Request for Non-Significance Determination

Office: OCSPP/OPPT
Title: Asbestos; Significant New Use Rule
SAN: 6677
RIN: 2070-AK45
Stage: Final Rule
Spring 2019 Proposed Reg Agenda Priority: Substantive, not significant.
Spring 2019 Proposed Reg Agenda EO 13771 Designation: Other; EO 13771 status not yet determined.

Description of the Action: Under the Toxic Substances Control Act (TSCA), EPA is finalizing a significant new use rule (SNUR) for asbestos. The Asbestos Hazard Emergency Response Act (AHERA) (TSCA Title II) 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 the 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); high-grade electrical paper; millboard; missile liner; pipeline wrap; reinforced plastics; roofing felt; separators in fuel cells and batteries; vinyl-asbestos floor tile; woven products (other than brake blocks used in oilfield drawworks); any other building material; and any other use of asbestos that is neither ongoing nor already prohibited under TSCA.

Persons subject to the SNUR 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 significant new use notice (SNUN) provides EPA the opportunity to evaluate the new use and, if necessary, take action to prohibit or limit the activity. 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.

A Significant New Use Rule (SNUR) involves already defined requirements, both in terms of what EPA must do to designate a "new use" for a particular chemical substance, and what the regulated entity must do in response to such a designation. Those requirements are not changed by an action for an individual chemical, such as this action. As a result, OMB determined in 1995 that SNURs do not generally meet the "significant regulatory action" criteria in section 3(f) of EO 12866 unless the SNUR involves unusual circumstances (e.g., existing chemical with impacts on existing stocks). There are no such unusual circumstances with this particular SNUR.

EPA's authority for this action is 15 U.S.C. 2604(a)

Background: EPA issued the proposed Asbestos SNUR on June 11, 2018, which opened a 60-day public comment period that closed on August 10, 2018. The Agency received nearly 5,900 public comments; however, the majority of comments were based on a misunderstanding of the scope and intent of the rule. Overall, the Agency received approximately 30 germane comments, half of which are substantive. Of the substantive comments, most suggested broadening the scope of the SNUR. In response to public comments, the Agency is revising the final rule to provide clarifications and ensure all discontinued uses of asbestos are subject to the rulemaking.

Based on public comments received, EPA is clarifying the following issues in the final rule:

- The distinction between a "new use" under the existing partial ban and a "significant new use rule"
- The Agency's review process of Significant New Use Notices
- Whether and how mining for asbestos is subject to the SNUR
- Whether and how recycling of legacy asbestos-containing material is subject to the SNUR

After consideration of the public comments, in addition to the 14 significant new uses identified in the proposed rule, in the final rule EPA is broadening the scope of regulated significant new uses of asbestos (including as part of an article) to include:

- Cement products
- Friction Materials (with some exception)
- Woven products
- Any other use of asbestos that is neither ongoing nor already prohibited under TSCA

Two issues raised in public comment that the Agency is not addressing in this final SNUR are 1) to require 12(b) export notification for all asbestos-containing articles; and 2) to require a significant new use notice for *any* asbestos mining in the United States. The Agency views including these two issues as actions to go beyond the intended focus of the SNUR. EPA is currently evaluating options for how these issues might be addressed in the future. For the first issue (export notification for articles), the Agency believes this would impact ongoing uses of asbestos, not just uses that have been discontinued as identified in the SNUR. EPA believes that this issue would be more appropriately addressed during consideration of any potential risk management actions following completion of EPA's risk evaluation for asbestos, pursuant to TSCA section 6(b)(4), in the event of an unreasonable risk determination..

For the second issue (a notice for *any* asbestos mining beyond mining for the significant new uses), EPA believes if addressed that further opportunity for public comment would be useful prior to a final action.

Rationale: In 2016, the Frank R. Lautenberg Chemical Safety for the 21st Century Act (Pub. L. 114-182, 130 Stat. 448) amended TSCA and included statutory requirements related to the risk evaluations of conditions of use for existing chemicals. In December of 2016, EPA designated asbestos as one of the first 10 chemical substances subject to the Agency's initial chemical risk evaluations (81 FR 91927), pursuant to TSCA section 6(b)(2)(A) (15 U.S.C. 2605(b)(2)(A)). The risk evaluation focuses on the conditions of use of asbestos: the circumstances under which

asbestos is intended, known, or reasonably foreseen to be manufactured (including imported), processed, distributed in commerce, used, or disposed of in the United States. The significant new use rule for asbestos serves to compliment the risk evaluation by ensuring that any discontinued use of asbestos not otherwise already prohibited (that can resume at any time) must be reviewed and approved by EPA prior to commencing.

Costs: In the event that a SNUN is submitted, costs (includes the most recent TSCA user fees) are estimated to be approximately $23,000 per SNUN submission for large business submitters and about $10,000 for small business submitters. In addition, for persons exporting a substance that is the subject of a SNUR, a one-time notice to EPA must be provided for the first export or intended export to a particular country, which is estimated to be approximately $95 per notification. However, 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 as articles are generally excluded from the TSCA section 12(b) export notification requirements. Therefore, EPA assumes no additional costs under TSCA section 12(b) for this rule.

Timing: EPA plans to publish the final asbestos significant new use rule in the *Federal Register* on or before April 30, 2019 to coincide with the deadline of an asbestos related TSCA section 21 petition response.