sections 2601 to 2671

More information about TSCA can be found on the EPA website at <http://www.epa.gov/lawsregs/laws/tsca.html>.

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