

# Conquering Heroic Challenges

## A Look at Hot Legal and Regulatory Issues You Need to Know

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If the National Association of Chemical Distributors (NACD) had to select a song today that best reflects a typical member's profile, it would have to be "It's Not Easy To Be Me". Challenged commercially by the credit crunch, escalating energy, labor, and raw material costs, squeezed by market pressures spawned by a badly damaged economy, and reeling from legal and regulatory challenges that are mushrooming exponentially, NACD members really do need red capes emblazoned with the unmistakable S of Superman (and Superwoman, of course) to survive, let alone flourish, in this harsh economic climate.

While the natural inclination under these circumstances may be to "lay low" and hope things improve, to do so would be a costly mistake. Now is the time to step up, monitor initiatives carefully, and engage strategically and vigorously to ensure sensible business practices prevail.

### Red Hot Legal/Regulatory Priorities

The Obama Administration has ushered in more than new faces. NACD member companies, as is the entire chemical value chain, are under intense and growing legal and regulatory scrutiny. This is not hype. This is real. When U.S. Environmental Protection Agency (EPA) Administrator Jackson rolled-out her top priorities in January, "managing chemical risks" ranked third. This is a far cry from past Administrations, where chemical management issues never made the list, let alone rise to the near top. The other big change is the Democrats plainly control Congress. While debate on health care reform is rancorous, we can expect more bi-partisan alignment on chemical management issues. This was certainly true under the Bush Administration and there is no reason now to expect otherwise.

### Here are a few key issues that will deeply impact NACD member company operations.

**TSCA Reauthorization** – Debate over the Toxic Substances Control Act's (TSCA) strengths and weaknesses is as old as the law

itself. What is new is the radically different context in which this debate will play out over the next several Congressional sessions. Implementation in the European Union's new chemical management program, the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH), has greatly incentivized TSCA detractors to seek TSCA reform now. With the Democrats in control, the Subcommittee on Commerce, Trade, and Consumer Protection of the House Energy and Commerce Committee wasted no time and convened a hearing on

result in additional reporting requirements, regulatory restrictions, including hazard communication and/or labeling requirements, testing requirements, or other regulatory measures that NACD member companies would be expected to observe. How any such change might impact chemical product availability and/or marketability is, of course, unclear.

**Chemical Plant Security** – NACD and others recently dodged a bullet when Congress agreed to an extension until 2010 of the Chemical Facility Anti-Terrorism Standards (CFATS) program of the Department of Homeland Security (DHS). The program began under time-limited authority inserted into a 2006 DHS appropriations bill. The authority for CFATS was scheduled to expire on October 4, 2009. Both the House and Senate have included provisions to extend CFATS authority for one year in their current appropriations bills, which have not yet been reconciled. The extension is expected to pass, as it has White House and Congressional support. The good news is new and troubling provisions such as inherently safer technology (IST) requirements and preemption limitations are now moot. The bad news is October 2010 is just around the corner. NACD will want to engage to ensure CFATS does not become an agent of unwanted and costly changes in the chemical supply chain.

**EPA Chemical Management Initiatives** – Mindful of Administrator Jackson's priority of "managing chemical risks," EPA is in high gear on a range of TSCA regulatory initiatives. These include TSCA Section 4 test rules for orphaned/unsponsored High Production Volume (HPV) chemicals, Section 5 Significant New Use Rules (SNUR) for nanoscale and other chemicals, Section 6 bans on chemicals of high concern, and Section 8 information gathering rules, including Inventory Update Rule (IUR) revisions. These are illustrative only, as the list of initiatives goes on and on.

**Retailer Initiatives** – Private sector commercial stewardship initiatives like Walmart's Chemical Intensive Products (CIP) Sustainable Value Network are causing a sea change in the marketplace. Under these initiatives, EPA and state

### Engage Today!

Keep up with legislative and regulatory issues, access tools/resources, and participate in advocacy events:

- \* Write your Senators and Congressmen via NACD's web site
- \* Read election analysis and share information with your staff via our Chemical (RE)Actions web page
- \* Participate in NACD's Annual Washington Fly-In next spring on April 28-29, 2010 and meet your representatives
- \* Support the NACD Responsible Distribution PAC (Political Action Committee)
- \* Dial in to NACD Regulatory Webinars for easy access to current happening on legislative activity and/or compliance assistance

Tap in today via NACD's Web Site:  
[www.nacd.com/advocacy](http://www.nacd.com/advocacy)

TSCA early in the new session, likely the first of several such hearings. The message Congress telegraphed in doing so is clear – chemical reform is a legislative priority. The existing legislative template is the Kid Safe Chemical Act (KSCA) re-introduced by Senator Frank Lautenberg (D-NJ) in May 2008. It is, among other things, an attempt to harmonize TSCA with REACH. KSCA is being retooled and a new bill is expected to be introduced this fall. This legislation is critically important to NACD and all members of the chemical product value chain. TSCA reform legislation is expected to result in enhanced review of high priority chemicals and authorize EPA to engage in some form of chemical "safety" assessment, among many other potential changes. Each such change could

regulators need to make room for a new sheriff, armed with commercial clout rather than enforcement authority. The CIP and similar sustainability codes and practices are having a profound effect on the design, distribution, and marketing of “chemical intensive” products, especially those marketed to consumers.

**GHS** – For several years, the Occupational Safety and Health Administration (OSHA) has considered whether to modify the Hazard Communication Standard requirements, including those applicable to material safety data sheets, to make them consistent with those under the Globally Harmonized System of Classification and Labeling of Chemicals (GHS). Finally, on May 27, 2009, OSHA submitted a proposed rule to the Office of Management and Budget (OMB) for review. The proposed rule is under OMB review, and not yet publicly available. GHS will deeply impact NACD member operations in several ways. Harmonizing Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) labeling requirements with GHS imperatives, for example, remains unclear. EPA states that “many [FIFRA] stakeholders would be affected by changes in classification and labeling” and EPA foresees a multi-step process over several years. Similarly, GHS classification will impact TSCA nomenclature, Inventory, chemical description procedures, as well as other chemical conventions that are well recognized, but likely to change under GHS mandates.

## What To Do?

In a word, engage. Do so immediately, relentlessly, and thoughtfully. Not all such challenges are created equally, and NACD and its members need to hone in on those issues with the greatest potential for unnecessary business disruption.

NACD needs to leverage limited resources effectively. As regulators and retailers bear down, NACD members, wrapped in their capes with the S emblazoned on them, need to step-up, engage, and prevail. No one said it would be easy to be you.



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# NACD Welcomes New Non-Chemical Handlers Affiliate Program Participants!



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The NACD **Affiliate Program for Non-Chemical Handlers** is open to participation for non-chemical handlers that supply products and services to the chemical distribution industry. Companies participating have chosen to closely associate with NACD distributors committed to improving the chemical industry's performance in health, safety, security, and environmental issues through the Responsible Distribution Process<sup>SM</sup>.

### KEY TO PRODUCT CODES FOR NON-CHEMICAL HANDLER AFFILIATES

<b>AA</b>	Computers, Printers & Software
<b>BB</b>	Consulting, Environmental & Safety
<b>CC</b>	Containers, IBC's, Drums, Tanks, etc.
<b>DD</b>	Publications
<b>EE</b>	Pumps, Valves, Hoses, Fittings, etc.
<b>FF</b>	Training, Regulatory, Legislative Services
<b>GG</b>	Transportation & Logistics Management
<b>HH</b>	Waste, Recycling, & Spill Recovery
<b>II</b>	E-Commerce/Internet
<b>JJ</b>	Measurement & Monitoring Instruments
<b>KK</b>	Business Financial Services
<b>LL</b>	Public Warehouses
<b>MM</b>	Carriers
<b>NN</b>	Liquid Terminal Operators
<b>OO</b>	Waste Management
<b>PP</b>	Recyclers
<b>QQ</b>	Insurance
<b>RR</b>	Public Relations/Risk Communications
<b>TT</b>	Other