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INSIGHT

Background on Risk Evaluation Under the Toxic Substances Control Act (TSCA): Asbestos

September 12, 2022

In 2016, the Frank R. Lautenberg Chemical Safety for the 21st Century Act (LCSA; P.L. 114-182) amended Title I of the Toxic Substances Control Act (TSCA; 15 U.S.C. §2601 et seq.) to direct the U.S. Environmental Protection Agency (EPA) to systematically prioritize chemicals for risk evaluation. (For more information, see CRS Report R45149, *Title I of the Toxic Substances Control Act (TSCA): A Summary of the Statute*.) The purpose of the risk evaluations is to determine whether particular chemicals warrant regulation in terms of the risks associated with their manufacture, processing, distribution, use, or disposal. If EPA identifies "unreasonable" risk to human health or the environment associated with one or more of the elements of a chemical's lifecycle, TSCA Section 6 directs EPA to promulgate a rule to mitigate those risks. TSCA Section 9 limits EPA's authority to regulate a chemical under TSCA if another law may be used to regulate a chemical for the unreasonable risk identified by the agency.

As amended, TSCA Section 6 directed EPA to select 10 chemicals for risk evaluation from a list of 90 chemicals that the agency identified in 2014 as warranting risk assessment. EPA based this list on a screening of 345 chemicals for potential hazard and exposure, and persistence and bioaccumulation characteristics. With more than 86,000 chemicals on the TSCA Inventory, EPA's screening approach was intended to focus the agency's resources and attention on a select group of chemicals for which sufficient scientific and technical information is available to suggest greater concern to human health or the environment. Pursuant to TSCA Section 6, EPA selected the initial 10 chemicals for risk evaluation, including asbestos, in 2016 (81 *Federal Register* 91927-91929, December 19, 2016).

Each chemical substance that EPA evaluates has unique properties, uses, and risks, which may warrant different risk management approaches. The process of conducting risk evaluations and assessing risk management options involves judgments about the reliability of available scientific and technical information. Aspects of this process and what information EPA identifies as the basis for justifying certain regulatory action can generate disagreement between the agency and stakeholders (e.g., industry, environmental and public health organizations). As EPA continues to implement TSCA, the agency's risk evaluations and related actions are likely to receive scrutiny among stakeholders. Congress may consider assessing EPA's implementation of TSCA, as amended by the LCSA, and the resulting outcomes from the

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agency's actions and decisions. The next section discusses EPA's risk evaluation for asbestos and potential next steps toward addressing the unreasonable risks that the agency identified.

Asbestos

In 2016, EPA selected asbestos (CAS Number 1332-21-4) as one of the initial 10 chemicals for a risk evaluation. For decades, the use of asbestos has been gradually phased out due to human health concerns and liability issues. In 1989, EPA promulgated regulations under TSCA to ban most asbestos-containing products. However, litigation resulted in a more limited regulation that applied only to new uses of asbestos and certain asbestos-containing products (e.g., flooring felt, certain types of paper). See 40 C.F.R. Part 763, Subpart I. The predominant remaining use of asbestos is for the manufacture of chlorine and sodium hydroxide, which are feedstock chemicals used to manufacture a variety of other chemicals. According to the U.S. Geological Survey (USGS), the last domestic producer of asbestos ceased operations in 2002. Since then, the United States has relied on imports of asbestos to meet chemical manufacturing needs. USGS estimates that the United States imported 1,590 tons of asbestos for consumption between 2017 and 2021.

In December 2020, EPA finalized part one of the risk evaluation for asbestos, focusing on one form—chrysotile. EPA identified unreasonable risks to the health of workers, occupational non-users, consumers, and bystanders from 16 out of 32 conditions of use that the agency evaluated. EPA did not identify unreasonable risks to the environment from any of the evaluated conditions of use. EPA based its risk determinations on a comparison of predicted exposure to chrysotile asbestos from various exposure scenarios (e.g., workers involved in handling or using chrysotile asbestos with or without the use of a respirator) and an estimated level of exposure expected to limit the increase in risk of developing lung cancer and mesothelioma to certain guideline ranges (i.e., 1-in-10,000 to 1-in-a-million above background risk). EPA's risk determinations regarding potential environmental effects are based on the predicted exposure to chrysotile asbestos for various species compared to the estimated level of exposure expected not to result in the development of adverse effects in species at the population level.

To address the unreasonable risks identified in the December 2020 risk evaluation, EPA proposed a rule to prohibit the manufacture, processing, distribution, and use of chrysotile asbestos in various industrial and commercial products. EPA also proposed certain disposal and recordkeeping requirements (87 *Federal Register* 21706-21738, April 12, 2022). On May 6, 2022, EPA proposed an additional rule to require reporting and recordkeeping with regard to asbestos and asbestos-containing articles in commerce, and certain exposure-related information. Data collected pursuant to this rule, if finalized, would inform the agency's consideration of potential future actions, including risk evaluation and risk management activities (87 *Federal Register* 27060-27081). These proposed rules would supplement a 2019 EPA rule under TSCA that requires notification to the agency for reintroducing asbestos into commerce for discontinued uses. See 84 *Federal Register* 17345-17360, April 25, 2019, and 40 C.F.R. §721.11095.

As a result of litigation, EPA has agreed to prepare by 2024 a second part to the risk evaluation of asbestos that focuses on legacy uses and associated disposal. Congress may continue to conduct oversight or consider legislation with regard to EPA's efforts to manage risks associated with asbestos and whether such efforts are aligned with the intent of the TSCA amendments. Some Members have introduced legislation that goes beyond EPA's recent proposed actions. In the 117th Congress, H.R. 7810 and S. 4244 would amend TSCA Section 6 to prohibit the manufacture, processing, use, or distribution of *commercial asbestos* or any mixture or article containing commercial asbestos.

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