Asbestos; Significant New Use Rule
Response to Comments
RIN 2070-AK45
Draft/Deliberative
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Overview

The U.S. Environmental Protection Agency received a total of 17,912 comments related to the proposed *Asbestos; Significant New Use Rule* (SNUR) under docket identification (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 due to inappropriate language, and 5,873[1] individual comments are identified by ID number, posted in the docket, and available to view on regulations.gov at [HYPERLINK "https://www.regulations.gov/docket?D=EPA-HQ-OPPT-2018-0159"]. Over 90% (5,386) of the individual comments received on the Asbestos SNUR are anonymous.

Upon careful review, EPA identified seven general themes throughout the public comments on the proposed Asbestos SNUR. The majority of the comments are not germane to the purpose and requirements of the proposed rule, as explained below. Comments are addressed in this document according to the following main topics areas:

1. 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 (SNUNs)
5. Provide clarification: Recycling and disposal
6. Broaden the scope of the SNUR
    a. Include mining
    b. Require 12(b) export notification for articles
    c. Revise the SNUR to include every use of asbestos that is no longer ongoing
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 following discussion. As for the other public comment topics of the proposed rule listed above, the Agency specifically cites 17 substantive comments, which may address multiple aspects of the proposed rule.

1. Purpose of the proposed Asbestos SNUR

Most commenters (too numerous to cite individually) expressed concern that the proposed rule would allow otherwise prohibited asbestos products to be reintroduced into U.S. commerce, which is not the case. Instead, this action will prevent any discontinued uses of asbestos (that are not already prohibited under the partial 1989 Toxic Substances Control Act (TSCA) ban) from restarting without EPA having an opportunity to evaluate each intended use for potential risks to

[1] 5,893 comments are reported in regulations.gov, but 18 of those comments have been withdrawn due to inappropriate language and are accounted for in this summary as part of the 67 not posted.

human health and the environment and take any necessary regulatory action, as appropriate. The final SNUR does not provide any means by which prohibited uses under the partial 1989 TSCA ban can return to the marketplace. On the contrary, the action ensures that otherwise unregulated uses of asbestos undergo EPA evaluation. 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 SNUR ensures that 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.

This SNUR also compliments the TSCA section 6 risk evaluation for asbestos by ensuring that any discontinued use of asbestos not already prohibited (that otherwise could resume at any time) must be reviewed and approved by EPA prior to commencing. A further discussion of what a SNUR is and the relationship of this action to past and current Agency actions is provided in the following paragraphs.

Under the 1989 rule *Asbestos: Manufacture, Importation, Processing, and Distribution in Commerce Prohibitions (54 FR 29460, July 12, 1989) (FRL-3476-2)*, any "new use" of asbestos – defined by that rule as uses for which the manufacture, importation or processing would be initiated *for the first time* after August 25, 1989 – are banned in the United States. However, after the court's decision in *Corrosion Proof Fittings v. EPA*, 947 F.2d 1201 (5th Cir. 1991), that 1989 rule did not ban uses of asbestos that began on or before August 25, 1989 and then were subsequently discontinued voluntarily after August 25, 1989. Recognizing the inherent confusion between what is covered as a "new use" as defined and banned by the 1989 rule and a "significant new use" at issue in the current rulemaking, the Agency attempted to make this distinction in Unit III.A. of the proposed Asbestos SNUR:

> "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,* which was conducted in support of the rule (Ref. 20). However, the ban against most of the asbestos product categories was overturned 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 1 below, any new use of asbestos was also banned. The prohibition on any new uses of asbestos is for uses initiated for the first time after August 25, 1989. As a point of clarification, in this proposed rulemaking, a significant new use of asbestos addresses multiple uses that were initiated prior to August 25, 1989, for which manufacturing and processing are no longer ongoing in the United States."

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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 1 below as reflected in the preamble of the proposed rule, and new uses of asbestos initiated for the first time after August 25, 1989, remained banned. The new SNUR keeps these prohibitions in place and would not amend them in any way; in other words, the new SNUR would not provide a means by which these prohibited uses could return to the marketplace.

Table 1—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.

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In this SNUR, a significant new use of asbestos addresses multiple uses that were initiated on or before August 25, 1989 (such that the uses were not covered by the 1989 ban for uses initiated *for the first time after August 25, 1989*), for which manufacturing and processing are no longer ongoing in the United States. This SNUR is designed to complement the existing prohibitions on asbestos, not alter or displace those prohibitions.

In response to the confusion surrounding the Asbestos SNUR, EPA offers the following explanation of a significant new use rule, which, in general terms, is a notification requirement. EPA is including some of the explanation below to more clearly distinguish between "new use" and "significant new use," to clarify what the proposed SNUR discussed and avoid additional confusion.

Significant new use rules can be promulgated for existing chemicals and new chemicals. "Existing" chemical substances are chemicals that are on the TSCA Chemical Substance Inventory[2]. Any chemical substance that is not on the TSCA Chemical Substance Inventory is classified as a new chemical.

Asbestos is classified as an existing chemical, and SNURs for existing chemicals typically occur in three circumstances:

1. The chemical has been phased out or taken off the market for certain uses or has not been manufactured for a certain use before;
2. The chemical is no longer being manufactured or processed for any use; or
3. There is a potential or likely use that has not commenced.

EPA can promulgate an existing chemical SNUR to ensure that no company will be able to manufacture or process the chemical for a certain use (circumstance 1) or for any use (circumstance 2) without prior notification to EPA, and not before 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.

Most asbestos products are not banned in the United States, although some uses of asbestos are prohibited. Such limited banned uses of asbestos include:

- Under TSCA – Manufacturing, importing, processing or distributing five asbestos-containing products (corrugated paper, rollboard, commercial paper, specialty paper, and flooring felt) and new uses initiated for the first time after August 25, 1989 (40 CFR Part 763, Subpart I; FRL-3269-8).
- Under the Clean Air Act (CAA) – Asbestos pipe insulation and asbestos block insulation on facility components, such as boilers and hot water tanks, if the materials are either pre-

[2] Access the TSCA Chemical Substance Inventory [HYPERLINK "https://www.epa.gov/tsca-inventory/how-access-tsca-inventory"]

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formed (molded) and friable or wet-applied and friable after drying. Spray-on application of materials containing more than 1% asbestos on buildings, structures, pipes, and conduits unless certain conditions specified under 40 CFR 61, Subpart M are met.

- Under the Consumer Product Safety Act (CPSA) – Asbestos in artificial fireplace embers and wall patching compounds (16 CFR 1500).
- Under the Food and Drug Administration (FDA) – Asbestos-containing filters in pharmaceutical manufacturing, processing and packing (21 CFR 211.72).

Although the use of asbestos has declined significantly since EPA attempted a broad ban in 1989, any otherwise prohibited uses of asbestos can resume at any time. This SNUR targets uses of asbestos that are not already prohibited under TSCA nor ongoing in the United States. In the absence of the asbestos SNUR, manufacturing, importing, or processing of asbestos (including as part of an article) for the significant new uses identified in the rule may begin at any time without prior notice to EPA.

The significant new use rule for asbestos under TSCA section 5 served to compliment the ongoing risk evaluation for asbestos under TSCA section 6. In December 2016, EPA named asbestos as one of the first ten chemical substances subject to the Agency's initial chemical risk evaluations under TSCA. EPA is currently conducting that risk evaluation, and if EPA determines there is unreasonable risk for any of the activities being evaluated, EPA is then required by statute to initiate risk management under TSCA for those activities, including restrictions on such activities. While the risk evaluation for asbestos addresses conditions of use, the SNUR addresses unregulated uses that are no longer ongoing but could legally resume at any time absent the SNUR. By ~~taking action under the~~reviewing ongoing uses in the risk evaluation and issuing the SNUR simultaneously, EPA is ensuring that both ongoing uses of asbestos and uses that are no longer ongoing – but not prohibited – and which could resume at any time, are reviewed and evaluated by the Agency. Between these two regulatory actions under the authorities of TSCA sections 5 and 6, EPA is reviewing associated risks and exposures for the conditions of use of asbestos in the United States and ensuring that the Agency has the opportunity to evaluate uses that may reoccur in the future in the event that a company wishes to pursue resuming a former use of asbestos.

Commented [BS1]: We are not taking action under risk evaluation yet.

Section 5(a)(2) of TSCA, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, 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. These factors include:

- The projected volume of manufacturing (including import) and processing of a chemical substance;
- The extent to which a use changes the type or form of exposure of humans or the environment to a chemical substance;
- The extent to which a use increases the magnitude and duration of exposure of humans or the environment to a chemical substance; and
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

Once a SNUR is issued to identify a significant new use, then under TSCA section 5(a)(1), a person desiring to manufacture or process for commercial purposes the chemical substance or mixtures containing it for a significant new use identified in the SNUR must notify EPA at least 90 days prior to initiating manufacture (including import) or processing for the significant new use [see 40 CFR §721.5(a)(1)]. For asbestos, EPA is lifting a general SNUR exemption for articles so that this requirement applies to asbestos as part of an article.

2. Extend the comment period

EPA received several requests to extend the comment period for the proposed Asbestos SNUR (EPA-HQ-OPPT-2018-0159-0437; EPA-HQ-OPPT-2018-0159-2767; EPA-HQ-OPPT-2018-0159-2924; EPA-HQ-OPPT-2018-0159-5647). However, these requests were submitted on the day the comment period ended or later, which did not provide sufficient time for the Agency to respond. Moreover, the requests to extend the comment period were largely based on the incorrect assertion that asbestos is entirely banned in the United States and that this regulation would allow otherwise banned uses of asbestos to begin again. On the contrary, as explained above, the SNUR would further regulate the use of asbestos by requiring notification of intended uses of asbestos subject to the rulemaking and by providing the Agency an opportunity to evaluate each intended use for potential risks to human health and the environment and take any necessary regulatory action to address risks, as appropriate.

3. Ban asbestos

The majority of commenters (too numerous to cite individually) called for an outright ban on asbestos. As discussed in the preamble of the proposed Asbestos SNUR and in section 1 above, on July 12, 1989, EPA issued a final rule under the TSCA Section 6(a) banning most asbestos-containing products. In 1991, this regulation was partially vacated and remanded to EPA by the Fifth Circuit Court of Appeals in New Orleans following a case brought by industry representatives. As a result of the Court's decision, most of the ban on asbestos-containing products were lifted. However, the following specific asbestos-containing products that were no longer manufactured or imported at the time of the 1989 rule remain banned: flooring felt, rollboard, and corrugated, commercial, or specialty paper. In addition, the regulation continues to ban "new uses" of asbestos, which the rule defines to mean uses where the manufacture, importation or processing of which would be initiated for the first time after August 25, 1989.

Under TSCA, EPA cannot immediately issue a ban as envisioned by some commenters. Rather, TSCA section 6 provides a specific process for risk evaluation and risk management that EPA must follow prior to taking any risk managment action for a chemical, such as a "ban". As part of the 2016 Frank R. Lautenberg Chemical Safety for the 21st Century Act amendments, TSCA section 6(b)(4) requires EPA to establish a risk evaluation process. In performing risk evaluations for existing chemicals, EPA is directed to "determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by the Administrator under the conditions of use."

In December of 2016, EPA published a list of 10 chemical substances that are the subject of the Agency's initial chemical risk evaluations as required by TSCA section 6(b)(2)(A). Asbestos was one of these chemicals. EPA subsequently published the scope of the risk evaluation to be conducted for asbestos in June 2017 as per TSCA section 6(b)(4)(D). In this scope document, EPA identified asbestos conditions of use that would be included within the scope of the asbestos risk evaluation. In June 2018, EPA issued a problem formulation document which refined the conditions of use, exposures and hazards presented in the scope of the risk evaluation for asbestos and presented refined conceptual models and analysis plans that describe how EPA expects to evaluate the risk for asbestos.

Per statute, the first ten risk evaluations must be completed within three years of initiation, with a possible extension of ~~6~~ six months. If EPA determines from the asbestos risk evaluation that the conditions of use of asbestos present an unreasonable risk of injury to health or the environment, then regulation would be pursued under TSCA section 6(a), which authorizes EPA to issue regulations requiring one or more of the following actions to the extent necessary so that the chemical substance no longer presents an unreasonable risk:

- Prohibit or otherwise restrict the manufacturing, processing, or distribution in commerce of such substances (§ 6(a)(1)).
- Prohibit or otherwise restrict manufacturing, processing, or distribution in commerce of such substances for particular uses or for uses in excess of a specified concentration (§ 6(a)(2)).
- Require minimum warning labels and instructions (§ 6(a)(3)).
- Require record keeping or testing (§ 6(a)(4)).
- Prohibit or regulate any manner or method of commercial use (§ 6(a)(5)).
- Prohibit or otherwise regulate any manner or method of disposal (§ 6(a)(6)).
- Direct manufacturers and processors to give notice of the determination to distributors and the public and replace or repurchase substances (§ 6(a)(7)).'

EPA must issue these regulations within specific timelines and in accordance with additional requirements laid out in TSCA section 6(c) (15 U.S.C. §2605).

4. Explain EPA's review process of Significant New Use Notices (SNUNs)

The Agency received several comments requesting more explanation regarding the review process of significant new use notices (SNUNs) (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).

In response to concerns about the review process of a significant new use notice, the Agency is including additional explanation in the final rule. 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 Section 5 of TSCA to provide EPA with notice at least 90 days before initiating the activity. A SNUN submission follows the same process as a premanufacture notice (PMN) for

new chemicals, as described in 40 CFR 721.25. 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. Under TSCA section 5(g), the Agency must also publish notice in the Federal Register of a TSCA section 5(a)(3)(C) determination that a significant new use is not likely to present an unreasonable risk of injury to health or the environment.

Commented [USEPA2]: Flagging for OPPT IO: Also added to the FRN. This would go beyond what we understand is the normal practice for SNURs. Given the attention asbestos receives and the unlikelihood of ever getting a SNUN, may make sense as a policy.

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.

For asbestos, the final rule also explains that the submitter 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 C.F.R. part 763, subpart I. In particular, this would include documentation in the submitter's possession or control that the manufacture, importation or processing for the intended use had been initiated for the first time before August 25, 1989.

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 [HYPERLINK "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).

Under TSCA, once EPA receives and reviews a significant new use notice, the Agency must make one of the following determinations:

- "Not likely to present an unreasonable risk" Determinations (See TSCA section 5(a)(3)(C)) – In cases where EPA determines that a significant new use is not likely to present an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors, including unreasonable risk to a potentially exposed or susceptible subpopulation under the conditions of use, EPA will notify the submitter of its decision under TSCA section 5(a)(3)(C) and the submitter may commence manufacture or processing for the significant new use notwithstanding any remaining portion of the 90-day review period. EPA will publish its findings in a statement in the Federal Register pursuant to TSCA section 5(g).
- "Insufficient Information" Determinations (See TSCA section 5(a)(3)(B)(i)) – In cases where EPA determines that the available information is insufficient to allow EPA to make a

reasoned evaluation of the health and environmental effects of the significant new use, EPA must issue an order under section 5(e) of TSCA. A section 5(e) order must prohibit or limit the manufacture, processing distribution in commerce, use or disposal to the extent necessary to protect against an unreasonable risk, and may include testing requirements.

- "May present an unreasonable risk" Determinations (See TSCA section 5(a)(3)(B)(ii)(I)) – In cases where EPA determines that in the absence of sufficient information to allow EPA to make a reasoned evaluation of the health and environmental effects of the significant new use, the manufacture, processing, distribution in commerce, use, or disposal of the chemical may present an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the EPA Administrator under the conditions of use, EPA must issue an order under section 5(e) of TSCA. A section 5(e) order must prohibit or limit the manufacture, processing, distribution in commerce, use, or disposal to the extent necessary to protect against an unreasonable risk, and may include testing requirements. Most TSCA section 5(e) orders issued by EPA are consent orders that are negotiated with the submitter of the SNUN.
- "Exposure-based" Determinations (See TSCA section 5(a)(3)(B)(ii)(II)) – In cases where EPA determines that the chemical substance is or will be produced in substantial quantities and either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance, EPA must issue an order under section 5(e) of TSCA. A section 5(e) order must prohibit or limit the manufacture, processing, distribution in commerce, use, or disposal to the extent necessary to protect against an unreasonable risk and may include testing requirements.
- "Presents an unreasonable risk" Determinations (See TSCA section 5(a)(3)(A)) – In cases where EPA determines that the significant new use presents an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the EPA Administrator under the conditions of use, EPA must take action under section 5(f) to protect against the unreasonable risk. Pursuant to section 5(f), EPA may propose a rule under section 6(a) or may issue an order to prohibit or limit the manufacture, processing, or distribution in commerce of the substance.

Upon making a determination, the Agency must notify the SNUN submitter.

5. Provide Clarification: Recycling and Disposal

One commenter (EPA-HQ-OPPT-2018-0159-0437) posits, "the SNUR is silent on the use of legacy materials that may be manufactured into new products. For example, a scrapped vehicle that may contain asbestos components (e.g., brake linings) will be recycled into new materials for the production of other products, including vehicles. Another example would be products manufactured with recycled building demolition materials (e.g., metal, gypsum wallboard) and how these materials and products would be evaluated under the proposed SNUR to ensure the protection of human health and the environment."

The Agency provides the following explanation in the preamble of the final rule: EPA interprets recycling to be part of *processing* under TSCA. Therefore, recycling asbestos-containing

material for a significant new use of asbestos subject to the SNUR would require a significant new use notice.

Commented [BS3]: Just flagging this again. I will make sure to diiscuss with Jeff et al.

Another commenter (EPA-HQ-OPPT-2018-0159-4066) requested EPA "make clear that the scope of this rulemaking *does not* in any way regulate or otherwise impede the (1) the continued use of asbestos-containing products from manufacturing/processing activities that occurred *prior* to June 1, 2018 (the proposed cutoff date for determining the applicability of the SNUR to new manufacturing/processing activities); or (2) the removal from service for disposal of asbestos-containing materials, including where such disposal activities may involve the incidental 'processing' of asbestos as part of the asbestos disposal process (as such processing is not being conducted for a commercial purpose)."

The Agency does not interpret disposal of legacy materials containing asbestos to be processing for a significant new use under this rule. Additionally, the SNUR does not prohibit any ongoing uses of asbestos-containing products from manufacturing/ processing activities that were initiated prior to June 1, 2018; more specifically the conditions of use of asbestos subject to the current asbestos risk evaluation under TSCA section 6 are not subject to this SNUR.

6. Broaden the scope of the SNUR

The Agency received numerous suggestions to broaden the scope of the significant new use rule to address mining, export notification for asbestos articles, and to include additional significant new uses of asbestos. These comments are addressed by topic in the following section.

a. Include mining

Some commenters (EPA-HQ-OPPT-2018-0159-4023; EPA-HQ-OPPT-2018-0159-5886) suggested that mining be subject to the significant new use rule because it is no longer ongoing in the United States.

The Agency interprets mining to be *production* under the TSCA definition of *manufacture*. Therefore, mining asbestos for a significant new use as identified in the final rule would require a SNUN. Mining for ongoing uses of asbestos would not require a SNUN. However, the Agency may pursue a separate action under TSCA to address asbestos mining for ongoing asbestos uses in the United States.

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b. Require 12(b) export notification for articles

The Agency received several comments recommending that the export notification requirement under TSCA section 12(b) apply to exported articles that contain asbestos (EPA-HQ-OPPT-2018-0159-0469; EPA-HQ-OPPT-2018-0159-1269; EPA-HQ-OPPT-2018-0159-4023; EPA-HQ-OPPT-2018-0159-5886).

Raw asbestos is subject to the export notification requirement at Section 12(b) of TSCA. One of the purposes of a significant new use rule for an existing chemical is to require notification from anyone who intends to resume uses that have been identified

as no longer ongoing. Should anyone intend to resume such uses as identified in a SNUR, the Agency would review the significant new use notice submitted to the Agency, evaluate the associated risks, hazards, and exposures based on the conditions of use, make a determination on the notice under Section 5(a)(3), and take such actions as are required in association with that determination.

Based on the research conducted in support of the ongoing TSCA section 6 risk evaluation, the Agency identified uses of asbestos (including as part of an article) that are no longer ongoing. The Agency has found no evidence to suggest that asbestos is used for any of the activities subject to the SNUR, and therefore, does not believe that an export notification is required for articles containing asbestos that are neither manufactured (including imported) nor processed in the United States. The commenters have not indicated that any of the uses of asbestos (including as part of an article) subject to the SNUR are currently ongoing nor have the commenters provided a persuasive argument as to why the Agency should require export notification for articles that are not manufactured, imported, or processed in the United States. Therefore, EPA assumes that applying an export requirement for asbestos-containing products that no longer exist in the U.S. marketplace would provide no meaningful benefit because the Agency would not receive any such export notifications.

In the event that anyone would be interested in using asbestos for any of the uses subject to the SNUR, EPA would receive notification through a SNUN, which would include information about the conditions of use, including distribution. Review of that SNUN would provide an opportunity for the Agency to require TSCA section 12(b) export notification if a discontinued use for a particular article were to be resumed.

As for the conditions of use of asbestos that are currently undergoing risk evaluation, if an unreasonable risk determination is made, the Agency will at that time evaluate what appropriate risk management options and tools should be used to address the risk, and requiring a TSCA section 12(b) export notification would be part of that evaluation.

c. Revise the SNUR to include every use of asbestos that is no longer ongoing

EPA received several comments suggesting that the SNUR be revised to include all uses of asbestos that are no longer ongoing and some suggest targeting all uses of asbestos except ongoing uses currently under consideration for the asbestos 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).

After further review and consideration, the Agency agrees with this comment and is revising the regulatory text to include any use of asbestos that is no longer ongoing and not currently banned under TSCA which is captured in the following category:
(xviii) Any other use of asbestos

In light of that revision, the Agency is also adding two exceptions to the final rule to account for the ongoing uses of chrysotile (paragraph (3)(i)) and the remaining prohibitions from the 1989 Asbestos Ban and Phaseout rule discussed above (paragraph (3)(ii)):

(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 C.F.R. part 763, subpart I.

The specific uses of chrysotile carved out by paragraph (3)(i) account for uses EPA believes to be ongoing and thus outside of the Agency's SNUR authority. These uses are currently under consideration as conditions of use in the TSCA section 6 asbestos risk evaluation.

7. Economic Analysis

The Agency received two comments regarding the Economic Analysis for the Asbestos SNUR:

One commenter states "[w]ith the past negative effects of asbestos, this proposed policy appears to be too weak. $10,000 appears to be much too little to do a thorough analysis" (EPA-HQ-OPPT-2018-0159-4163). To clarify, $10,000 was the estimated cost to a business submitting a SNUN. According to the EA, the cost that EPA is expected to incur reviewing a SNUN is $41,000. Since publication of the proposed asbestos SNUR, the fees have been updated and are now $16,000 per SNUN submission for large businesses and $2,800 for small businesses. The updated estimate of the total cost of submitting a SNUN is approximately $10,000 for a small business and $23,000 for a large business.

Another commenter suggests, "only the cost of submitting and [preparing] the SNUN and a user fee are included. It is foreseeable any SNUN for asbestos could go through extensive follow-up investigation due to the health concern of the material and public perception of the

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asbestos use. The overall economic cost for business should include additional data gathering, testing, and health study of using asbestos in the proposed categories" (EPA-HQ-OPPT-2018-0159-0010). 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. Testing, investigation, and study are not required for the SNUN submission, and therefore, EPA's cost estimates are based on reasonably ascertainable information gathering activities. However, Section 3.2.8 of EPA's Economic Analysis ("Article Importation and Processing") includes a discussion of the types of costs that firms may incur if they choose to undertake additional activities to assure themselves that they are not undertaking a new use.

EPA addressed the commenter's concern about follow-up costs in Section 3.5 ("Potential for Subsequent Regulatory Actions") of the Economic Analysis of the proposed rule, where the Agency explained that "The Agency recognizes that if submission of a SNUN does result from a SNUR, the Agency may take additional regulatory actions under TSCA. These additional regulatory actions might be necessary to further evaluate an intended new use and associated activities, or to prohibit or limit that activity before it occurs to prevent unreasonable risk of injury to human health or the environment. It is not known what specific subsequent regulatory actions, if any, the Agency may determine are necessary after reviewing a SNUN. Any such actions are highly dependent on the circumstances surrounding the individual SNUN (e.g., available information and scientific understanding about the chemical and its risks at the time the SNUN is being reviewed). Should the Agency's review of the SNUN result in further regulatory actions, the Agency will initiate and follow the appropriate procedures for taking those actions. Included in those procedures would be an assessment of the costs and benefits of those actions."