PRE-PUBLICATION NOTICE

On Wednesday, April 17, 2019, Alexandra Dapolito Dunn, the EPA Assistant Administrator for Chemical Safety and Pollution Prevention, signed the following document:

Action:	Final Rule.
Title:	**Restrictions on Discontinued Uses of Asbestos; Significant New Use Rule**
FRL #:	9991-33
Docket ID #:	EPA-HQ-OPPT-2018-0159

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Once the official version of this document is published in the *Federal Register*, this version will be removed from the Internet and replaced with a link to the official version. At that time, you will also be able to access the on-line docket for this *Federal Register* document at http://www.regulations.gov.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA-HQ-OPPT-2018-0159; FRL-9991-33]

RIN 2070–AK45

Restrictions on Discontinued Uses of Asbestos; Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Toxic Substances Control Act (TSCA), EPA is promulgating a rule to ensure that any discontinued uses of asbestos cannot re-enter the marketplace without EPA review, closing a loophole in the regulatory regime for asbestos. This restrictive rule is called a significant new use rule (SNUR) for asbestos, as the term asbestos is defined under the Asbestos Hazard Emergency Response Act**.** The restricted significant new uses of asbestos (including as part of an article) is manufacturing (including importing) or processing for uses that are neither ongoing nor already prohibited under TSCA. The Agency has found no information indicating that the following uses are ongoing, and therefore, the following uses are subject to this SNUR and cannot return to the marketplace without EPA review: Adhesives, sealants, and roof and non-roof coatings; arc chutes; beater-add gaskets; cement products; extruded sealant tape and other tape; filler for acetylene cylinders; friction materials (with certain exceptions identified in Table 1); high-grade electrical paper; millboard; missile liner; packings; pipeline wrap; reinforced plastics; roofing felt; separators in fuel cells and batteries; vinyl-asbestos floor tile; woven products; any other building material; and any other use of asbestos that is neither ongoing nor already prohibited under TSCA. This action prohibits these discontinued uses of

asbestos from restarting without EPA having an opportunity to evaluate each intended use (i.e., significant new use) for potential risks to health and the environment and take any necessary regulatory action, which may include a prohibition. This SNUR does not provide a means by which prohibited uses under the 1989 partial ban under TSCA section 6 could return to the marketplace. This SNUR keeps all prior asbestos prohibitions in place and would not amend them in any way. EPA is focused on protecting the public from exposure to asbestos, and as such persons subject to the SNUR may not undertake any of these activities; they are required to notify EPA at least 90 days before commencing any manufacturing (including importing) or processing of asbestos (including as part of an article) for a significant new use. The required notification initiates EPA's evaluation of the conditions of use associated with the intended use. Manufacturing (including importing) and processing (including as part of an article) for the significant new use may not commence until EPA has conducted a review of the notice, made an appropriate determination on the notice, and taken such actions as are required in association with that determination.

DATES: This final rule is effective [*insert date 60 days after date of publication in the* **Federal Register**].

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPPT-2018-0159, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Please

review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Robert Courtnage, National Program Chemicals Division (Mail Code 7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 566-1081; email address: *courtnage.robert@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. *Does this action apply to me?*

You may be potentially affected by this action if you manufacture (including import), process, or distribute in commerce asbestos as it is defined by TSCA Title II, section 202 (15 U.S.C. 2642) (including as part of an article). The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Construction (NAICS code 23);
- Manufacturing (NAICS codes 31 – 33);
- Wholesale Trade (NAICS code 42); and
- Transportation (NAICS code 48).

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA (15 U.S.C. 2601 *et seq.*). Persons who import or process any chemical substance governed by a final SNUR are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements and the corresponding regulations at 19 CFR 12.118 through 12.127 (see also 19 CFR 127.28). Those persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including any SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B.

In addition, asbestos, as defined in this rule, is already subject to TSCA section 6(a) (40 CFR part 763, subparts G and I) rules that trigger the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b); see also 40 CFR 721.20). Any person who exports or intends to export asbestos must comply with the export notification requirements in 40 CFR part 707, subpart D; however, although EPA makes inapplicable the exemption at 40 CFR 721.45(f) for persons who import or process any asbestos as part of an article in a category listed in Table 1, the Agency is not requiring export notification for articles containing asbestos, as further explained in Unit III.B. of this notice.

If you have any questions regarding the applicability of this action to a particular entity, consult the technical information contact listed under **FOR FURTHER INFORMATION CONTACT**.

B. *What is the Agency's authority for taking this action?*

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2) (see Unit

IV.). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture (including import) or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)(i)). TSCA prohibits the manufacturing (including importing) or processing from commencing until EPA has conducted a review of the notice, made an appropriate determination on the notice, and taken such actions as are required in association with that determination (15 U.S.C. 2604(a)(1)(B)(ii)). Those actions could include a prohibition on a use of that chemical substance. As described in Unit V., the general SNUR provisions are found at 40 CFR part 721, subpart A.

C. *What action is the Agency taking?*

EPA is promulgating a final SNUR for asbestos, using the definition in TSCA Title II, section 202, which defines asbestos as the "asbestiform varieties of six fiber types – chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite or actinolite." The significant new use of asbestos (including as part of an article) is manufacturing (including importing) or processing for uses that are neither ongoing nor already prohibited under TSCA. The Agency found no information indicating that the following uses are ongoing, and therefore, the following uses are subject to this SNUR: Adhesives, sealants, and roof and non-roof coatings; arc chutes; beater-add gaskets; cement products; extruded sealant tape and other tape; filler for acetylene cylinders; friction materials (with certain exceptions identified in Table 1); high-grade electrical paper; millboard; missile liner; packings; pipeline wrap; reinforced plastics; roofing felt; separators in fuel cells and batteries; vinyl-asbestos floor tile; woven products; any other building material; and any other use of asbestos that is neither ongoing nor already prohibited under TSCA.

Table 1 below presents the significant new uses of asbestos (including as part of an article) subject to this rule and lists product categories of asbestos uses that are no longer ongoing (i.e., discontinued uses) in the United States that this SNUR will prohibit from restarting under TSCA without EPA's prior notice, review, and, as necessary, regulation by EPA. Unless otherwise noted, the product category descriptions are based on those presented in the *Regulatory Impact Analysis of Controls on Asbestos and Asbestos Products* for the 1989 final rule (Ref. 1).

Table 1: Restricted Product Categories of Significant New Uses of Asbestos

Product Category	Description of the Product Category
Adhesives, Sealants, and Roof and Non-Roof Coatings	The automobile industry historically used asbestos in a wide variety of adhesive, sealant, and coating applications. The aerospace industry used asbestos in extremely specialized applications such as firewall sealants and epoxy adhesives. Non-roof coatings were used to prevent corrosion (e.g. as vehicle undercoatings and underground pipe coatings). Roof coatings were used to repair and patch roofs, seal around projections such as chimneys and vent pipes, and bond horizontal and vertical surfaces.
Arc Chutes	Ceramic arc chutes containing asbestos were used to guide electric arcs in motor starter units in electric generating plants.
Beater-Add Gaskets	Asbestos fibers were incorporated within various elastomeric binders and other fillers to form the beater-add paper. These products were used extensively for internal combustion applications and for the sealing component of spiral wound gaskets. Gaskets were used to seal one compartment of a device from another in non-dynamic applications such as engine and exhaust manifolds.
Cement Products*	Includes asbestos cement product categories in the 1989 Regulatory Impact Assessment: Asbestos-Cement Pipe and Fittings, Asbestos-Cement Flat Sheet, Corrugated Asbestos-Cement Sheet, and Asbestos-Cement Shingles.
Extruded Sealant Tape and Other Tape	Sealant tape was made from a semi-liquid mixture of butyl rubber and asbestos. On exposure to air, the sealant solidified forming a rubber tape about an inch wide and an eighth of an inch thick. The tape acted as a gasket for sealing building windows, automotive windshields, and mobile home windows. It was also used in the manufacture of parts for the aerospace industry and in the manufacture of insulated glass.
Filler for Acetylene Cylinders	Asbestos was used to produce a sponge-like filler, which held the liquefied acetylene gas (acetone) in suspension in the steel cylinder

	and puled the acetone up through the tank as the gas was released through the oxyacetylene torch. The torch was used to weld or cut metal and sometimes used as an illuminant gas. The filler also acted as an insulator that offered fire protection in case the oxidation of the acetylene became uncontrollable.
Friction Materials (except brake blocks used in oil drilling equipment; aftermarket automotive brakes/linings; and other vehicle friction products)	Friction materials were used as braking and gear-changing (clutch) components in a variety of industrial and commercial machinery. Applications included agricultural equipment such as combines, mining and oil-well-drilling equipment, construction equipment such as cranes and hoists, heavy equipment used in various manufacturing industries (e. g., machine tools and presses), military equipment, marine engine transmissions, elevators, chain saws, and consumer appliances such as lawn mowers, washing machines, and vacuum cleaners.
High-Grade Electrical Paper	The major use of asbestos electrical paper was insulation for high temperature, low voltage applications such as in motors, generators, transformers, switch gears, and other heavy electrical apparatuses.
Millboard	Asbestos millboard was essentially a heavy cardboard product that was used for gasketing, insulation, fireproofing, and resistance against corrosion and rot. Millboard was used in many industrial applications to include linings in boilers, kilns, and foundries; insulation in glass tank crowns, melters, refiners, and sidewalls in the glass industry; linings for troughs and covers in the aluminum, marine, and aircraft industries; and thermal protection in circuit breakers in the electrical industry. In addition, thin millboard was inserted between metal to produce gaskets. Commercial applications for millboard included fireproof linings for safes, dry-cleaning machines, and incinerators.
Missile Liner	A missile liner was an asbestos and rubber compound used to insulate the outer casing of the rocket from the intense heat generated in the rocket motor while the rocket fuel was burned. Rockets and rocket boosters were used to propel a number of objects including military weapons and the space shuttle.
Packings	Asbestos packings were dynamic or mechanical (static packings are gaskets) and used to seal fluids in devices where motion was necessary. The design of a packing is to control the amount of leakage of fluid at shafts, rods or valve systems and other functional parts or equipment requiring containment of liquids or gases. Asbestos packings were used in rotary, centrifugal, and reciprocating pumps, valves, expansion joints, soot blowers, and many other types of mechanical equipment.
Pipeline Wrap	Pipeline wrap was an asbestos felt product primarily used by the oil and gas industry for coating its pipelines. Asbestos pipeline wrap was also used in the coal tar enamel method of coating pipes, some above-ground applications (such as for special piping in cooling towers) and was also used by the chemical industry for underground hot water and steam piping.

Reinforced Plastics	Asbestos-reinforced plastics were used for electro-mechanical parts in the automotive and appliance industries and as high-performance plastics for the aerospace industry. Asbestos-reinforced plastic was typically a mixture of some type of plastic resin (usually phenolic or epoxy), a general filler (often chalk or limestone), and raw asbestos fiber.
Roofing Felt	Asbestos roofing felt was single or multi-layered grade and used for built-up roofing. Asbestos was used in roofing felts because of its dimensional stability and resistance to rot, fire, and heat.
Separators in Fuel Cells and Batteries	In very specialized aerospace applications, asbestos functioned as an insulator and separator between the negative and positive terminals of a fuel cell/battery.
Vinyl-Asbestos Floor Tile	Vinyl-asbestos floor tile was used in commercial, residential, and institutional buildings in heavy traffic areas such as supermarkets, department stores, commercial plants, kitchens, and "pivot points" – entry ways and areas around elevators
Woven Products*	Includes Protective Clothing and Asbestos Textiles from the 1989 RIA.
Any Other Building Material	Examples include insulation, plasters, mastics, textured paints (e.g., simulates stucco), and block filler paints (e.g., for coating masonry).
Any use of asbestos not otherwise identified	Except those uses prohibited under § 763.165 (i.e. Corrugated Paper, Rollboard, Commercial Paper Specialty Paper, Flooring Felt and New Uses (the manufacture, importation or processing of which would be initiated for the first time after August 25, 1989)) and uses of imported chrysotile (including as part of an article) that are currently ongoing in the United States (i.e. diaphragms; sheet gaskets; oilfield brake blocks; aftermarket automotive brakes/linings; other vehicle friction products; and other gaskets).
* *Not a product category described in the same terms in the Regulatory Impact Analysis* (Ref. 1)*; this broader product category is used generally to describe a number of specific product categories identified during the TSCA section 6 risk evaluation process.*	

The Frank R. Lautenberg Chemical Safety for the 21st Century Act (Pub. L. 114-182, 130 Stat. 448) amended TSCA in June 2016. As amended, TSCA includes statutory requirements related to the risk evaluations of existing chemicals under their conditions of use. In December of 2016 (81 FR 91927, December 19, 2019) (FRL-9956-47), EPA designated asbestos as one of the first 10 chemical substances subject to the Agency's chemical risk evaluation rule, pursuant to TSCA section 6(b)(2)(A) (15 U.S.C. 2605(b)(2)(A)).

EPA is separately conducting a risk evaluation of asbestos under its conditions of use,

pursuant to TSCA section 6(b)(4)(A). Through scoping and subsequent research for the asbestos risk evaluation, EPA identified several conditions of use of asbestos to include in the risk evaluation. However, through extensive research, review of public comments, and stakeholder engagement, the conditions of use of asbestos have been further refined since publication of the proposed Asbestos SNUR (83 FR 26922, June 11, 2018) (FRL-9978-76), and *Problem Formulation of the Risk Evaluation for Asbestos* (Ref. 2) in June 2018. The conditions of use of asbestos currently undergoing risk evaluation include: Imported raw bulk chrysotile asbestos for the fabrication of diaphragms for use in chlorine and sodium hydroxide production; and several imported chrysotile asbestos-containing materials, including sheet gaskets for use in chemical production (e.g. titanium dioxide production), brake blocks used in oil drilling equipment, aftermarket automotive brakes/linings and other vehicle friction products, and other gaskets. Cement products, woven products, and packings have been removed from the scope of the risk evaluation since publication of the problem formulation document because no information was found to confirm they are conditions of use. Because additional EPA research indicates that cement products, woven products, and packings are not ongoing uses, this significant new use rule includes them as significant new uses. This final SNUR does not affect those uses that EPA believes are currently ongoing in the United States; again, those uses are being evaluated in the context of EPA's asbestos risk evaluation.

EPA requested public comment on the proposed SNUR for information regarding any ongoing uses not identified by the Agency and additional uses no longer ongoing (83 FR 26922, June 11, 2018) (FRL-9978-76). The Agency did not receive any comments providing additional information regarding the ongoing uses or discontinued uses of asbestos. EPA did receive many comments (too numerous to cite individually) stating that the Agency should not allow otherwise

prohibited asbestos uses to return to the marketplace. EPA's approach is consistent with these comments, and this rulemaking does not bring previously prohibited uses back to market. This SNUR regulates uses of asbestos that are no longer ongoing (i.e., discontinued uses) in the United States but that are not currently prohibited from restarting under TSCA (i.e., not subject to the 1989 partial ban under TSCA section 6). In the absence of this SNUR, manufacturing, importing, or processing of asbestos (including as part of an article) for the significant new uses identified in Table 1 may begin at any time and without prior notice to and oversight by EPA. EPA is committed to protecting the public from asbestos risks. As such, EPA will ensure through this final rule that no former uses of asbestos can be reintroduced into commerce in the U.S. without prior notice, review, and, as necessary, regulation by EPA.

As explained in greater detail in the *Response to Comments* document (Ref. 3), a significant new use rule can be promulgated to regulate new chemicals or existing chemicals. For existing chemicals, such as asbestos, a SNUR can be used to ensure that no company will be able to manufacture, import, or process the chemical for uses the Agency identifies as significant new uses without prior notification to EPA and not before EPA has conducted a review of the notice, made an appropriate determination on the notice based on information available to EPA about the risk to health and the environment, and taken such regulatory actions as are required in association with that determination. This final SNUR requires persons who intend to manufacture (including import) or process any form of asbestos as defined under Title II of TSCA (including as part of an article) for a significant new use listed in Table 1, consistent with the requirements at 40 CFR 721.25, to notify EPA at least 90 days before commencing such manufacturing (including importing) or processing. Furthermore, this rule precludes the commencement of such manufacturing (including importing) or processing until EPA has

conducted a review of the notice, made an appropriate determination on the notice, and taken such actions as are required in association with that determination.

EPA intends that the provisions of this rule be severable. In the event that any individual provision or part of this rule is invalidated, EPA intends that this would not render the entire rule invalid, and that any individual provisions that can continue to operate will be left in place.

D. *Why is the Agency taking this action?*

This final SNUR will require timely advance notice to EPA of any future manufacturing (including importing) or processing of asbestos (including as part of an article) for the designated significant new uses that may produce changes in human and environmental exposures and to allow EPA to make an appropriate determination (relevant to the risks associated with such manufacturing (including importing), processing, and use) prior to the commencement of such manufacturing (including importing) or processing. This action is necessary to ensure that manufacturing (including importing) or processing for the significant new use cannot proceed until EPA has responded to the circumstances by taking the required actions under TSCA sections 5(e) or 5(f) in the event that EPA determines any of the following: (1) that the significant new use presents an unreasonable risk to health or the environment under the conditions of use (without consideration of costs or other non-risk factors, and including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by EPA); (2) that the information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects of the significant new use; (3) that, in the absence of sufficient information, the manufacturing (including importing), processing, distribution in commerce, use, or disposal of the substance, or any combination of such activities, may present an unreasonable risk (without consideration of costs or other non-risk factors, and including an

unreasonable risk to potentially exposed or susceptible subpopulations identified as relevant by EPA); or (4) that there is substantial production and sufficient potential for environmental release or human exposure (as defined in TSCA section 5(a)(3)(B)(ii)(II)).

There is a strong causal association between asbestos exposure and lung cancer and mesotheliomas (tumors arising from the thin membranes that line the chest (thoracic) and abdominal cavities and surround internal organs) (Ref. 4; Ref. 5 Ref. 6; Ref. 7; Ref. 8; Ref. 9). In addition, other cancers, as well as non-cancer effects, such as respiratory and immune effects, have been associated with asbestos exposure (Ref. 10).

Agency research conducted in support of the TSCA risk evaluation of asbestos revealed that the use of asbestos has declined dramatically in the United States since the 1970s when asbestos use was at its peak. Nevertheless, EPA is concerned about the potential for adverse health effects of asbestos and believes this action will prevent former uses of asbestos from being reintroduced into commerce without the EPA being aware and having the opportunity to review and, as necessary, restrict those uses. EPA is taking action in this final rule to prohibit manufacturing (including importing) or processing for a significant new use of asbestos (including as part of an article) identified in Table 1 in the United States without prior notice, review, and, as necessary, regulation by EPA. The rationale and objectives for this final SNUR are explained in additional detail in Unit III. of the proposed rule (83 FR 26922, June 11, 2018) (FRL-9978-76).

E. What are the estimated incremental impacts of this action?

EPA has evaluated the potential costs of establishing SNUR reporting requirements for potential manufacturers (including importers) and processors of asbestos, as defined in this rule. This Economic Analysis (Ref. 11), which is available in the docket, is discussed in Unit IX. and

is briefly summarized here.

In the event that a SNUN is submitted, costs are estimated to be approximately $23,000 per SNUN submission for large business submitters and about $10,000 for small business submitters. Asbestos is already subject to TSCA section 6(a) rules (40 CFR part 763, subparts G and I) that trigger the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b); see also 40 CFR 721.20), and the Agency is not requiring export notifications for articles containing asbestos. Articles are generally excluded from the TSCA section 12(b) export notification requirements and the Agency is not lifting the article exemption for 12(b) export notification for asbestos articles for the reasons discussed in Unit III.B. Therefore, EPA assumes no additional costs under TSCA section 12(b) for this rule.

The rule may also affect firms that plan to import or process articles that may be subject to the SNUR. Although there are no specific requirements in the rule for these firms, they may choose to undertake some activity to assure themselves that they are not undertaking a significant new use. In the accompanying Economic Analysis for this final SNUR (Ref. 11), example steps (and their respective costs) that an importer or processor might take to identify asbestos in articles are provided. These steps can include gathering information through agreements with suppliers, declarations through databases or surveys, or use of a third-party certification system. Additionally, importers may require suppliers to provide certificates of testing analysis of the products or perform their own laboratory testing of certain articles. EPA is unable to predict, however, what, if any, particular steps an importer might take; thus, potential total costs were not estimated.

II. Chemical Substance Subject to this Final Rule

A. *What chemicals are included in the final SNUR?*

This SNUR applies to asbestos, using the definition in TSCA Title II, section 202, which defines asbestos as the "asbestiform varieties of six fiber types – chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite or actinolite." This SNUR applies to the manufacturing (including importing) or processing of asbestos (including as part of an article) for uses that are neither ongoing nor already prohibited under TSCA. EPA found no information indicating that the following uses are ongoing, and therefore, the following uses are subject to this final SNUR: Adhesives, sealants, and roof and non-roof coatings; arc chutes; beater-add gaskets; cement products; extruded sealant tape and other tape; filler for acetylene cylinders; friction materials (with certain exceptions identified in Table 1); high-grade electrical paper; millboard; missile liner; packings; pipeline wrap; reinforced plastics; roofing felt; separators in fuel cells and batteries; vinyl-asbestos floor tile; woven products; any other building material; and any other use of asbestos that is neither ongoing nor already prohibited under TSCA. This action enables the Agency to protect public health because these significant new uses are not permitted to commence until EPA conducts a review and evaluates risks, and, as necessary, restricts the use(s).

Under this final SNUR, the exemption at 40 CFR 721.45(f) would not apply to persons who import or process asbestos as part of an article (which includes as a component of an article) because there is reasonable potential for exposure to asbestos if the substance is incorporated into articles and then imported or processed. Asbestos-containing articles subject to this SNUR are listed in Table 1.

B. *What are the production volumes and uses of asbestos?*

Asbestos has not been mined or otherwise produced in the United States since 2002; therefore, any new raw bulk asbestos used in the United States is imported. According to the

U.S. Geological Survey (USGS), approximately 750 metric tons of raw bulk asbestos was imported into the United States in 2018 (Ref. 12). Chrysotile is the only form of raw bulk asbestos currently imported, and the chlor-alkali industry is the only known importer (Ref. 12). EPA did not identify any domestic entity that uses raw bulk asbestos other than the chlor-alkali industry, which uses chrysotile asbestos to fabricate diaphragms for use in chlorine and sodium hydroxide production.

In an effort to identify national import volumes and conditions of use for the asbestos risk evaluation being conducted under TSCA section 6(b)(4)(A), EPA searched a number of available data sources including EPA's Chemical Data Reporting (CDR) database, USGS's Mineral Commodities Summary and the Minerals Yearbook, the U.S. International Trade Commission's Dataweb, the U.S. Customs and Border Protection's Automated Commercial Environment (ACE) system, and the *Use and Market Profile for Asbestos* (Ref. 13). Based on this research, EPA published a preliminary list of information and sources related to asbestos conditions of use prior to a February 2017 public meeting on the scoping efforts for the risk evaluation convened to solicit public comment (see *Preliminary Information on Manufacturing, Processing, Distribution, Use, and Disposal: Asbestos*, Ref. 14). EPA also convened meetings with companies, associated industry groups, chemical users, and other stakeholders to aid in identifying conditions of use and verifying conditions of use identified by EPA.

During the public comment period for the *Preliminary Information on Manufacturing, Processing, Distribution, Use, and Disposal: Asbestos* (Ref. 14), one company identified the use of asbestos-containing gaskets, which are imported, for use during the production of titanium dioxide. During stakeholder discussions another company confirmed importing and distributing brake blocks for use in oil drilling equipment by the oil industry. EPA believes that aftermarket

automotive brakes/linings and other vehicle friction products, and other gaskets containing asbestos are also imported, as reported by USGS (Ref. 15) and also appear in data from ACE; however, the volume of products and the quantity of asbestos within imported products is not fully known. These conditions of use along with the others listed in Table 3 will be subject to the TSCA section 6 risk evaluation.

On June 22, 2017, EPA published the *Scope of the Risk Evaluation for Asbestos* (Ref. 10), which was further refined by the June 2018, *Problem Formulation of the Risk Evaluation for Asbestos* (Ref. 2) issued in conjunction with the June 11, 2018 proposed Asbestos SNUR (83 FR 26922, June 11, 2018) (FRL-9978-76). Each of these three actions provided 60-day comment periods and opportunity for the public and private sector to identify conditions of use of asbestos in the United States. The Agency did not receive additional information from the public comments during the comment period regarding ongoing or discontinued uses of asbestos.

C. *What are the potential health effects of asbestos?*

Asbestos was listed as a known human carcinogen in the National Toxicology Program's *First Annual Report on Carcinogens* in 1980 (Ref. 16). In 1988, EPA assessed the health hazards and effects caused by exposure to asbestos under the Integrated Risk Information System (IRIS) program and determined that asbestos exposure can lead to lung cancer and mesotheliomas (tumors arising from the thin membranes that line internal organs) (Ref. 5). There is causal association between asbestos and lung cancer and mesotheliomas (Ref. 4; Ref. 6; Ref. 7). EPA also noted in the *Scope of the Risk Evaluation for Asbestos* (Ref. 10) that there is a causal association between exposure to asbestos and cancer of the larynx and cancer of the ovary (Ref. 7). There is also suggestive evidence of a positive association between asbestos and cancer of the pharynx (Ref. 7; Ref. 17), stomach (Ref. 6; Ref. 7), and colorectum (Ref. 4; Ref. 6; Ref. 7; Ref.

17; Ref. 18; Ref. 19). All types of asbestos fibers have been reported to cause mesothelioma (Ref. 7).

Increases in lung cancer mortality have been reported in both workers and residents exposed to various asbestos fiber types as well as fiber mixtures (Ref. 7). There is evidence in *in-vitro*, animal, and human studies that asbestos is genotoxic, meaning asbestos can damage an organism's genetic material (Ref. 6). There is also evidence that asbestos exposure is associated with adverse respiratory system effects, such as asbestosis and immunotoxicity (Ref. 6; Ref. 10).

D. *What are the potential routes and sources of exposure to asbestos*

The greatest risk of exposure to asbestos occurs when the substance is in a friable state, meaning the fibers can be crumbled, pulverized, or reduced to a powder under hand pressure (Ref. 6). During use and over time, non-friable asbestos has the potential to become friable (Ref. 6). For example, testing has shown that non-friable asbestos-containing material can become friable during use such as cutting, crumbling, and tearing, and as a result of such use, asbestos fibers can be released into the air (Ref. 20). Similarly, non-friable asbestos-containing building materials can release fibers if disturbed during building repair or demolition (Ref. 21). Exposures to workers, consumers and the general population, as well as environmental receptors, may occur from industrial releases and use of asbestos-containing products. Based on EPA's research conducted during the early stages of the TSCA risk evaluation, most of the ongoing uses of asbestos pertain to industrial and commercial uses (Ref. 10).

The primary exposure route for asbestos is inhalation. Asbestos fibers can be released into the air during processing of raw bulk asbestos and asbestos-containing products. Weathering and the disturbance and/or degradation of asbestos-containing products can also cause asbestos fibers to be suspended in air (Ref. 6). Fibers can then enter the lungs through inhalation.

Exposures to asbestos can potentially occur via oral and dermal routes; however, EPA anticipates that the most likely exposure route is inhalation.

III. SNUR Rationale and Objectives

A. *Rationale*

As discussed in Unit II. and Unit III. of the proposed rule (83 FR 26922, June 11, 2018) (FRL-9978-76), EPA is concerned about the potential for adverse health effects of asbestos based on established sound scientific data indicating that asbestos is a known human carcinogen. Asbestos was listed as a human carcinogen in the National Toxicology Program's *First Annual Report on Carcinogens* in 1980 (Ref. 16).

Asbestos, in particular chrysotile asbestos, has several useful properties, including low electrical conductivity while maintaining high tensile strength, high friction coefficient, and high resistance to heat (Ref. 19). These properties made asbestos ideal for use in friction materials (e.g., brakes), insulation (e.g., sound, heat, and electrical), and building materials (e.g., cement pipes, roofing compounds, flooring) over the past century. However, the use of asbestos has declined dramatically due to health concerns and consumer preference (Ref. 22), which has led to the elimination of some exposure scenarios associated with such uses. According to USGS, in 1973, national annual consumption, including manufacturing/importing and processing, of raw bulk asbestos peaked around 800,000 metric tons and has since fallen approximately 99 percent to between 300 and 800 metric tons in recent years (Ref. 12). Today, most manufactured products that historically contained asbestos in the United States are now asbestos-free (Ref. 22).

In 1989, EPA published a final rule *Asbestos: Manufacture, Importation, Processing, and Distribution in Commerce Prohibitions* (54 FR 29460, July 12, 1989) (FRL-3476-2), which was intended "to prohibit, at staged intervals, the future manufacture, importation, processing and

distribution in commerce of asbestos in almost all products, as identified in the rule . . .” and to “reduce the unreasonable risks presented to human health by exposure to asbestos during activities involving these products.” The 1989 final rule applied to the asbestos product categories identified in the *Regulatory Impact Analysis of Controls on Asbestos and Asbestos Products* (Ref. 1), which was conducted in support of the rule. However, the ban against most of the asbestos product categories was partially vacated and remanded to EPA by the Fifth Circuit Court of Appeals in 1991. In addition to the asbestos products that remain banned after the court ruling, which are identified in Table 2 below, any new use of asbestos was also banned. This prohibition on any new uses of asbestos is for uses initiated *for the first time* after August 25, 1989. The purpose of this SNUR is to address the uses of asbestos that began prior to August 25, 1989, for which manufacturing (including importing) and processing are no longer ongoing in the United States but are not prohibited under the 1989 partial ban under TSCA section 6.

Table 2: Asbestos Containing Product Categories Banned Under TSCA Section 6

Product Category	Definition (40 CFR 763.163)
Corrugated Paper	Corrugated paper means an asbestos-containing product made of corrugated paper, which is often cemented to a flat backing, may be laminated with foils or other materials, and has a corrugated surface. Major applications of asbestos corrugated paper include: Thermal insulation for pipe coverings; block insulation; panel insulation in elevators; insulation in appliances; and insulation in low-pressure steam, hot water, and process lines.
Rollboard	Rollboard means an asbestos-containing product made of paper that is produced in a continuous sheet, is flexible, and is rolled to achieve a desired thickness. Asbestos rollboard consists of two sheets of asbestos paper laminated together. Major applications of this product include: Office partitioning; garage paneling; linings for stoves and electric switch boxes; and fire-proofing agent for security boxes, safes, and files.
Commercial Paper	Commercial paper means an asbestos-containing product that is made of paper intended for use as general insulation paper or muffler paper. Major applications of commercial papers are insulation against fire, heat transfer, and corrosion in circumstances that require a thin, but durable, barrier.

Specialty Paper	Specialty paper means an asbestos-containing product that is made of paper intended for use as filters for beverages or other fluids or as paper fill for cooling towers. Cooling tower fill consists of asbestos paper that is used as a cooling agent for liquids from industrial processes and air conditioning systems.
Flooring Felt	Flooring felt means an asbestos-containing product that is made of paper felt intended for use as an underlayer for floor coverings, or to be bonded to the underside of vinyl sheet flooring.
New Uses*	The commercial uses of asbestos not identified in §763.165 the manufacture, importation or processing of which would be initiated for the first time after August 25, 1989.
** A "new use" as defined in 40 CFR 763.163 is distinct from a significant new use per TSCA section 5(a)(2), which is explained for the purposes of this final rule in Table 1.*	

After the court's ruling in *Corrosion Proof Fittings v. EPA*, 947 F.2d 1201 (5th Cir. 1991), only the specific asbestos products identified in Table 2 and new uses of asbestos initiated for the first time after August 25, 1989, remained banned under TSCA. This SNUR keeps these prohibitions in place and would not amend them in any way. In other words, this SNUR does not provide a means by which these prohibited uses under the 1989 partial ban under TSCA section 6 could return to the marketplace.

A significant new use of asbestos includes all uses that were initiated on or before August 25, 1989 (and were not covered by the 1989 partial ban under TSCA section 6) for which manufacturing (including importing) and processing are no longer ongoing in the United States. This SNUR is designed to complement the existing prohibitions on asbestos and does not alter or displace those prohibitions.

As part of the current asbestos risk evaluation process, the Agency identified conditions of use to be considered under the TSCA risk evaluation. In the proposed Asbestos SNUR (83 FR 26922, June 11, 2018) (FRL-9978-76) and the *Problem Formulation of the Risk Evaluation for Asbestos* (Ref. 2), the Agency identified the following conditions of use to be considered under the TSCA section 6 risk evaluation: Imported raw bulk chrysotile asbestos for the fabrication of

diaphragms for use in chlorine and sodium hydroxide production and several imported chrysotile asbestos-containing materials including sheet gaskets for use in chemical production (e.g., titanium dioxide chemical production), brake blocks for use in oil drilling, aftermarket automotive brakes/linings and other vehicle friction products, other gaskets and packing, cement products, and woven products. However, since the problem formulation document and proposed SNUR were published in June 2018, EPA has further refined the conditions of use of asbestos for the TSCA section 6 risk evaluation. Three uses of asbestos – cement products, packings, and woven products – were believed to be possibly ongoing based on import data reported in USGS's 2016 Mineral Yearbook (Ref. 16). EPA further investigated the import data and determined that there is no evidence to support that asbestos-containing cement products, packings, and woven products are ongoing uses of asbestos, and therefore, these three uses are subject to this final rulemaking.

In an effort to obtain confirmation that asbestos-containing cement products are imported into the U.S., EPA contacted the last known foreign supplier to North America. After contacting them, the supplier informed the Agency that they do not export asbestos-containing cement to the United States (Ref. 23). The Agency also discussed the use of asbestos cement pipe in the U.S. with the trade organization American Water Works, who provided a written statement that, to their knowledge, asbestos cement pipe is no longer an ongoing use (Ref. 24).

Upon further review of import data, EPA determined that packings and "woven and knitted fabrics," which are reported in USGS's 2016 Minerals Yearbook (Ref. 16) under Harmonized Tariff Schedule (HTS) codes 6812.99.0020 and 6812.99.0004 respectively, were misreported. EPA also determined that the import data suggesting that imported packings contain asbestos pertained to gaskets, not packings. The Agency contacted a potential exporter of

asbestos-containing woven products, but the company stated that they do not have customers in the United States (Ref. 25). EPA has included woven products in this SNUR because there is no evidence of ongoing use of woven products.

Based on further outreach and investigation since June 2018, the refined conditions of use of asbestos currently undergoing risk evaluation include: Imported raw bulk chrysotile asbestos for the fabrication of diaphragms for use in chlorine and sodium hydroxide production; and several imported chrysotile asbestos-containing materials, including sheet gaskets for use in chemical products (e.g., titanium dioxide chemical production), brake blocks used in oil drilling equipment, aftermarket automotive brakes/linings and other vehicle friction products, and other gaskets. Cement products, packings, and woven products have been removed from the risk evaluation since publication of the problem formulation document because no information was found to confirm they are conditions of use. Because additional EPA research indicates that cement products, woven products and packings are not ongoing uses, this SNUR includes them as significant new uses. This SNUR does not identify as significant new uses those uses that EPA believes are currently ongoing in the United States. The conditions of use of asbestos that are undergoing risk evaluation are specific to the chrysotile form only, which is the only known form of asbestos that is still manufactured or imported into the United States. Therefore, manufacturing, importing, mining, or processing crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite or actinolite for a significant new use of asbestos (including as part of an article) or any use whatsoever requires a significant new use notification to EPA.

In the proposed SNUR, the Agency requested comment on the ongoing uses of asbestos as well as uses that are no longer ongoing (83 FR 26922, June 11, 2018) (FRL-9978-76). EPA

received several comments suggesting that the SNUR be revised to include all product uses of asbestos that are no longer ongoing, and some commenters suggested targeting all uses of asbestos except ongoing uses currently under consideration for the asbestos TSCA section 6 risk evaluation (EPA-HQ-OPPT-2018-0159-1269; EPA-HQ-OPPT-2018-0159-1271; EPA-HQ-OPPT-2018-0159-5755; EPA-HQ-OPPT-2018-0159-5886). Considering that asbestos has been used in thousands of applications, EPA recognizes the public's comments on the significant new use rule as originally proposed and whether it covered all uses of asbestos that are no longer ongoing in the United States. The Agency's intent in this final SNUR is to cover all uses of asbestos that are neither ongoing in the United States nor already banned under TSCA. In response to public comment since proposal, the Agency is revising the regulatory text to add another broad use category to ensure all other uses of asbestos that are no longer ongoing and not already prohibited under TSCA are captured in this rulemaking. EPA is explicitly excluding from this rulemaking uses of asbestos that are already prohibited under TSCA through the 1989 partial ban under TSCA section 6 or are currently ongoing. Ongoing uses identified by EPA as conditions of use under consideration for the TSCA section 6 risk evaluation (i.e. imported chrysotile for the fabrication of asbestos diaphragms and the following imported chrysotile products: Sheet gaskets, oilfield brake blocks, aftermarket automotive brakes/linings, other vehicle friction products, and other gaskets) are not significant new uses of asbestos and therefore would not require a significant new use notice submission to the Agency.

As explained in the proposed rule (83 FR 26922, June 11, 2018) (FRL-9978-76), as part of the information gathering activity associated with the current asbestos TSCA section 6 risk evaluation, the Agency researched market availability for the asbestos product categories subject to the 1989 TSCA section 6 ban that was later partially vacated and remanded to EPA. In

addition to the asbestos product categories that EPA identified in the proposed SNUR where manufacturing (including importing) and processing for the use is no longer ongoing, the Agency has determined that the product category "friction materials" as defined in Table 1 (and with the exceptions noted in Table 1) is also a significant new use of asbestos. While this product category was in the 1989 Regulatory Impacts Analysis (Ref. 1), it was not included in the proposed SNUR because the broad category definition could be viewed as contradictory to uses not subject to the rule – brake blocks in particular. However, in response to public comments, the Agency is including friction materials as defined in Table 1 within the significant new use for asbestos, to encompass all uses that the Agency has determined to be neither ongoing in the United States nor already prohibited under TSCA. The Agency believes it is appropriate to include the product category of "friction materials" in the scope of this SNUR and doing so will not create confusion or potentially overlapping definitions.

Table 3 represents the conditions of use for asbestos which are undergoing risk evaluation under TSCA section 6. These uses are ongoing uses that are not covered under the 1989 partial ban under TSCA section 6 nor in this final SNUR. All of the remaining ongoing uses of asbestos are solely for chrysotile asbestos. Ongoing uses identified by EPA as conditions of use under consideration for the TSCA section 6 risk evaluation are not significant new uses of asbestos and therefore are not subject to this rulemaking and would not require a significant new use notice submission to the Agency.

Table 3: Conditions of Use of Asbestos that are not Significant New Uses of Asbestos

Product Category	**Example**
Asbestos Diaphragms	Chlor-alkali Industry
Sheet Gaskets	Chemical Manufacturing Industry
Oilfield Brake Blocks	Oil Industry
Aftermarket Automotive Brakes/Linings	Automotive Industry

Other Vehicle Friction Products	Automotive Industry
Other Gaskets	Non-automotive Vehicle Industry

As discussed in Unit 1.C., EPA is conducting a TSCA section 6 risk evaluation for the ongoing uses of asbestos. If a finding of unreasonable risk of injury to health or the environment is determined for any of those ongoing uses listed in Table 3, the Agency is required by statute to pursue risk management action options, including prohibitions on use. Risk management action by the Agency must be proposed within 1 year and finalized within 2 years of publication of the final asbestos risk evaluation document. For more information on the TSCA chemical risk evaluation process, read the *Procedures for Chemical Risk Evaluation Under the Amended Toxic Substances Control Act* final rule (40 CFR 702, subpart B) (82 FR 33726, July 20, 2017) (FRL–9964–38).

In the absence of this rule, the manufacturing (including importing) or processing of asbestos (including as part of an article) for the significant new uses identified in this rule may begin at any time and without prior notice to EPA. EPA is committed to protecting the public from asbestos risks and is concerned that the commencement of the manufacturing (including importing) or processing for the significant new uses of asbestos identified in Table 1 could increase the volume of manufacturing (including importing) and processing of asbestos as well as the magnitude and duration of exposure to humans over that which would otherwise exist currently. EPA has concluded that action on this chemical substance is warranted and therefore determined that any manufacturing (including importing) or processing of asbestos (including as part of an article), using the definition under Title II of TSCA, for any use identified in Table 1 is a significant new use.

The Agency received several public comments on the proposed rule requesting that

disposal and recycling of asbestos-containing products (EPA-HQ-OPPT-2018-0159-0437; EPA-HQ-OPPT-2018-0159-4066) as well as asbestos mining (EPA-HQ-OPPT-2018-0159-4023; EPA-HQ-OPPT-2018-0159-5886) be addressed. The Agency does not interpret the disposal of asbestos-containing materials to be processing for a significant new use; therefore, such activity does not require a significant new use notice under this final rule. Disposal is considered to be the end of life for a product. By contrast, however, the Agency does interpret recyling to be processing under TSCA, and recycling of any asbestos-containing material for a significant new use of asbestos subject to this rulemaking requires a SNUN. For example, recycling asbestos building material, such as roofing tiles, for reuse is prohibited without notification, review, and, as necessary, regulation by EPA.

The Agency interprets mining to be production under the TSCA definition of manufacture. Therefore, mining asbestos for a significant new use as identified in this rule would require a SNUN. Mining for the ongoing uses of asbestos, however, would not require a significant new use notice.

Consistent with EPA's past practice for issuing SNURs under TSCA section 5(a)(2), EPA's decision to promulgate a SNUR for a particular chemical use need not be based on an extensive evaluation of the hazard, exposure, or potential risk associated with that use. If a person decides to begin manufacturing (including importing) or processing asbestos (including as part of an article) for a use identified in Table 1, the notice to EPA allows the Agency to evaluate the use according to the specific parameters and circumstances surrounding the conditions of use.

B. *Rationale for Making Inapplicable the Exemption at 40 CFR 721.45(f) for Persons who Import or Process Asbestos*

Chemical substances that are part of an article may still result in exposure if the chemical substance has certain physical-chemical properties – as in the case of asbestos, fibers can degrade with use and become friable over time where human exposures can occur leading to increased risks for disease (Ref. 6; Ref. 20; Ref. 21). During use and over time, non-friable asbestos has the potential to become friable (Ref. 6). For example, testing has shown that non-friable asbestos-containing material can become friable during use such as cutting, crumbling, and tearing, and as a result of such use, asbestos fibers can be released into the air (Ref. 20). Similarly, non-friable asbestos-containing building materials can release fibers if disturbed during building repair or demolition (Ref. 21). Therefore, EPA is making inapplicable the exemption at 40 CFR 721.45(f) for persons who import or process any asbestos as part of an article for the significant new uses of asbestos identified in Table 1. A person who imports or processes asbestos (including as part of an article) for a significant new use would be subject to the SNUN requirements in this rule. No person would be able to begin importing or processing asbestos (including as part of an article) for a significant new use without first submitting a SNUN to EPA and not before the Agency has conducted a review of the notice, made an appropriate determination on the notice, and taken such actions as are required in association with that determination, including a prohibition on use.

The Agency received several comments suggesting that exported asbestos-containing articles be subject to the notification requirement at TSCA section 12(b) (15 U.S.C. 2611(b)). Considering that this rulemaking addresses uses of asbestos (including as part of an article) that are no longer ongoing, the Agency sees no value in requiring export notification for the uses subject to this rule because such articles of asbestos are neither manufactured, imported, nor processed in the United States. Therefore, the Agency assumes that such articles are not

exported. In the event EPA receives a notice for a significant new use of asbestos, the Agency will consider an export notification requirement for that significant new use at that time.

As for the ongoing uses of asbestos that are currently undergoing risk evaluation under TSCA section 6, the Agency feels it is appropriate to consider a TSCA section 12(b) export notification requirement as part of any risk management pursued after completion of the risk evaluation, if an unreasonable risk is determined.

C. *Objectives*

Based on the considerations in Unit III.A., EPA wants to achieve the following objectives with regard to the significant new use of asbestos (including as part of an article) as designated in this rule:

1. EPA would receive notice of any person's intent to manufacture (including import) or process asbestos (including as part of an article) for the described significant new use before that activity begins.

2. EPA would have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing (including importing) or processing asbestos (including as part of an article) for the described significant new use.

3. EPA would be able to either determine that the significant new use is not likely to present an unreasonable risk, or take necessary regulatory action associated with any other determination before the described significant new use of asbestos (including as part of an article) occurs.

IV. Significant New Use Determination

According to TSCA section 5(a)(2), EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors

including:

1. The projected volume of manufacturing and processing of a chemical substance.

2. The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.

3. The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.

4. The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorizes EPA to consider any other relevant factors.

Both federal and state environmental protection agencies and occupational safety and health organizations provide existing regulation pertaining to certain aspects of the manufacturing (including importing), processing, use, and/or disposal of asbestos in order to protect consumers, workers, and the environment. EPA believes the significant new uses of asbestos identified in Table 1 could increase the volume of manufacturing (including importing) and processing of asbestos, as well as the duration and magnitude of human and environmental exposure to the substance and reintroduce exposure scenarios that have become obsolete over the past several decades. It is imperative that EPA be notified of any intended significant new use of asbestos identified in Table 1 and be provided the opportunity to evaluate such intended new use. Once a SNUR is finalized, failure to notify EPA and file a SNUN prior to manufacturing (including importing) or processing for a significant new use would constitute a violation of TSCA and would be subject to TSCA section 16 penalties, accordingly.

To determine what would constitute a significant new use of asbestos as discussed in this

unit, EPA considered relevant information about the toxicity or expected toxicity of the substance, likely human exposures and environmental releases associated with possible uses, and the four factors listed in TSCA section 5(a)(2). In addition to the factors enumerated in TSCA section 5(a)(2), the statute authorizes EPA to consider any other relevant factors.

The article exemption at 40 CFR 721.45(f) is based on an assumption that people and the environment will generally not be exposed to chemical substances in articles (Ref. 26). However, even when contained in an article, asbestos can become friable over time with use (Ref. 6; Ref. 20; Ref. 21). Based on this understanding, upon receipt of a SNUN, EPA intends to evaluate the potential risk of exposure to human health and the environment for any intended significant new use of asbestos (including as part of an article**)**. This understanding warrants making the article exemption for submitting a SNUN at 40 CFR 721.45(f) inapplicable to importers or processors of articles containing asbestos. Considering the potential friability of asbestos, even when incorporated in articles, and the health risks associated with exposure to asbestos, EPA affirmatively finds under TSCA section 5(a)(5) that notification is justified by the reasonable potential for exposure to asbestos through the articles subject to this SNUR. EPA intends to evaluate such potential uses whether in the form of an article, or not, for any associated risks or hazards that might exist before those uses would begin. EPA has reason to anticipate that importing or processing asbestos as part of an article would create the potential for exposure to asbestos, and that EPA should have an opportunity to review the intended use before such use could occur.

V. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, and exemptions to reporting

requirements. Provisions relating to user fees appear in 40 CFR part 700.

According to 40 CFR 721.1(c), persons subject to SNURs must comply with the same notice requirements and EPA regulatory procedures as submitters of Premanufacture Notices (PMNs) under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720.

Once EPA receives a SNUN, EPA must either determine that the significant new use is not likely to present an unreasonable risk of injury or take such regulatory action as is associated with an alternative determination before the manufacturing (including importing) or processing for the significant new use can commence. If EPA determines that the significant new use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's finding.

VI. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

EPA designates June 1, 2018 (the date of web posting of the proposed rule) as the cutoff date for determining whether the new use is ongoing. The objective of EPA's approach is to ensure that a person cannot defeat a SNUR by initiating a significant new use before the effective date of the final rule. In developing this rule, EPA has recognized that, given EPA's general practice of posting proposed and final SNURs on its website a week or more in advance of **Federal Register** publication, this objective could be thwarted even before that publication.

Persons who began commercial manufacturing (including importing) or processing of the chemical substance (to include importing or processing articles and components thereof containing the chemical substance) for a significant new use as of June 1, 2018 would have to

cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and wait until all TSCA prerequisites for the commencement of manufacturing (including importing) or processing have been satisfied (see 55 FR 17376, April 24, 1990 (FRL-3658-5) and 81 FR 85472, November 28, 2016 (FRL-9945-53) for additional information).

VII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not usually require developing new information (e.g., generating test data) before submission of a SNUN; however, there is an exception: Development of information is required where the chemical substance subject to the SNUR is also subject to a rule, order, or consent agreement under TSCA section 4 (see TSCA section 5(b)(1)). Also pursuant to TSCA section 4(h), which pertains to reduction of testing of vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies or NAMs), if available, to generate any recommended test data. EPA encourages dialogue with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h).

In the absence of a TSCA section 4 test rule covering the chemical substance, persons are required to submit only information in their possession or control and to describe any other information known to or reasonably ascertainable by them (15 U.S.C. 2604(d); 40 CFR 721.25, and 40 CFR 720.50). However, as a general matter, EPA recommends that SNUN submitters include information that would permit a reasoned evaluation of risks posed by the chemical substance during its manufacturing (including importing), processing, use, distribution in commerce, or disposal. EPA encourages persons to consult with the Agency before submitting a

SNUN. As part of this optional pre-notice consultation, EPA would discuss specific information it believes may be useful in evaluating a significant new use.

Submitting a SNUN that does not itself include information sufficient to permit a reasoned evaluation may increase the likelihood that EPA will either respond with a determination that the information available to the Agency is insufficient to permit a reasoned evaluation of the health and environmental effects of the significant new use or, alternatively, that in the absence of sufficient information, the manufacturing (including importing), processing, distribution in commerce, use, or disposal of the chemical substance may present an unreasonable risk of injury.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs and define the terms of any potentially necessary controls if the submitter provides detailed information on human exposure and environmental releases that may result from the significant new uses of the chemical substance.

VIII. SNUN Submissions

EPA recommends that submitters consult with the Agency prior to submitting a SNUN to discuss what information may be useful in evaluating a significant new use. Discussions with the Agency prior to submission can afford ample time to conduct any tests that might be helpful in evaluating risks posed by the substance. According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710-25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 721.25 and 40 CFR 720.40. E-PMN software is available

electronically at *http://www.epa.gov/opptintr/newchems*.

The Agency received several public comments on the proposed asbestos SNUR requesting more explanation regarding the review process of a significant new use notice (EPA-HQ-OPPT-2018-0159-0437; EPA-HQ-OPPT-2018-0159-3224) and the opportunity for public comment on submitted SNUN applications, if any, as well as the Agency's significant new use determinations, if any, for asbestos (EPA-HQ-OPPT-2018-0159-4021; EPA-HQ-OPPT-2018-0159-1270; EPA-HQ-OPPT-2018-0159-5889). The SNUN submission and review process is explained in detail in the Response to Comments document (Ref. 3) and in this unit.

Anyone who plans to manufacture, import, or process asbestos (including as part of an article) for a significant new use identified in the rule is required by TSCA section 5 to provide EPA with notice at least 90 days before initiating the activity. A SNUN submission follows the same process as a PMN for new chemicals. Upon receipt of a significant new use notice, EPA is required by TSCA section 5(d)(2) to publish notification of the intended significant new use in the **Federal Register**. For transparency purposes, in addition, EPA intends to take public comment on any intended significant new use following that public notification.

In general, TSCA section 5 notices require that all reasonably ascertainable information on chemical identity, production volume, byproducts, use, environmental release, disposal practices, and human exposure be included in the notice. In addition, EPA requires that the following information be submitted with the notice: Any health and environmental information in the possession or control of the submitter, parent company or affiliates, and a description of any other applicable information known to or reasonably ascertainable by the submitter (see 40 CFR 720.45 and 40 CFR 720.50 for specific requirements).

EPA risk assessors consider all of this information during the EPA significant new use

review process and conduct a detailed analysis with the ultimate goal of identifying and controlling unreasonable risks. EPA uses an integrated approach that draws on knowledge and experience across disciplines to identify and evaluate concerns regarding human health and environmental effects, exposures and releases and impacts. EPA has developed assessment methods, databases, and predictive tools to evaluate what happens to chemicals when they are used and released to the environment and how workers, citizens, and the environment might be exposed to and affected by these chemicals. These tools are helpful when laboratory studies or monitoring data are not available or need to be supplemented. The Agency can take a range of actions, including prohibition, to ensure the use of the chemical does not present an unreasonable risk to human health or the environment.

SNUNs are reported using the standard electronic PMN form, which allows manufacturers of TSCA chemical substances to use the Internet through EPA's Central Data Exchange (CDX), to submit TSCA section 5 notices to EPA (instructions available at *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/how-submit-e-pmn*). SNUNs are subject to a 90-day review process similar to that for a PMN. When submitting a SNUN, the submitter should include a cover letter that provides the Code of Federal Regulations citation of the SNUR and identifies the specific significant new use(s) for which the SNUN is being submitted. The fee for each SNUN is $16,000, except for small businesses the fee is $2,800 (see 40 CFR 700.45).

IX. Economic Analysis

A. *SNUNs*

EPA has evaluated the potential costs of establishing SNUR reporting requirements for potential manufacturers (including importers) and processors of the chemical substance included

in this rule (Ref. 11). In the event that a SNUN is submitted, average costs are estimated at approximately $23,000 per SNUN submission for large business submitters and about $10,000 for small business submitters. These estimates include the cost to prepare and submit the SNUN (averaging about $7,300), and the payment of a user fee. Businesses that submit a SNUN would be subject to either a $16,000 user fee required by 40 CFR 700.45(c)(2)(ii), or, if they are a small business, a reduced user fee of $2,800 (40 CFR 700.45(c)(1)(ii)). Businesses that submit a SNUN are also estimated to incur average costs of $65 for rule familiarization. First time submitters will incur an average cost of $123 for CDX registration and associated activities. Companies manufacturing, importing, or processing asbestos or articles containing asbestos will incur an average cost of $79 for notifying their customers of SNUR regulatory activities. EPA's complete economic analysis is available in the public docket for this rule (Ref. 11).

B. *Export Notification*

Under TSCA section 12(b) and the implementing regulations at 40 CFR part 707, subpart D, exporters must notify EPA if they export or intend to export a chemical substance or mixture for which, among other things, a rule has been proposed or promulgated under TSCA section 5. As explained in Unit I. and Unit III.B., export notifications are required for asbestos, but not for articles containing asbestos. Asbestos-containing articles are not subject to the export notification requirements; therefore, EPA assumes no additional costs under TSCA section 12(b) for this rule.

C. *Import or Processing Chemical Substances as Part of an Article*

In making inapplicable the exemption relating to persons that import or process certain chemical substances as part of an article, this action may affect firms that plan to import or process types of articles that may contain the asbestos. Some firms have an understanding of the

contents of the articles they import or process. However, EPA acknowledges that importers and processors of articles may have varying levels of knowledge about the chemical content of the articles that they import or process. These parties may need to become familiar with the requirements of the rule. And, while not required by the SNUR, these parties may take additional steps to determine whether the subject chemical substance is part of the articles they are considering for importing or processing. This determination may involve activities such as gathering information from suppliers along the supply chain and/or testing samples of the article itself. Costs vary across the activities chosen and the extent of familiarity a firm has regarding the articles it imports or processes. Cost ranges are presented in the document entitled *Understanding the Costs Associated with Eliminating Exemptions for Articles in SNURs* (Ref. 27). Based on available information, EPA believes that article importers or processors that choose to investigate their products would incur costs at the lower end of the ranges presented in the Economic Analysis. For those companies choosing to undertake actions to assess the composition of the articles they import or process, EPA expects that importers or processors would take actions that are commensurate with the company's perceived likelihood that a chemical substance might be a part of an article for the significant new uses subject to this rulemaking (identified in Table 1) and the resources it has available. Example activities and their costs are provided in the accompanying Economic Analysis of this rule (Ref. 11).

X. Alternatives

Before proposing this SNUR, EPA considered the following alternative regulatory action: Promulgate a TSCA section 8(a) Reporting Rule.

Under a TSCA section 8(a) rule, EPA could, among other things, generally require persons to report information to the Agency when they manufacture (including import) or

process a chemical substance for a specific use or any use. However, for asbestos, the use of TSCA section 8(a) rather than SNUR authority would have several limitations. First, if EPA were to require reporting under TSCA section 8(a) instead of TSCA section 5(a), that action would not ensure that EPA receives timely advance notice of future manufacturing (including importing) or processing of asbestos (including as part of an article and components thereof) for new uses that may produce changes in human and environmental exposures. Nor would action under 8(a) ensure that an appropriate determination (relevant to the risks of such manufacturing (including importing) or processing) has been issued prior to the commencement of such manufacturing (including importing) or processing. Furthermore, a TSCA section 8(a) rule would not ensure that manufacturing (including importing) or processing for the significant new use cannot proceed until EPA has responded to the circumstances by taking the required actions under TSCA sections 5(e) or 5(f) in the event that EPA determines any of the following: (1) That the significant new use presents an unreasonable risk under the conditions of use (without consideration of costs or other non-risk factors, and including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by EPA); (2) that the information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects of the significant new use; (3) that in the absence of sufficient information, the manufacture (including import), processing, distribution in commerce, use, or disposal of the substance, or any combination of such activities, may present an unreasonable risk (without consideration of costs or other non-risk factors, and including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by EPA); or (4) that there is substantial production and sufficient potential for environmental release or human exposure (as defined in TSCA section 5(a)(3)(B)(ii)(II)).

In view of the level of health concerns about asbestos if used for a significant new use, EPA believes that a TSCA section 8(a) rule for this substance would not meet EPA's regulatory objectives.

XI. Scientific Standards, Evidence, and Available Information

EPA has used scientific information, technical procedures, measures, methods, protocols, methodologies, and models consistent with the science standards required under TSCA section 26(h), as applicable, to determine whether a particular use would be a significant new use, based on relevant factors including those listed under TSCA section 5(a)(2). As noted in Unit III., EPA's decision to promulgate a SNUR for a particular chemical use need not be based on an extensive evaluation of the hazard, exposure, or potential risk associated with that use.

The clarity and completeness of the data, assumptions, methods, quality assurance, and analyses employed in EPA's decision are documented, as applicable and to the extent necessary for purposes of this significant new use rule, in Unit II. and in the references cited throughout the preamble of this rule. EPA recognizes, based on the available information, that there is variability and uncertainty in whether any particular significant new use would actually present an unreasonable risk. For precisely this reason, it is appropriate to secure a future notice and review process for these uses, at such time as they are known more definitively. The extent to which the various information, procedures, measures, methods, protocols, methodologies or models used in EPA's decision have been subject to independent verification or peer review is adequate to justify their use, collectively, in the record for a significant new use rule.

XII. Response to Public Comment

The Agency received a total of 17,912 comments in response to the proposed rule under docket ID number EPA-HQ-OPPT-2018-0159. The public comment period began on June 11,

2018 and ended August 10, 2018. Of the 17,912 public comments received, 11,732 are part of a mass mail campaign, 240 are from a second mass mail campaign, 67 are not posted in the public docket due to inappropriate language, and 5,873 individual comments are identified by ID number, posted in the docket, and available to view on regulations.gov at *https://www.regulations.gov/docket?D=EPA-HQ-OPPT-2018-0159*.

Over 90% (5,386) of the individual comments received on the proposed Asbestos SNUR are anonymous. The majority of comments are generally considered not germane to the proposed rule considering the purpose and effect of the action, but, where appropriate, they are associated with one of the comment topics and addressed in EPA's Response to Comments document (Ref. 3). Upon careful review, EPA has identified the following seven general themes throughout the public comments:

1. The purpose of the proposed Asbestos SNUR.
2. Extend the comment period.
3. Ban asbestos.
4. Explain EPA's review process of Significant New Use Notices.
5. Provide clarification: Recycling and disposal.
6. Broaden the scope of the SNUR.
7. Economic Analysis.

EPA received thousands of comments pertaining to the purpose of the proposed Asbestos SNUR as well as the request that EPA ban the use of asbestos in the United States. Due to the overwhelming number of comments on these two topics, the Agency does not cite each relevant comment by ID number in the Response to Comments document. As for the other public comment topics of the proposed rule listed earlier in this unit, the Agency specifically cites in the

Response to Comments document 17 substantive public comments, which may address multiple aspects of the proposed rule.

XIII. References

The following is a listing of the documents that are specifically referenced in this document. The docket, EPA-HQ-OPPT-2018-0159, includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. U.S. Environmental Protection Agency. (EPA, 1989). Regulatory Impact Analysis of Controls on Asbestos and Asbestos Products: Final Report: Volume III. (5601989ICF001). Washington, DC: Office of Toxic Substances, U.S. Environmental Protection Agency.

2. U.S. Environmental Protection Agency. (EPA, 2018). Problem Formulation of the Risk Evaluation for Asbestos. Retrieved from *https://www.epa.gov/sites/production/files/2018-06/documents/asbestos_problem_formulation_05-31-18.pdf.*

3. U.S. Environmental Protection Agency. (EPA, 2019). Response to Comments on the Proposed Asbestos Significant New Use Rule.

4. National Toxicology Program. (NTP, 2016). Report on Carcinogens, Fourteenth Edition.; Research Triangle Park, NC: U.S. Department of Health and Human Services, Public Health Service. Retrieved from *https://ntp.niehs.nih.gov/ntp/roc/content/profiles/asbestos.pdf*.

5. U.S. Environmental Protection Agency. (EPA, 1988). IRIS summary for asbestos (CASRN 1332-21-4). Washington, DC: Integrated Risk Information System. Retrieved from *http://cfpub.epa.gov/ncea/iris/iris_documents/documents/subst/0371_summary.pdf*.

6. Agency for Toxic Substances and Disease Registry. (ATSDR, 2001). Toxicological profile for asbestos (update). Retrieved from *https://www.atsdr.cdc.gov/ToxProfiles/tp.asp?id=30&tid=4*.

7. International Agency for Research on Cancer. (IARC, 2012). A review of human carcinogens. Part C: Arsenic, metals, fibres, and dusts IARC Monograph. Lyon, France: World Health Organization. Retrieved from *http://monographs.iarc.fr/ENG/Monographs/vol100C/mono100C.pdf*.

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9. International Agency for Research on Cancer. (IARC, 1987). Asbestos and certain asbestos compounds IARC Monograph. In IARC Monographs on the Evaluation of Carcinogenic Risks to Humans (pp. 106-116). Lyon, France. Retrieved from *http://monographs.iarc.fr/ENG/Monographs/suppl7/index.php*.

10. U.S. Environmental Protection Agency. (EPA, 2017). Scope of the Risk Evaluation for Asbestos. Retrieved from *https://www.regulations.gov/document?D=EPA-HQ-OPPT-2016-0736-0086.*

11. U.S. Environmental Protection Agency. (EPA, 2019). Economic Analysis for the Significant New Use Rule for Asbestos – Final Rule.

12. U.S. Geological Survey. (USGS, 2018). Mineral Commodity Summaries 2019. Washington, DC: U.S. Department of the Interior. Retrieved from *https://minerals.usgs.gov/minerals/pubs/commodity/asbestos/mcs-2019-asbes.pdf.*

13. U.S. Environmental Protection Agency. (EPA, 2017). Use and Market Profile for

Asbestos. Retrieved from *https://www.regulations.gov/document?D=EPA-HQ-OPPT-2016-0736-0085.*

14. U.S. Environmental Protection Agency. (EPA, 2017). Preliminary Information on Manufacturing, Processing, Distribution, Use, and Disposal: Asbestos. Retrieved from *https://www.regulations.gov/document?D=EPA-HQ-OPPT-2016-0736-0005.*

15. U.S. Geological Survey. (USGS, 2017). Mineral Commodity Summaries: Asbestos. Retrieved from *https://minerals.usgs.gov/minerals/pubs/commodity/asbestos/mcs-2017-asbes.pdf*.

16. National Toxicology Program. (NTP, 1980). First Annual Report on Carcinogens. Retrieved from *https://ntrl.ntis.gov/NTRL/dashboard/searchResults/titleDetail/PB84122852.xhtml*.

17. National Research Council. (NRC, 2006). Asbestos: Selected cancers. Institute of Medicine (US) Committee on Asbestos: Selected Health Effects. Washington, DC: The National Academies Press.

18. National Research Council. (NRC, 1983). Drinking Water and Health. Washington, DC: Safe Drinking Water Committee, Board on Toxicology and Environmental Health Hazards. Retrieved from *http://dx.doi.org/10.17226/326*.

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21. 40 CFR Part 61, Subpart M, Asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP). Retrieved from *https://www.govinfo.gov/content/pkg/CFR-2015-title40-vol9/pdf/CFR-2015-title40-vol9-part61-subpartM.pdf.*

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23. U.S. Environmental Protection Agency. (EPA, 2018). Chemical Use Outreach Phone Call with Mexalit and EPA to Discuss Asbestos in Products Exported to the United States.

24. American Water Works Association. (AWWA, March 21, 2019). Letter regarding Asbestos; Significant New Use Rule, Docket No. EPA-HQ-OPPT-2018-0159.

25. U.S. Environmental Protection Agency. (EPA, 2018). Chemical Use Outreach Phone Call with Textiles Técnicos and EPA to Discuss Asbestos in Products Exported to the United States.

26. U.S. Environmental Protection Agency. (EPA, 1984). Significant New Uses of Chemical Substances; Certain Chemicals. 49 FR 35014, September 5, 1984 (FRL-2541-8).

27. U.S. Environmental Protection Agency. (EPA, 2013). Understanding the Costs Associated with Eliminating Exemptions for Articles in SNURs. May 1, 2013.

XIV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders*.

A. *Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action under Executive Orders 12866 (58 FR

51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011, and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. *Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

This action is not expected to be a regulatory action subject to Executive Order 13771 (82 FR 9339, February 3, 2017), because this action is not a significant regulatory action under Executive Order 12866.

C. *Paperwork Reduction Act (PRA)*

According to PRA, 44 U.S.C. 3501 *et seq*., an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument, or form, as applicable. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this action. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is “good cause” under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table without further notice and comment.

This action does not impose any burden requiring additional OMB approval. Burden is defined in 5 CFR 1320.3(b). The information collection activities associated with existing

chemical SNURs are already approved under OMB control number 2070-0038 (EPA ICR No. 1188); and the information collection activities associated with export notifications are already approved under OMB control number 2070-0030 (EPA ICR No. 0795). If an entity were to submit a SNUN to the Agency, the burden is estimated to be approximately 100 hours per response (slightly less for submitters who have already registered to use the electronic submission system). This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required information.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Regulatory Support Division, Office of Mission Support (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001. Please remember to include the OMB control number in any correspondence, but do not send any completed regulatory submissions to this address.

D. *Regulatory Flexibility Act (RFA)*

Pursuant to section 605(b) of the RFA, 5 U.S.C. 601 *et seq*., I certify that promulgation of this SNUR would not have a significant economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows.

A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a "significant new use." By definition of the word "new" and based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. Since this SNUR will require a person who intends to engage in such activity in the future to first notify EPA by submitting a SNUN, no economic impact will

occur unless someone files a SNUN to pursue a significant new use in the future or forgoes profits by avoiding or delaying the significant new use. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemical substances, the Agency receives only a handful of notices per year. During the six-year period from 2005-2010, only three submitters self-identified as small in their SNUN submissions (Ref. 11). EPA believes the cost of submitting a SNUN is relatively small compared to the cost of developing and marketing a chemical new to a firm or marketing a new use of the chemical and that the requirement to submit a SNUN generally does not have a significant economic impact.

Therefore, EPA believes that the potential economic impact of complying with this SNUR is not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published as a final rule on August 8, 1997 (62 FR 42690) (FRL-5735-4), the Agency presented its general determination that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities.

E. *Unfunded Mandates Reform Act (UMRA)*

Based on EPA's experience with SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reason to believe that any State, local, or Tribal government would be impacted by this rulemaking. As such, the requirements of sections 202, 203, 204, or 205 of UMRA, 2 U.S.C. 1531-1538, do not apply to this action.

F. *Executive Order 13132: Federalism*

This action will not have federalism implications as specified in Executive Order 13132

(64 FR 43255, August 10, 1999), because it will not have substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

G. *Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not have any effect on tribal governments, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

H. *Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive Order. This SNUR will prohibit the discontinued uses of asbestos from restarting without EPA having an opportunity to evaluate each intended use (i.e., significant new use) for potential risks to health and the environment and take any necessary regulatory action, as appropriate.

I. *Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use*

This action is not a "significant energy action" as defined in Executive Order 13211 (66

FR 28355, May 22, 2001), because it is not likely to have any effect on energy supply, distribution, or use.

J. *National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve any technical standards and is therefore not subject to considerations under section 12(d) of NTTAA, 15 U.S.C. 272 note.

K. *Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

This action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This action does not affect the level of protection provided to human health or the environment.

L. *Congressional Review Act (CRA)*

This action is subject to the CRA, 5 U.S.C. 801–808, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Imports, Labeling, Occupational safety and health, Reporting and recordkeeping requirements.

Dated: _____.

_____

Alexandra Dapolito Dunn,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, 40 CFR parts 9 and 721 are amended as follows:

PART 9--[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq*., 136-136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601-2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq*., 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq*., 6901-6992k, 7401-7671q, 7542, 9601-9657, 11023, 11048.

2. In § 9.1, add the following sections in numerical order under the undesignated center heading "Significant New Uses of Chemical Substances" to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	**OMB control No.**
* * * * *	
Significant New Uses of Chemical Substances	
* * * * *	
721.11095	2070-0012
* * * * *	

* * * * *

PART 721--[AMENDED]

3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

4. Add the following section:

§721.11095 Asbestos.

(a) *Chemical substance and significant new use subject to reporting*. (1) The chemical substance identified as asbestos (as defined by 15 U.S.C. 2642(3) as the asbestiform varieties of chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite or actinolite) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section except as provided by paragraph (a)(3).

(2) Except as provided by paragraph (a)(3), the significant new use of the chemical substance identified in paragraph (a)(1) of this section is: manufacturing (including importing) or processing for any of the following uses:

i. Adhesives, sealants, roof and non-roof coatings;

ii. Arc chutes;

iii. Beater-add gaskets;

iv. Cement products;

v. Extruded sealant tape and other tape;

vi. Filler for acetylene cylinders;

vii. Friction materials;

viii. High grade electrical paper;

ix. Millboard;

x. Missile liner;

xi. Packings;

xii. Pipeline wrap;

xiii. Reinforced plastics;

xiv. Roofing felt;

xv. Separators in fuel cells and batteries;

xvi. Vinyl-asbestos floor tile;

xvii. Woven products;

xviii. Other building products; or

xix. Any other use of asbestos.

(3) *Exceptions.* (i) The significant new use identified in (a)(2) of this section does not include manufacturing (including importing) or processing for the following uses of the asbestiform variety of chrysotile (serpentine) asbestos:

(A) Diaphragms for use in chorine and sodium hydroxide production;

(B) Sheet gaskets for use in chemical manufacturing;

(C) Brake blocks in oil drilling equipment;

(D) Aftermarket automotive brakes/linings;

(E) Other vehicle friction products; or

(F) Other gaskets.

(ii) The significant new use does not include the manufacture (including importation) or processing of the asbestos-containing products identified in §763.165, which continue to be prohibited pursuant to 40 CFR part 763, subpart I.

(b) *Specific requirements*. (1) 40 CFR 721.45(f) does not apply to this section. A person who intends to manufacture (including import) or process the substance identified in paragraph (a)(1) for the significant new use identified in paragraph (a)(2) of this section as part of an article is subject to the notification provisions of §721.25.

(2) Any person who submits a significant new use notice for the substance identified in

paragraph (a)(1) of this section for the significant new use identified in paragraph (a)(2) of this section must include with the notice adequate documentation or supporting information in the submitter's possession or control that the intended use is not subject to the prohibitions identified in 40 CFR part 763, subpart I.