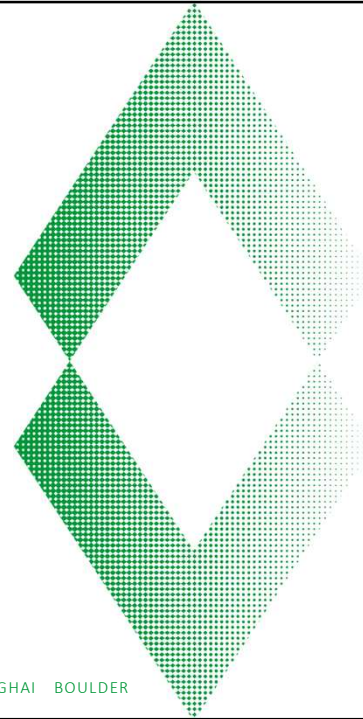


# The Road Ahead for TSCA: Insights and Predictions for 2025

February 12, 2025

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## Agenda



- ◆ Welcome and Introduction – Tom Berger
- ◆ New Administration Overview – David Fischer
- ◆ Section 5, Enforcement – Tom Berger
- ◆ Section 6 and Related Litigation – Greg Clark
- ◆ Section 8, PFAS – James Votaw
- ◆ Q&A Session – Group

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## The Road Ahead for TSCA (1)



- ◆ Compared with prior administrations, the Trump White House will exert significantly more hands-on influence over executive branch agencies, including EPA.
- ◆ We have seen that already with a slew of Executive Orders, OPM and EPA Directives.
  - ◆ Significant reduction in number of EPA career staff
  - ◆ Unclear the extent to which outside contract support will be impacted
- ◆ A new “status quo” likely will take many months, perhaps until the end of 2025.

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## The Road Ahead for TSCA (2)



- ◆ Significant number of EPA appointee vacancies to be filled
  - ◇ Some of whom will require Senate confirmation
- ◆ For now, current political appointees are taking on multiple jobs
- ◆ All of this will continue to impact all areas of EPA, including:
  - ◇ OCSPP
  - ◇ TSCA implementation

## The Road Ahead for TSCA (3)



- ◆ What we have seen thus far is EPA weighing in on litigation, granting administrative stays on the effective dates for multiple rules, including TSCA risk management rules (e.g., TCE).
- ◆ EPA may also start to ask for voluntary remands of rules currently in litigation so that EPA can have time to review and potentially repropose.

## The Road Ahead for TSCA (4)



- ◆ With regard to seeking changes in TSCA regulations:
  - ◇ APA and TSCA section 21 petitions will be important tools.
    - Note that section 21 does not accommodate all TSCA rulemaking petitions.
  - ◇ Petitions should clearly set forth why the change is needed, and how it is consistent with the *Loper Bright* decision (the change reflects the best statutory interpretation).
  - ◇ And whether the change advances one or more of the EPA's recently announced initiative, *Powering the Great American Comeback*

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## The Road Ahead for TSCA (5)



- ◆ **Pillar 1:** Clean Air, Land, and Water for Every American
- ◆ **Pillar 2:** Restore American Energy Dominance
- ◆ **Pillar 3:** Permitting Reform, Cooperative Federalism, and Cross-Agency Partnership
- ◆ **Pillar 4:** Make the United States the Artificial Intelligence Capital of the World
- ◆ **Pillar 5:** Protecting and Bringing Back American Auto Jobs

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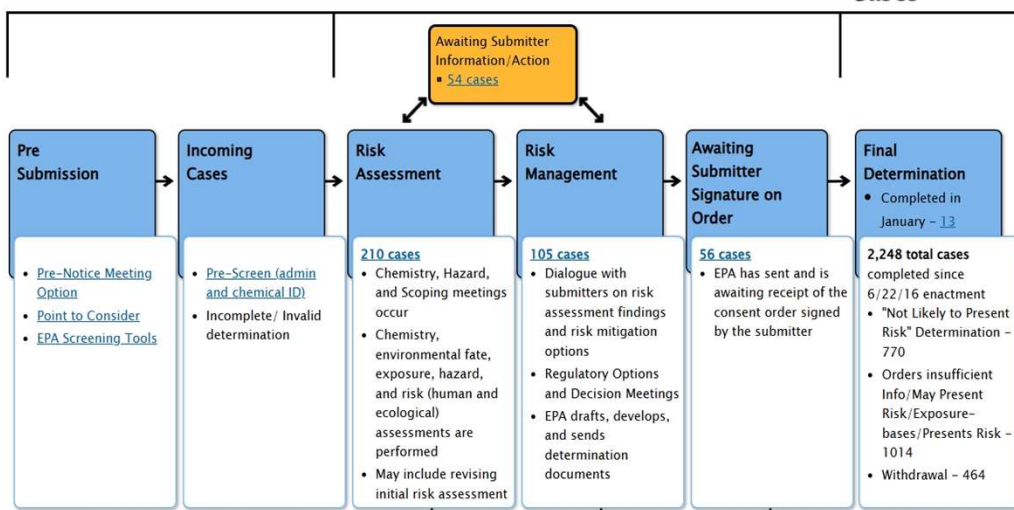
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## Section 5

- ◆ At least in short term, *largely* business as usual
- ◆ Review backlog continues but  $\Delta$  backlog  $\downarrow$ 
  - ◇ GAO report
  - ◇ See [ACC website](#)
- ◆ EPA may now restart review period if submitter provides information during RP without demonstrating that it was not known to or reasonably ascertainable at time of initial submission
- ◆ SNURs issuing on increasingly “timely” basis, partially addressing cause/encourage/suggest issue
  - ◇ Direct final and advance compliance SNUN procedures no longer used
- ◆ Initial indications are that “priority” categories remain as such

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## PMN Status (2/1/2025)



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Enforcement



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Recent Trends (CY2024)

- ◆ Involving HQ program office staff in inspections
- ◆ Re-inspecting sites for no obvious reason
- ◆ Use of §20(a) by NGOs
- ◆ Allowing continued manufacture/import for certain critical chemicals

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## General Outlook

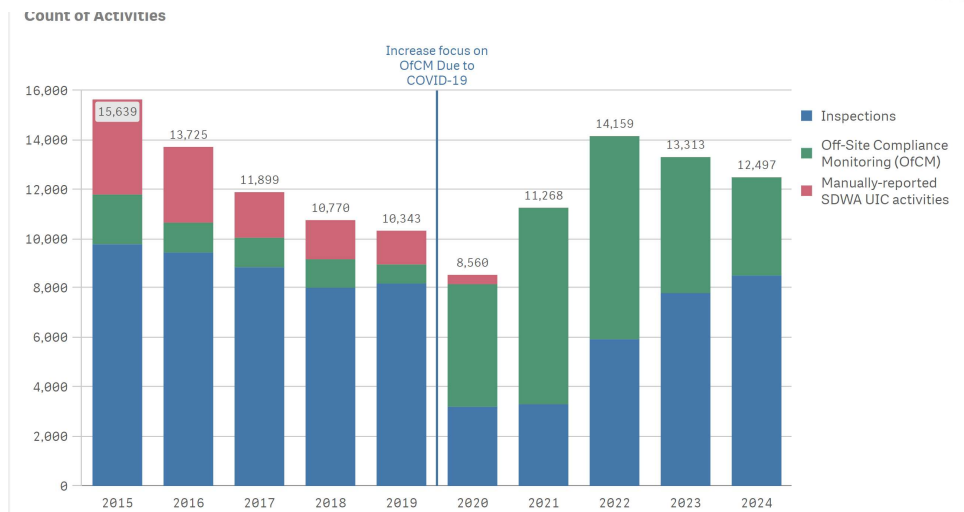


- ◆ With respect to TSCA, in the absence of concise statements from new Administration, we expect Trump 2.0 enforcement to be similar to Trump 1.0 enforcement
  - ◆ General de-regulatory environment
    - Office of Environmental Justice & External Civil Rights (OEJECR) closure
  - ◆ Focus on compliance vs. enforcement
  - ◆ Some stop/start, particularly early on
  - ◆ Limited resources - likely fewer inspections and more citizen suits
    - Impact of *SEC v. Jarkesy* (2024)?
  - ◆ Jan 8, 2025 - maximum TSCA civil penalty \$48,512 → \$49,772

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## EPA Inspection Activity (all statutes)

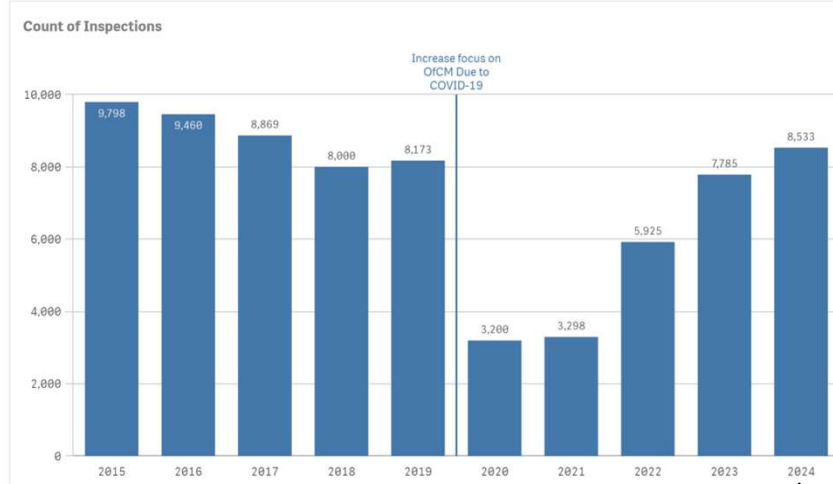


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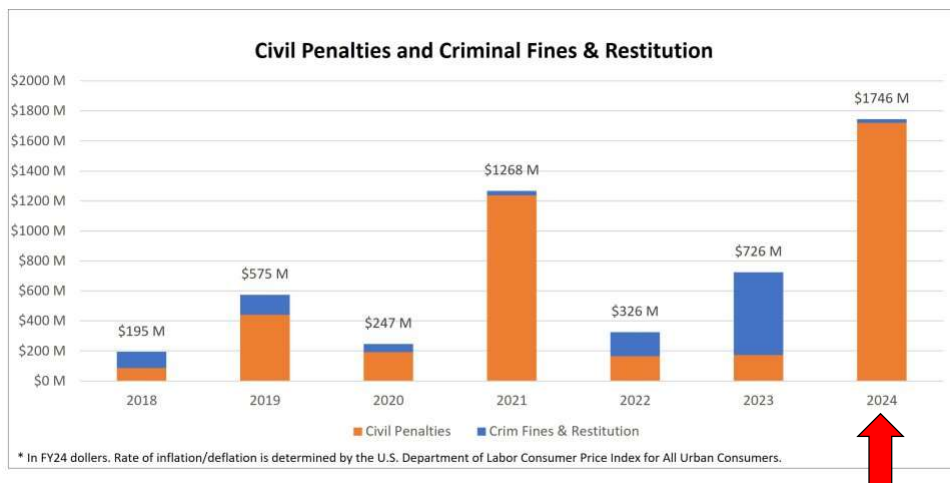
# Inspections



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# Penalties Collected (all statutes)

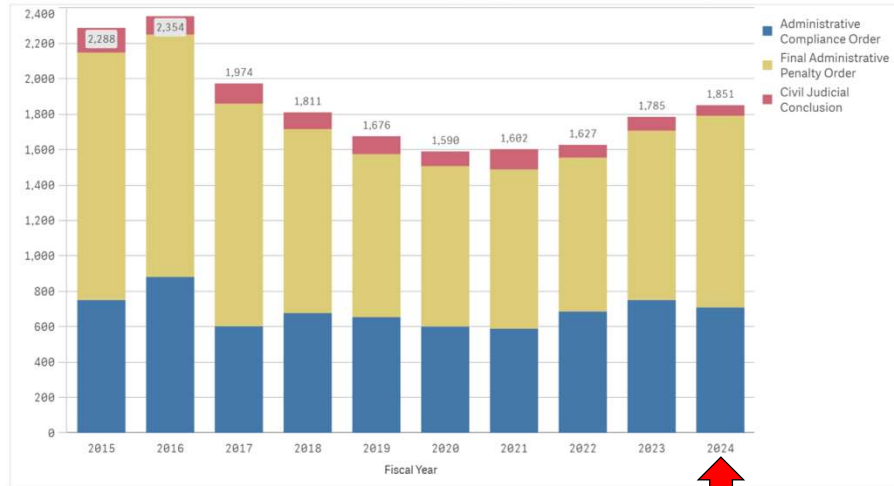


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## Civil Enforcement Case Conclusions



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## Audit Policy (1)



- ◆ *Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations*
  - ◆ 65 Fed. Reg. 19,618 (Apr. 11, 2000)  
<https://www.govinfo.gov/content/pkg/FR-2000-04-11/pdf/00-8954.pdf>
- ◆ EPA will waive ALL gravity-based penalties if all nine (9) conditions satisfied
- ◆ Will waive 75% GBP if last 8 conditions are met
- ◆ EPA retains right to recover any economic benefit

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## Audit Policy (2)



- ◆ Frequently used
  - ◇ From 1995-2020, over 10,000 entities voluntarily self-disclosed violations at nearly 28,000 facilities (> 50% EPCRA)
- ◆ In FY2023, EPA received 599 voluntary self-disclosures and/or new owner audit agreements covering 878 facilities
- ◆ Thus, Audit Policy is still “alive and well,” and will continue given focus on compliance vs. enforcement
- ◆ Works very well for TSCA violations
  - ◇ Encourages continued auditing
  - ◇ CBI considerations
  - ◇ Economic benefit

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## Risk Evaluations and Risk Management (1)



- ◆ First 10 Substances
  - ◇ 5.5 risk management rules remain
    - 1-BP, 1,4-dioxane, Asbestos Part 2, PV29, HBCD, NMP
    - EPA has proposed rules for NMP, 1-BP, and PV29
- ◆ 20 High Priority Substances
  - ◇ 18 final risk evaluations remain
    - 3 risk evaluations are past the draft stage
  - ◇ 2 substances are in the risk management stage
    - TCEP, Formaldehyde

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## Risk Evaluations and Risk Management (2)



- ◆ Next 5 High Priority Substances
  - ◇ Acetaldehyde, Acrylonitrile, Benzenamine, Vinyl chloride, 4,4'-Methylene bis(2-chloroaniline) (MBOCA)
  - ◇ EPA initiated risk evaluations in December 2024
  - ◇ Draft scope documents are beginning to be published
- ◆ Second 5 High Priority Substances
  - ◇ 4-tert-Octylphenol, Benzene, Ethylbenzene, Naphthalene, Styrene
  - ◇ EPA initiated prioritization in December 2024
  - ◇ First comment period closes March 18, 2025
  - ◇ Prioritization should be finalized in December 2025

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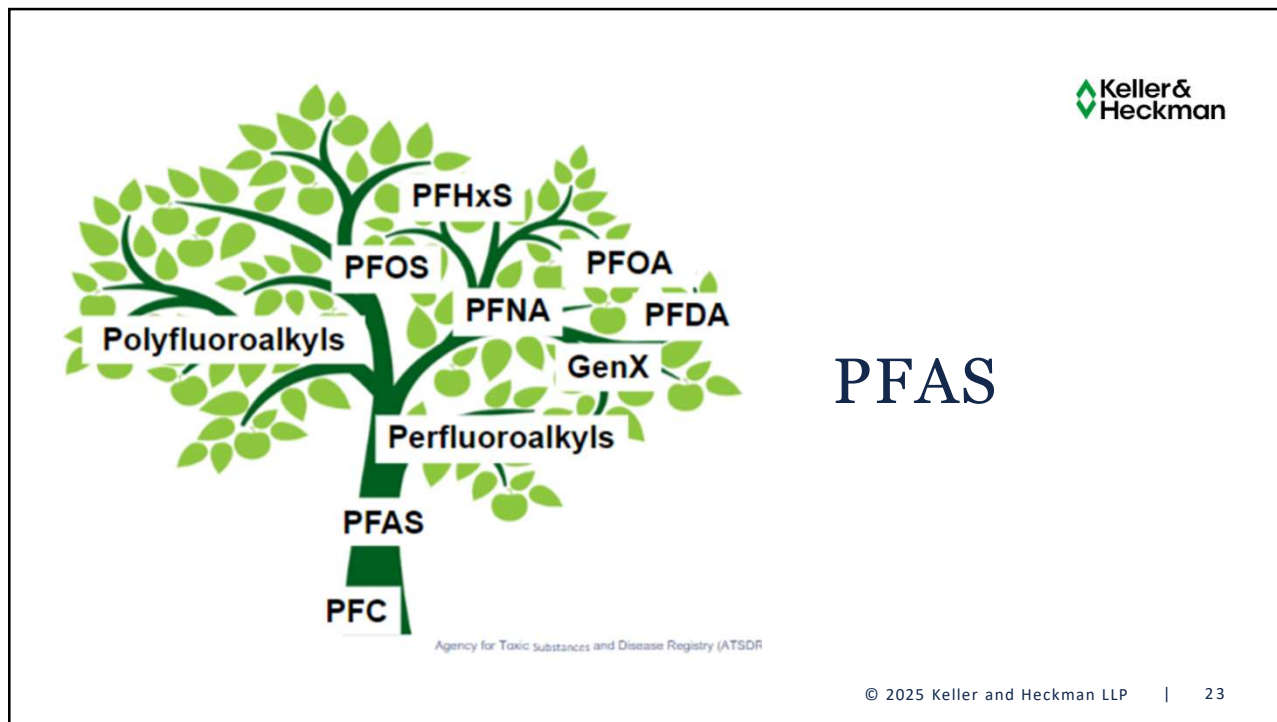
## TSCA Litigation



- ◆ Section 6 Risk Management Rules
  - ◇ Methylene chloride (5th Cir.)
  - ◇ Asbestos Part 1 (5th Cir.)
  - ◇ TCE (3rd Cir.)
  - ◇ CTC (8th Cir.)
  - ◇ PCE (5th Cir.)
- ◆ “Process” Regulations
  - ◇ Risk Evaluation Regulations (D.C. Cir.)
  - ◇ New Chemical Regulations (9th Cir.)

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## 2024 OPPT Regulation of PFAS (1)

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- ◆ **TSCA § 4 National PFAS Testing Strategy –**
  - ◇ Issued two § 4 PFAS test orders (NMeFOS and 6:2 FTAc)
  - ◇ Relied on § 4(a)(1) “may present an unreasonable risk”
    - No § 4(a)(2) “statement of need” litigated in *Vinyl Institute* case
- ◆ **TSCA § 5 New Chemicals –**
  1. New chemical review procedural rule update – PFAS made categorically ineligible for LoREX and LVEs
  2. Proposed “dead chemical” SNURs for 17 fluoroalkylacrylate polymers

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## 2024 OPPT Regulation of PFAS (2)



### ◆ TSCA § 6 Risk Management Rule: Fluorination Byproducts

- ◆ Follow-up to 5<sup>th</sup> Circuit *Inhance* decision (can't regulate existing uses with a § 5 SNUR)
- ◆ EPA granted § 21 petition to commence § 6 risk management rulemaking for fluorination byproducts (PFOA, PFNA, PFDA)
- ◆ “Promptly commence[d] appropriate proceeding” – Requested public comment on information relevant to risk management rule
  - Means to manage exposure risks
  - Technically and economically feasible alternatives
  - Extent and nature of uses (e.g., critical uses)

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## 2024 OPPT Regulation of PFAS (3)



### ◆ TSCA § 8(a)(7) PFAS reporting rule

- ◆ Information collection rule mandated by 2020 NDAA
- ◆ 2023 rule particularly burdensome because EPA concluded that it had *no legal discretion to tailor* to specific information needs
- ◆ Deferred start of reporting period from Nov 2024 to July 2025
  - CDX reporting tool not ready
  - EPA had diverted resources to develop asbestos and CDR reporting tools

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## 2024 OPPT Regulation of PFAS (4)



### ◆ EPCRA 313 Toxic Release Inventory Reporting (TRI)

- 1. Automatic addition of certain 7 PFAS to TRI list (per 2020 NDAA)**
  - Automatically added January 1 after certain assessments (e.g., SNUR, final toxicity values)
  - 100 lb reporting threshold; no exemption for *de minimis* concentrations
- 2. Proposed addition of 16 individual and 15 categories of PFAS to TRI**
  - NDAA 7321(d): Review each PFAS (or class) (A) with a validated drinking water method or (B) used to manufacture fluorinated polymers
  - Proposed to include the acid, associated salts, associated acyl/sulfonyl halide, and anhydride forms of each (same toxicity) = 100+ additions to TRI
- 3. Proposed “clarification” of TRI “supplier notification” start date**
  - Would be triggered by date of automatic listing, not date of listing in regulation

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## 2025 Outlook for OPPT PFAS Regulation



- ◆ **Bipartisan support for reasonable PFAS regulation**
- ◆ **TSCA 8(a)(7)** – reasonable candidate for relief from final rule (*but timing*)
  - ◆ *Loper Bright* – EPA failed in 2023 to recognize the discretion it had to make reasoned choices
  - ◆ Reporting already deferred once due to lack of preparations
- ◆ **National PFAS Testing Strategy** – slow progress on current orders
  - ◆ Not statutory, staff resource intensive, lack of transparency, limited outreach
- ◆ **Fluorinated byproducts risk management** – slow progress
  - ◆ Statutory, but no deadline; competing overdue § 6 obligations
- ◆ **Proposed discretionary TRI additions / clarifications** –
  - ◆ *Supplier notification*: proposal more burdensome than alternative interpretations
  - ◆ *7321(d) TRI additions*: reflects many policy choices that will be revisited

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## Upcoming Events



Please join us at 1:00 PM Eastern U.S.  
Wednesday, February 19, 2025  
<https://www.khlaw.com/OSHA3030>




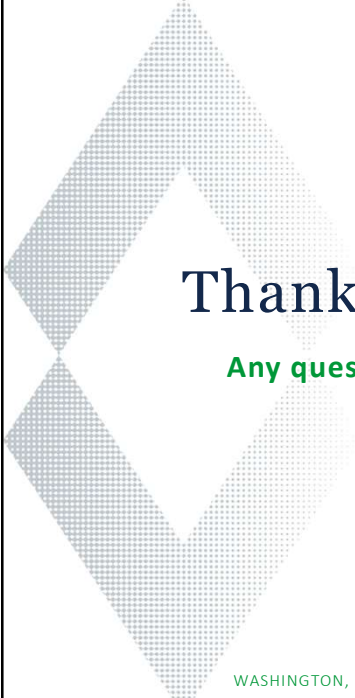
Please join us at 10:00 AM Eastern U.S.  
Wednesday, April 9, 2025  
<https://www.khlaw.com/REACH-3030>



Please join us at 1:00 PM Eastern U.S.  
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# Thank You

Any questions?

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