

Via Docket Submission

July 5, 2022

Assistant Administrator Michal Freedhoff
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: Downstream Users Coalition Comments on the “Asbestos; Reporting and Recordkeeping Requirements Under the Toxic Substances Control Act,” 87 Fed. Reg. 27,060 (May 6, 2022); EPA Docket ID: EPA-HQ-OPPT-2021-0357

Dear Assistant Administrator Freedhoff:

The following comments are submitted on behalf of the Downstream Users Coalition (Downstream Users) for the proposed rule for Asbestos; Reporting and Recordkeeping Requirements Under the Toxic Substances Control Act (TSCA), 87 Fed. Reg. 27060 (May 6, 2022). The Downstream Users is comprised of trade associations representing a cross-section of U.S. Industry. Members of the Downstream Users commenting on the proposed rule are the American Forest & Paper Association (AF&PA), the Toy Association and the U.S. Tire Manufacturers Association (USTMA).¹ These associations together represent thousands of their

¹ The American Forest & Paper Association (AF&PA) serves to advance a sustainable U.S. pulp, paper, packaging, tissue and wood products manufacturing industry through fact-based public policy and marketplace advocacy. AF&PA member companies make products essential for everyday life from renewable and recyclable resources and are committed to continuous improvement through the industry’s sustainability initiative — Better Practices, Better Planet 2020. The forest products industry accounts for approximately four percent of the total U.S. manufacturing GDP, manufactures nearly \$300 billion in products annually and employs approximately 950,000 men and women. The industry meets a payroll of approximately \$55 billion annually and is among the top 10 manufacturing sector employers in 45 states.

The Toy Association is the North America-based trade association for the toy sector; our membership includes more than 950 businesses – from inventors and designers of toys to toy manufacturers and importers, retailers and safety testing labs – all involved in bringing safe, fun toys and games to children. The toy sector is a global industry of more than US\$90 billion annually, and our members account for more than half this amount, and approximately 90% of North American toy sales by dollar volume. Toy safety is the top priority for The Toy Association and its members. Since the 1930s, we have served as leaders in global toy safety efforts; in the 1970s we helped to create the first comprehensive toy safety standard, which was later adopted under the auspices of ASTM International as ASTM F963. The ASTM F963 Toy Safety Standard has been recognized in the United States and internationally as an effective safety standard, and it serves as a model for other countries looking to safeguard the health and safety of their citizens with protective standards for children. The Toy Association is committed to working with legislators and regulators around the world to reduce barriers to trade and to achieve the international alignment and harmonization of risk-based standards that will provide a high level of confidence that toys from any source can be trusted as safe for use by children. Standards alignment assures open markets between nations to maximize product availability and choice.

July 5, 2022

respective individual companies that are product and product component manufacturers and represent other entities in the downstream portion of the consumer and commercial product supply chain.

Members of the Downstream Users do not make or use asbestos in their products. However, these groups are interpreting EPA's proposed scope to include any company in the United States that imports or processes talc in bulk, as part of a mixture, or as part of an article. If that is indeed the case, our member companies will be subject to reporting to the extent that they import articles containing talc or if they import and use talc in a process in the United States to make their products. Accordingly, the Downstream Users have an interest in providing comments to the Environmental Protection Agency (EPA) regarding the potential impacts on the industries that we represent and their individual members.

I. Executive Summary

The Downstream Users support EPA efforts to implement the 2016 Lautenberg Act amendments. We favor a single federal standard for chemical regulation that delivers on the preemption provisions of TSCA. We understand EPA needs adequate information and funding to effectively carry out its responsibilities. However, EPA is being required by court order to promulgate this rule pursuant to TSCA section 8(a), over the agency's objections that information collection was not necessary to carry out the risk evaluation for asbestos.² We urge EPA to meet its obligations by narrowly tailoring this rule so that it is more reasonable for companies to comply.

- **Purpose:** Many of our members struggle to understand how this rule fits EPA's policy to focus TSCA section 6 regulation on the greatest hazards and greatest exposures.³ Overall, the rule does not align with the EPA's stated priorities and goals. It is unclear why information on impurities and articles containing talc that is not respirable and presents little to no risk to human health or the environment is being given priority over moving forward on risk evaluations for the next twenty 2014 Workplan chemicals.
- **Remedies:** As discussed below, this proposal has the potential to be very burdensome because companies that import or process articles and impurities typically do not have to submit reports under TSCA. Our members are not knowingly or intentionally using any asbestos, and this rule imposes a substantial due diligence obligation upon many

USTMA is the national trade association for tire manufacturers that produce tires in the U.S. Our 13 member companies operate 58 tire-related manufacturing facilities in 17 states and generate over \$27 billion in annual sales. We directly support more than a quarter million tire manufacturing U.S. jobs – totaling almost \$20 billion in wages. USTMA advances a sustainable tire manufacturing industry through a commitment to science-based public policy advocacy. Our member company tires make mobility possible. USTMA members are committed to continuous improvement of the performance of our products, worker and consumer safety and environmental stewardship.

² *Asbestos Disease Awareness Org. v. Wheeler*, 508 F. Supp. 3d 707 (N.D. Cal. 2020) requiring EPA to issue a rule to collect information on the (1) importation and use of raw asbestos; (2) importation and use of asbestos-containing mixtures and articles; (3) processing of raw asbestos and articles and mixtures; and (4) presence of asbestos as an impurity.

³ 15 U.S.C. § 2605(b)(1)(B).

July 5, 2022

companies who EPA has left out of the economic impact assessment of this rule. To help manage the work associated with this rule for thousands of businesses across the country, the Downstream Users strongly recommend that:

- EPA adopt a low concentration exemption (by content or annual use) below which no reporting is required.
- The use of estimates should be avoided. EPA has proposed that the manufacturer (importer) or processor make “reasonable estimates” of quantities when data are unavailable. Such estimates would not all be conducted in the same way and would not produce reliable information that meets the best available science standard of TSCA. Further, the proposed rule states both that reporters “may”⁴ submit and that they “must provide”⁵ reasonable estimates. Clarification is required regarding the proposed obligations. Our strong preference is for EPA not to ask for or use estimates altogether.
- EPA should provide clear guidance to reporters which specifically states that they may rely upon content information provided on safety data sheets (SDSs) or supplier assurance statements to discharge the reporting obligation. We urge EPA to issue clear instructions on the level of due diligence early in the initial six-month review period to help companies plan and execute their reporting obligations.
- Additionally, we request extension of the reporting period. The EPA has stated that entities would report within a three-month submission period, which would begin six months following the effective date of the final rule. The reasons for this request include the broad (and global) scope of the data collection requirements, and the uncertainty of the level of due diligence required of each reporter. Also, we anticipate that our members will have to spend more time than EPA estimates to make reporting determinations. An additional three months would allow them time to gather these data.
- We request that EPA use caution in statements that appear to draw inaccurate conclusions about talc with respect to asbestos and amend the proposed processor definitions put forth in 40 C.F.R. § 704.180(a) so that impurities are clearly identified in these definitions so as to be distinguished from intentional ingredients.

The Downstream Users request that the EPA make these substantial changes to meet the Section 8(a) charge for companies to submit reports as the EPA may “reasonably require.”

⁴ 87 Fed. Reg. at 27074 (The definition of “reporting information to EPA” states that reasonable estimates “may be submitted”).

⁵ 87 Fed. Reg. at 27067 (stating that “the manufacturer (including importer) or processor would be required to make ‘reasonable estimates’”).

II. Purpose

The Downstream Users support information collection under TSCA and has approached EPA several times to ask the agency to develop a predictable approach that companies can budget and plan to provide EPA with information on chemicals undergoing risk evaluation early in the process. Here, we are gravely concerned that this proposed rule is a matter of “too little and too late.” It is not clear to our organizations how EPA can justify having industry and the agency spend so many more hours and resources collecting information on products that carry no risk of exposure to airborne asbestos -- when so many other risk evaluations are languishing or have yet to begin.

In 2017, EPA issued the scope of the risk evaluation for asbestos and indicated that it would be limited to uses of the chrysotile asbestiform. However, following the *Safer Chemicals* decision in the 9th Circuit,⁶ EPA split the risk evaluation in two parts and stated that the second phase would focus on “legacy uses” and associated disposals as required by the court.⁷ More recently, some lawsuits filed against EPA have established useful deadlines for completing the asbestos risk evaluation while others have resulted in “scope creep” that goes well beyond the scope provision in section 6(b) and EPA’s own rules in Part 702. Section 6(b)(4)(D) provides:

The Administrator shall, not later than 6 months after the initiation of a risk evaluation, publish the scope of the risk evaluation to be conducted, including the hazards, exposures, conditions of use, and the potentially exposed or susceptible subpopulations the Administrator expects to consider, and, for each designation of a high-priority substance, ensure not less than 12 months between the initiation of the prioritization process for the chemical substance and the publication of the scope of the risk evaluation for the chemical substance, and for risk evaluations conducted on chemical substances that have been identified under paragraph (2)(A) or selected under subparagraph (E)(iv)(II) of this paragraph, ensure not less than 3 months before the Administrator publishes the scope of the risk evaluation.

EPA claims that the proposed rule will help to better understand the exposures and uses associated with asbestos, in relation to future actions under TSCA including risk evaluation and management activities. It is our understanding that the scope of the asbestos risk evaluation that EPA issued in accordance with the directive in the statute above did not include impurities and articles. EPA recently finalized the scope of the Part 2 TSCA risk evaluation of asbestos to include legacy uses and associated disposals, other types of asbestos fibers, and conditions of use of asbestos-containing talc. The Downstream Users are concerned that the process proposed by EPA to utilize the information it collects in this rule does not align with section 6 of TSCA and EPA’s own rules for conducting risk evaluations pursuant to TSCA.

EPA’s risk assessment process begins with a scope that is based upon an analysis of the “reasonably available information.” The scope itself sets the framework for the entire risk evaluation and is set forth at an earlier stage in the process. We are unable to find any procedural

⁶ *Safer Chems. v. United States EPA*, 943 F.3d 397 (9th Cir. 2019).

⁷ 87 Fed. Reg. at 27064.

July 5, 2022

underpinning in the statute or rules that supports EPA's plans to change the scope of the asbestos risk evaluation or use the information it is collecting now, seven years into the process of conducting the risk evaluation for asbestos. We are aware that the EPA has adopted a "whole chemical approach" as its rationale, although it remains an open question whether the Lautenberg Amendments require this approach. The deadlines of TSCA were specifically intended to put guardrails on the time EPA takes on any particular risk evaluation. Effectively, we think that EPA is planning an open-ended risk evaluation for asbestos in disregard of the scoping and timing requirements in TSCA and the agency's own rules. Information collection at this late stage to inform the scope of a risk evaluation is not contemplated by the rules, which state that EPA may "use its authorities under the Act, and other information gathering authorities, when necessary to obtain the information needed to perform a risk evaluation for a chemical substance *before initiating* the risk evaluation for such substance."⁸

III. Impact

After careful review, the Downstream Users respectfully submit that this proposed rule is not sufficiently tailored to provide information that will be useful or reliable. As it relates to impurities, the proposed rule is far too broad. The proposed rule is not tailored regarding who must report, low concentration exemption levels, or through any other means. Instead, reporting may be applicable for nearly every mixture or article in commerce based upon the suspicion of asbestos.

EPA anticipates that it will incur a cost of \$560,343. It also believes that the total social burden and cost are therefore estimated at approximately 1,157 hours and \$659,839 dollars.⁹ This is based upon an estimated burden and cost of approximately 12 hours and \$1,146 to 26 hours and \$2,265, for companies where asbestos is intentionally manufactured (including imported) or processed, and between 17 hours and \$1,573 to 40 hours and \$3,334 for products where it appears as an impurity.¹⁰ EPA has requested comments on the total number of manufacturers (including importers) and processors that will be impacted by the promulgation of this rule, and on the related burden and costs for reporting. Further, EPA has acknowledged that its current economic impact considerations fail to consider the number of entities impacted by the requirement to provide data on asbestos as an impurity. This admission diminishes the value of EPA's provided economic impacts assessment and its total societal burdens.

Of significant concern is that EPA has grossly underestimated this proposed rule's impact on our industries. It is likely for this reporting requirement to impact all members of the Downstream Users coalition which is representative of several industries and thousands of firms.

The Toy Association estimates that 300 of its 950 members, large and small companies, including domestic toy manufacturers, will be affected. To determine whether they have information to report the Association estimates that it would take members 7.5 hours per sku¹¹ at \$50/hour.

⁸ 40 C.F.R. § 702.41(b)(2)(emphasis added).

⁹ 87 Fed. Reg. at 27062.

¹⁰ *Id.*

¹¹ A "sku" is a stock keeping unit that is used to differentiate between products.

Each company has, on average, approximately 500 skus. The EPA's cost estimates range between \$1,573 to \$3,334 per company which results in an additional \$471,900 - \$1 million in costs attributable to reporting by this sector that are unaccounted for by the proposed rule. However, we think EPA underestimates the costs for toys. We think the total cost to each company would be more in the hourly range that would result in a cost of \$187,500, for a total of \$56,250,000 million cost to the industry. The reason for this higher level of impact is due both to the large number of manufacturers and that toy importers do not have SDSs, so each imported sku will require the importer to contact foreign supply chains. Due to the myriad ways talc might be used in toys and limited data, this will require importers to go back two or three levels back up the supply chain.

The American Forest and Paper Industry estimates that 120 member mills may be required to report under the rule. Here, each paper mill would be required to investigate the asbestos content of talc used in the papermaking processing which may require contacting their distributors or immediate suppliers. Based on EPA's estimated cost per company, the burden and cost per site for products where asbestos is an impurity, reporting under the proposed rule may cost the industry \$193,479 to \$410,082. Guidance from the EPA regarding reliance on SDSs or supplier assurance statements to discharge the reporting obligation would substantially reduce this burden.

The U.S. Tire Manufacturers Association has twelve members that operate 56 tire manufacturing plants. Similarly, these plants do not intentionally use asbestos, but would be required to investigate the content of talc used in their facilities to manufacture tires and any residuals that may be present. To provide a reasonable basis for reporting these plants would be required to contact their immediate distributors and supplier to obtain the necessary data. Based on the estimates provided by the EPA for the burden and cost per site for products where asbestos is an impurity, reporting under the proposed rule may cost the industry \$18,876 to \$40,008.

Pursuant to the Office of Management and Budget (OMB) requirements, EPA has an obligation to ensure that any collection of activity has "practical utility."¹² EPA is required to "minimize the cost to itself of collecting, processing, and using the information . . . shall not do so by means of shifting disproportionate costs or burdens onto the public."¹³ EPA has not accounted for how much this rule will cost our member companies. EPA should take these costs into account, and tailor the rule to avoid the disproportionate impacts we expect the rule to have on downstream sectors.

IV. Reporting Should Include a Content Low Concentration Exemption

The Downstream Users ask that EPA adopt a low concentration exemption for reporting under the proposed rule. Adopting a one-percent low concentration exemption would be consistent with existing EPA and other federal regulations on asbestos. EPA's current regulation banning certain uses of asbestos under TSCA (40 C.F.R. § 763.163) recognizes the one percent limit. TSCA's Asbestos Hazard Emergency Response Act (AHERA) provisions sets the actionable level

¹² 5 U.S.C § 1320.5(d)(iii).

¹³ *Id.*

July 5, 2022

for asbestos containing materials at one percent.¹⁴ EPA's National Emission Standards for Hazardous Air Pollutants (NESHAPS) for asbestos establishes a one percent low concentration exemption for the regulated categories of asbestos.¹⁵ The Occupational Safety and Health Administration's (OSHA) standard for general industry and the construction industry on asbestos handling in the workplace defines asbestos-containing materials subject to the standard (including products containing asbestos as an impurity) as requiring the presence of more than one percent asbestos.¹⁶ Furthermore, EPA's asbestos rule for worker protection incorporates this OSHA's standard.¹⁷ Therefore, our strong preference is to have the reporting requirements of the rule mirror the existing reportable and actionable limits set by federal regulation. Companies are unlikely to have data on asbestos under this amount readily available in light of the consistent low concentration levels in federal law. The specific OSHA standard for a chemical must be followed by companies when one exists, rather than general hazard communication requirements. Therefore, the historical approach to asbestos regulation should continue to be recognized in this rule, absent a compelling rationale for collecting this new category of data.

We respectfully submit that having a low concentration exemption for reporting impurities present above "zero" is not "reasonably ascertainable" for importers and processors. A requirement to report impurities at any level no matter how small may compel companies to report "yes" on Form A because it is not technically possible, through testing or other objective means, to rule out the presence of unintentional or even background levels. We think it is very important for our members to have a one-percent low concentration exemption for reporting impurities for secondary products.

Alternatively, the Downstream Users would accept adoption of a low concentration exemption of 0.1%. In previous comments, we have acknowledged the 0.1% low concentration exemption aligns with the principles articulated through general OSHA Hazard Communication principles. Under the OSHA Hazard Communication Standard, where a mixture itself does not have test data or sufficient data to apply OSHA bridging principles, then the hazard may be estimated through application of cut-off values/concentration limits from the ingredients.¹⁸ The typical values/concentration limits are 0.1% or 1%¹⁹. To detect chemicals below these levels will require new testing or overly-burdensome formal inquiries throughout several layers of the supply chain.

We think a low concentration exemption is essential for our members in the in final rule. It will make the rule more tailored, and will help to ensure that the EPA receives useful data. As drafted

¹⁴ 15 U.S.C. § 2641-2656.

¹⁵ 40 C.F.R. Part 61, Subpart M (e.g., definitions for "friable asbestos," "nonfriable asbestos-containing material," "Category I nonfriable asbestos-containing material" and "Category II nonfriable asbestos-containing material").

¹⁶ 29 C.F.R. § 1910.1001 (general workplace standard); 29 C.F.R. § 1926.1101 (construction standard).

¹⁷ 40 C.F.R. Part 763, Subpart G – Asbestos Worker Protection.

¹⁸ 29 C.F.R. § 1910.1200, Appendix A – Health Hazard Criteria (Mandatory), section A.0.4 Considerations for the Classification of Mixtures, subsections A.0.4.1(c) and A.0.4.2.

¹⁹ 29 C.F.R. § 1910.1200, Appendix A, subsection A.0.4.3.

the proposed rule is far too broad in requiring reporting any level above zero, or essentially requiring companies to make a zero content finding for an impurity. To move forward without a low concentration exemption will be significantly more burdensome by comparison on the thousands of downstream companies that use talc in their products who will need to conduct a due diligence review per this rule.

V. The Proposed Rule Should Not Require Unreliable Estimates

EPA's reporting standard should be tailored so that it does not generate unreliable data in the form of estimates, which could lead to over- or under-reporting. Section 8(a) of TSCA allows the Administrator to request the maintenance of records and reporting in respect to the following:

- The common or trade name, the chemical identity, and the molecular structure of each chemical substance or mixture for which such report is required;
- The categories or proposed categories of use of each such substance or mixture
- The total amount of each substance and mixture manufactured or processed, reasonable estimates of the total amount to be manufactured or processed for each of its categories of use or proposed categories of use;
- A description of the byproducts resulting from the manufacture, processing, use, or disposal of each substance or mixture;
- All existing information concerning the environmental and health effects of such substance or mixture;
- The number of individuals exposed, and reasonable estimates of the number who will be exposed, to such substance or mixture in their places of employment and the duration of such exposure;²⁰

This type of reporting calls for information that is "reasonably ascertainable," which means "all information in a person's possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know."²¹ Here, EPA puts forth the following:

In the event that a manufacturer (including importer) or processor does not have actual data (e.g., measurements or monitoring data) to report to EPA, the manufacturer (including importer) or processor would be required to make "reasonable estimates".²²

As we pointed out at the outset of these comments, the proposed rule is not clear whether one *must* make these "reasonable estimates" or whether this submission is permissive due to conflicting language. Clarification is required on this point in the final rule. However, we ask EPA to consider having no estimate reporting in the final rule altogether. Under TSCA section 8(a)(2),

²⁰ 15 U.S.C. § 2607(a)(2).

²¹ 40 C.F.R. § 704.3.

²² 87 Fed. Reg. at 27067.

July 5, 2022

EPA may require “reasonable estimates of the total amount to be manufactured or processed . . .”.²³ Consistent with this sentence, it seems more reasonable to require future-looking estimates when they are at least based on an accurate *current* production or import volume number to begin with. Here, EPA is asking companies to estimate the current number, which could lead to under or over reporting due to lack of information or variation among the methods used to compile the estimate. The knowledge-based standard for reporting under Section 8(a) seems to be exceeded by calling for estimates where no data exists.

The variety of means that companies possess to estimate an impurity level will generate more work on their part but it will not produce meaningful information that can be relied upon in a risk evaluation. Pursuant to TSCA, the EPA must make decisions based upon scientific information using the best available science.²⁴ The “best available science” refers to “science that is reliable and unbiased” . . . and its use involves “supporting studies conducted in accordance with sound and objective science practices, including, when available, peer reviewed science and supporting studies and data collected by accepted methods or best available methods.”²⁵ An estimate can be biased, unreliable, and may have no underlying supporting basis. Estimates do not lend themselves to peer review. For these reasons, we recommended eliminating this data collection point from the rule.

In addition, the Downstream Users support EPA’s decision not to request additional data related to employee data, wastewater discharge and waste disposal, air emissions data and customer sites data. We also caution against the inclusion of these additional data without reconsidering the overall timeline for reporting. If entities must report on this wide array of data, they must be granted additional time for reporting, and the industry cost for such a fruitless effort would be exponentially greater. EPA should not include any additional data points without reconsidering the cost to reporting entities. This would be sufficiently more data, and it is unclear how EPA would analyze these data for this particular action. For these reasons we support moving forward without its inclusion.

VI. EPA Must Provide Industry Guidance on the Level of Due Diligence Tailored to the Entities Subject to the Rule

The knowledge-based standard employed by the EPA requires reporting when the presence of asbestos is known or reasonably ascertainable. EPA has asked what additional guidance might be useful to companies to explain the reporting standard. The Downstream Users support any further clarity EPA can provide on the level of due diligence required to comply with the rule, so that companies will not spend significantly more time and resources than necessary on understanding how to comply. It is extremely important to understand the level of due diligence EPA expects particularly with respect to the identification of impurities.

The Downstream Users would like to understand to what extent they must investigate their supply chain. The proposed rule indicates that one should document their due diligence if they

²³ 15 U.S.C. § 2607(a)(2)(C).

²⁴ 15 U.S.C. § 2625(h).

²⁵ 40 C.F.R. § 702.33.

July 5, 2022

find no reportable data.²⁶ The guidance should specifically address what constitutes sufficient due diligence for identifying impurities for documentation to be satisfactory under the rule. We would like clarity on the documentation our members may rely upon to satisfy their inquiry. Specifically, we would like EPA to agree and state in the final rule that relying on a supplier-provided SDS or a separate supplier assurance statement will satisfy the level of due diligence EPA requires for identifying impurities in reportable articles in this rule. We request consideration of the following language in the final rule itself or the preamble:

“Manufacturers (including importers) and processors may rely upon either a vendor-supplied SDS or a separate assurance statement by their supplier to satisfy the inquiry into the content of asbestos as an impurity and in identifying reportable articles. Either form of documentation will satisfy the due diligence requirement.”

It would be very beneficial to our members if EPA will confirm that the documentation above completes their inquiry. Time permitting, our members would benefit from a guidance document with factual scenarios as well as questions and answers, similar to the Chemical Data Reporting guidance which can be accessed here: <https://www.epa.gov/chemical-data-reporting/how-report-under-cdr#reg>. This guidance provides specific information for each type of reporter and offers factual scenarios which can help to inform entities of their responsibilities. Scenarios would be very helpful for understanding why EPA requires separate definitions for primary processors and secondary processors, and the differences between them that are relevant to this reporting exercise. EPA’s definitions and explanations of primary and secondary processors subject to reporting are vague, and our members would greatly benefit from “real world” examples.

VII. Clarity on Reporting Obligations of Processors is Needed

Further with respect to the proposed definitions for a primary processor and a secondary processor subject to reporting, we think these definitions have to specify that EPA expects reporting of asbestos *as an impurity* in the body of the definitions themselves. Specifically, the proposed rule defines a primary processor as “a person that starts with bulk asbestos or bulk materials containing asbestos and makes a mixture that contains asbestos as a component.” A secondary processor is “a person that further processes asbestos, after primary processing of asbestos is completed, as a component of a mixture, or an article containing asbestos.”²⁷

The term “component” is not defined by EPA, but the term generally refers to a constituent part of the whole that has an operation or function associated with it. That meaning is far removed from the concept of an impurity which is not intentional and does not contribute to product performance. Elsewhere, EPA better articulates its intent to capture impurities. For example, on p. 27068, EPA states “This subset would consist of information related to manufacturing (including importing) or processing asbestos, including as an impurity, in an article, or as a component of a mixture.” The agency’s references to a substance “as a component of a mixture”

²⁶ 87 Fed. Reg. at 27063.

²⁷ 87 Fed. Reg. at 27074.

is consistent with the “utilitarian” or purposeful meaning of the term “component” in industry.²⁸ Here, EPA accomplishes a clear separation in the use of the term “component” from the term “impurity” in that sentence. This rubric should be followed consistently in this rule. Holding to this rubric would result in the interpretation by industry of the proposed processor definitions as excluding processors of asbestos as an impurity. If this is intentional, it would greatly accomplish the tailoring of the proposal that the Downstream Users seek so that there is a smaller universe of companies subject to reporting. However, we think EPA is using the term component to refer to both intentional and unintentional presence of asbestos. In that case, EPA could alternatively insert the modifiers “intentional or unintentional” anywhere the term “component” is used in the rule. We ask EPA to address this important definitional and scoping aspect of the agency’s proposal to remove the uncertainty that is resulting from the imprecise and inconsistent use of these terms.

With regard to Table 4, we believe EPA should align the table categories with the agency’s 2019 Significant New Use Rule (SNUR) to exempt product categories that are prohibited in commerce as of June 24, 2019 (unless they file a Significant New Use Notice or “SNUN”) from this rule.²⁹ This reporting rule, according to the current schedule, will require reporting to begin on or about June 2023. Four years prior to that date is June 2019 – the effective date of the SNUR. Exempting and removing from Table 4 those uses that are prohibited by the SNUR, unless a SNUN has been filed, will ensure that the information provided aligns with the SNUR. The EPA should revise the rule to clarify that these prohibited categories are exempt from reporting. In addition, since 1991, the following categories of uses for asbestos have been banned and therefore need not be part of the reporting rule: (1) corrugated paper, (2) rollerboard, (3) commercial paper, (4) specialty paper and (5) flooring felts.³⁰

VIII. The Final Rule Should Be Neutral and Should Not Create the Presumption that All Talc Contains Asbestos as an Impurity

This proposed rule, in the preamble and language proposed for the rule itself, includes numerous references to talc that are problematic for our members for several reasons. First, EPA needs to explain that there is a low likelihood of the presence of asbestos impurities in talc and products containing it to provide more accurate context for this rule. EPA seems content for people to take away from this rule that the presence of asbestos impurities in talc is common, which is not the case. There is no need or basis for creating such a critical misunderstanding and for the agency to continue to mislead the public in this way is a disservice. For example, the proposal indicates that asbestos may be naturally occurring as an impurity “in other products such as talc . . .”.³¹ If any of our members knew of the presence of asbestos in the talc they import and process, they would change to a source of supply that did not have asbestos in it. Talc is a widely used commercial feedstock chemical, and suppliers for talc sold and used in consumer products

²⁸ 87 Fed. Reg. at 27066.

²⁹ Restrictions on Discontinued Uses of Asbestos; Significant New Use Rule, 84 Fed. Reg. 17345 (April 25, 2019).

³⁰ 84 Fed. Reg. at 17351.

³¹ 87 Fed. Reg. at 27065.

sectors would not stay in business long if their talc contained asbestos impurities. The proposed rule improperly conflates talc with asbestos. While EPA may argue that the purpose of the reported information is to inform EPA as to the status of asbestos impurities in TSCA-regulated uses of talc, the proposed rule improperly rushes to judgment. EPA should cease making any further references that conflate talc with asbestos.

IX. Conclusion

These comments are intended to provide the EPA with additional insight into the overall implications of its proposed rule from companies that do not intentionally use asbestos in products. As representatives of downstream supply chains, we believe that our comments offer insight on how this rule will impact a swath of industry that EPA's proposed rule currently does not quantify. The rule must be revised to be more narrowly tailored to include a low concentration exemption and refrain from asking for information that results in pure conjecture responses.

Again, many of our members struggle to understand how this rule fits EPA's policy to focus TSCA section 6 regulation on the greatest hazards and greatest exposures.³² Trace amounts of non-respirable impurities (their presence and amount unknown in most cases) and articles containing talc present little to no risk to human health or the environment. Yet, these products are being prioritized over and above focusing EPA's limited resources on collecting information to support the risk evaluations for the next twenty 2014 Workplan chemicals.

This proposal has the potential to be very burdensome on entities subject to reporting. To summarize the remedies in these comments that we think will make the rule more reasonable:

1. If the proposed rule is to proceed, the Downstream Users strongly recommend the EPA adopt a low concentration exemption (by content or annual use) below which no reporting is required.
2. EPA should also provide clear guidance to specify that downstream companies may rely upon content information provided on SDSs or supplier assurance statements to discharge the reporting obligation.
3. EPA should clarify the difference between primary and secondary processors with scenario examples and by including the term "impurity" in these definitions.
4. The proposed rule states both that reporters "may"³³ submit and that they "must provide"³⁴ reasonable estimates. Eliminating estimates as a data point from this rule altogether is our preferred solution: this approach keeps the separation between the two proposed forms simple and clear. Companies who have actual information on volume will know to use Form B and all other companies that do not have any volume information will know to use Form A.

³² 15 U.S.C. § 2605(b)(1)(B).

³³ 87 Fed. Reg. at 27074.

³⁴ 87 Fed. Reg. at 27067.

Comments of Downstream Users Coalition

EPA Docket ID: EPA-HQ-OPPT-2021-0357

July 5, 2022

5. We ask EPA to clarify that its statements on talc in this rule are in no way intended to suggest that asbestos impurities in talc are commonplace and use the term “impurity” in the definitions for processors, as well as provide scenarios that illustrate these terms.
6. Finally, we ask for an extension of the reporting period that provides a similar block of time as EPA has provided in similar Section 8(a) rules. Due to the inexperience of many of the companies that are affected by this rule with TSCA reporting, and the uncertainty of the level of due diligence required, an additional three months is requested.

Thank you for the opportunity to submit these comments.

Respectfully submitted,

American Forest and Paper Association

The Toy Association, Inc.

U.S. Tire Manufacturers Association