

PRE-PUBLICATION NOTICE

On November 26, 2024, Michal Freedhoff, the EPA Assistant Administrator for the Office of Chemical Safety and Pollution Prevention, signed the following document:

Action: **Notice**
Title: **Asbestos Part 2 Supplemental Evaluation Including Legacy Uses and Associated Disposals; Risk Evaluation Under the Toxic Substances Control Act (TSCA); Notice of Availability**
FRL #: **9347-07-OCSP**
Docket ID #: **EPA-HQ-OPPT-2021-0254**

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ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2021-0254; FRL-9347-07-OCSPP]

**Asbestos Part 2 Supplemental Evaluation Including Legacy Uses and Associated Disposals;
Risk Evaluation Under the Toxic Substances Control Act (TSCA); Notice of Availability**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is announcing the availability of the final supplemental risk evaluation under the under the Toxic Substances Control Act (TSCA) for asbestos Part 2: addressing legacy uses and associated disposal. The purpose of risk evaluations under TSCA is to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or non-risk factors, including unreasonable risk to potentially exposed or susceptible subpopulations identified as relevant to the risk evaluation by EPA, under the conditions of use. For the part 2 supplemental risk evaluation, the Agency evaluated legacy uses and associated disposals of asbestos including chrysotile asbestos, five additional fiber types, conditions of use for asbestos-containing talc that are subject to TSCA, and Libby asbestos. EPA used the best available science to prepare this final supplemental risk evaluation and determined, based on the weight of scientific evidence, that asbestos poses unreasonable risk to human health. Under TSCA, EPA must initiate risk management actions to address the unreasonable risk.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-EPA-HQ-OPPT-2021-0254, is available online at <https://www.regulations.gov>. Additional information about dockets generally, along with instructions for visiting the docket in-person, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

For technical information: Peter Gimlin, Existing Chemicals Risk Management Division (7404M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 566-0515; email address: gimlin.peter@epa.gov.

For general information: 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?

This action is directed to the public in general and may be of particular interest to those involved in the manufacture, processing, distribution, use, and disposal of asbestos-containing materials (ACMs), including construction professionals and individuals completing do-it-yourself (DIY) activities in buildings with ACMs, related industry trade organizations, non-governmental organizations with an interest in human and environmental health, state and local governments, Tribal Nations, and/or those interested in the assessment of risks involving chemical substances and mixtures regulated under TSCA. As such, the Agency has not attempted to describe all the specific entities that this action might apply to. If you need help determining applicability, consult the technical contact listed under **FOR FURTHER INFORMATION CONTACT**.

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

TSCA section 6, 15 U.S.C. 2605, requires the Agency to conduct risk evaluations on chemical substances and identifies the minimum components EPA must include in all chemical

substance risk evaluations. Each risk evaluation must be conducted consistent with the best available science, be based on the weight of scientific evidence, and consider reasonably available information per 15 U.S.C. 2625(h), (i), and (k). See also the implementing procedural regulations at 40 CFR part 702.

C. What action is the Agency taking?

EPA is announcing the availability of the final supplemental risk evaluation for asbestos legacy uses and associated disposals of Asbestos (also referred to as the Asbestos Part 2 Risk Evaluation) (Ref. 1). The purpose of risk evaluations under TSCA is to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or non-risk factors, including unreasonable risk to potentially exposed or susceptible subpopulations identified as relevant to the risk evaluation by EPA, under the conditions of use. The Agency has used the best available science to prepare this final risk evaluation and based on the weight of scientific evidence, determined that asbestos poses unreasonable risk to human health. Upon a determination of unreasonable risk, EPA must initiate risk management action as required pursuant to 15 U.S.C 2605(a) to address the unreasonable risk.

II. Background

When EPA designated asbestos as one of the first 10 existing chemicals to undergo risk evaluation under TSCA (Ref 1), the risk evaluation focused on chrysotile asbestos, which is the only type of asbestos fiber where manufacture (including import), processing, and distribution in commerce for use was known, intended, or reasonably foreseen in the U.S. In *Safer Chemicals, Healthy Families v. EPA*, 943 F.3d 397 (9th Cir. 2019) the court held that EPA's Risk Evaluation Procedural Rule (82 FR 33726, July 20, 2017 (FRL-9964-38)) should not have excluded "legacy uses" (i.e., uses without ongoing or prospective manufacturing, processing, or

distribution) and “associated disposals” (i.e., future disposal of legacy uses) from the definition of conditions of use. As a result, the risk evaluation for asbestos was split into two parts.

1. *Asbestos (Part 1: Chrysotile Asbestos)*. (Ref. 2) The final risk evaluation for Asbestos (Part 1: Chrysotile Asbestos) was released in January 2021 (86 FR 89, January 4, 2021; FRL-10017-43), covering all intended, known, or reasonably foreseen import, processing, and distribution of chrysotile asbestos; uses of chrysotile asbestos that have been imported, processed, and distributed; and disposal of such chrysotile asbestos uses. The final rule to address the unreasonable risk identified in the Asbestos Part 1 Risk Evaluation was issued in March 2024 (89 FR 21970, March 28, 2024; FRL-8332-01-OCSPP).

2. *Asbestos Part 2: Supplemental Evaluation Including Legacy Uses and Associated Disposals of Asbestos*. (Ref. 3) Legacy uses and associated disposals of chrysotile asbestos, five additional fiber types, conditions of use for asbestos-containing talc that are subject to TSCA, and Libby asbestos are the subject of the Asbestos Part 2 Risk Evaluation, which is scheduled to be finalized on or before December 1, 2024, per the consent decree in the case *Asbestos Disease Awareness Organization et al v. Regan et al*, 4:21- cv-03716 (N.D. Cal.).

In the Asbestos Part 2 Risk Evaluation, EPA concludes that asbestos, as a chemical substance and as evaluated in parts 1 and 2 of the risk evaluation process under TSCA, presents an unreasonable risk of injury to health under its conditions of use. This single unreasonable risk determination for asbestos replaces the previous unreasonable risk determinations made for asbestos by individual conditions of use and supersedes the determination (and withdraws the associated order) of no unreasonable risk for the conditions of use identified in the TSCA section 6(i)(1) order in Section 5.3.1 of the December 2020 Risk Evaluation for Asbestos Part I: Chrysotile Asbestos (Ref. 4). This determination does not alter any of the underlying technical or scientific information that informs the risk characterization in part 1, and as such the hazard,

exposure, and risk characterization sections of part 1 are not changed by this unreasonable risk determination for asbestos.

The final Asbestos Part 2 Risk Evaluation addresses comments from the public on the draft risk evaluation, as well as from the public comment and letter peer reviewer on the *White Paper: Quantitative Human Health Approach to be Applied in the Risk Evaluation for Asbestos Part 2 – Supplemental Evaluation Including Legacy Uses and Associated Disposals of Asbestos* (Ref. 5). The responses to peer review and public comments (Refs. 8 and 9), along with the final Asbestos Part 2 Risk Evaluation (Ref. 1) and a nontechnical summary document (Ref. 6), are available in the docket.

For more information about the TSCA risk evaluation process for existing chemicals, go to <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca>.

III. Unreasonable Risk Determination

EPA has determined that a single risk determination on the chemical substance asbestos is appropriate in order to protect health and the environment, because there are benchmark exceedances for multiple conditions of use (spanning across most aspects of the chemical life cycle, from manufacturing [including import], processing, industrial, commercial and consumer use, and disposal) for human health. Furthermore, the risk of severe health effects—specifically mesothelioma and lung, ovarian, and laryngeal cancers, along with non-cancer effects—is associated with chronic inhalation exposures of asbestos. Because these chemical-specific properties cut across the conditions of use within the scope of the risk evaluation and a substantial portion of the conditions of use contribute to the unreasonable risk, it is therefore appropriate for the Agency to determine that the chemical substance presents an unreasonable risk. For those conditions of use assessed in the 2020 *Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos* (Ref 4), EPA does not intend to amend, nor does a single risk determination

on the chemical substance require, amending the underlying scientific analysis and the risk characterization.

EPA has determined that asbestos presents an unreasonable risk of injury to human health under the conditions of use. The Agency has determined that the unreasonable risk to human health presented by asbestos is due to: (1) Cancer and non-cancer effects in workers, including ONUs and firefighters, from inhalation exposures; (2) Cancer and non-cancer effects in handlers and bystanders from inhalation exposures associated with handling of garments taken home from occupational exposure; (3) Cancer and non-cancer effects in consumers and bystanders from inhalation exposures; and (4) Cancer and non-cancer effects in the general population from inhalation exposures.

Consistent with the statutory requirements of TSCA section 6(a), EPA will propose a risk management regulatory action to the extent necessary so that asbestos no longer presents an unreasonable risk to human health. The Agency expects to focus its risk management action on the conditions of use that significantly contribute to the unreasonable risk identified in the Asbestos Part 2 Risk Evaluation (Ref 3). However, it should be noted that under TSCA section 6(a), EPA is not limited to regulating the specific activities found to drive unreasonable risk and may select from among a suite of risk management requirements in TSCA section 6(a) related to manufacture (including import), processing, distribution in commerce, commercial use, and disposal as part of its regulatory options to address the unreasonable risk. As a general example, EPA may regulate upstream activities (*e.g.*, processing, distribution in commerce) to address downstream activities (*e.g.*, consumer uses) driving unreasonable risk, even if the upstream activities do not drive the unreasonable risk.

TSCA requires EPA to initiate regulatory action to address those risks through risk management measures enumerated in TSCA section 6(a), 15 U.S.C. 2605(a). The Agency is

given a range of risk management options under TSCA—including labeling, recordkeeping or notice requirements, actions to reduce human exposure or environmental release, and a ban of the chemical or of certain uses. EPA will not be revisiting the risk management for the unreasonable risk that was identified in the Asbestos Part 1 Risk Evaluation (Ref 4) and that was addressed in the final rule that was issued in March 2024 (89 FR 21970, March 28, 2024; FRL-8332-01-OCSPP).

Like the prioritization and risk evaluation processes, there is an opportunity for public comment on any proposed risk management actions.

IV. References

The following is a listing of the documents that are specifically referenced in this document. The docket 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 person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. High-Priority Substance Designations Under the Toxic Substances Control Act (TSCA) and Initiation of Risk Evaluation on High-Priority Substances; Notice of Availability. *Federal Register*. 84 FR 71924, December 30, 2019 (FRL-10003-15).

2. EPA. Asbestos (Part 1: Chrysotile Asbestos); Final Toxic Substances Control Act (TSCA) Risk Evaluation; Notice of Availability. *Federal Register*. 86 FR 89, January 4, 2021 (FRL-10017-43).

3. EPA. Asbestos Part 2 Supplemental Evaluation Including Legacy Uses and Associated Disposals; Draft Risk Evaluation Under the Toxic Substances Control Act; Notice of Availability, Webinar and Request for Comment. *Federal Register*. 89 FR 26878, April 16, 2023

(FRL-9347-06-OCSP).

4. EPA. Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos. December 2020. Office of Chemical Safety and Pollution Prevention. Washington, DC. December 2020. (EPA Document ID No. EPA-HQ-OPPT-2021-0057-0007). <https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0057-0007>.

5. EPA. Letter Peer Review; White Paper: Quantitative Human Health Approach To Be Applied in the Risk Evaluation for Asbestos Part 2; Notice of Availability and Request for Comment. *Federal Register*. 88 FR 51309, August 3, 2023 (FRL-10017-43).

6. EPA. Nontechnical Summary of the TSCA Risk Evaluation for Asbestos (Part 2) November 2024. (EPA Document ID No. EPA-740-S-24-006).

7. EPA. Asbestos Part 1; Chrysotile Asbestos; Regulation of Certain Conditions of Use Under the Toxic Substances Control Act (TSCA). *Federal Register*. 89 FR 21970, March 28, 2024 (FRL-8332-01-OCSP).

8. EPA. Draft Comment Summary and Responses for Asbestos Part 2: Supplemental Evaluation Including Legacy Uses and Associated Disposals of Asbestos; Regulation Under the Toxic Substances Control Act. November 2024.

9. EPA. Draft Comment Summary and Responses for Letter Peer Review of White Paper: Quantitative Human Health Approach To Be Applied in the Risk Evaluation for Asbestos Part 2. November 2024.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: **November 26, 2024**.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.