

**Comments of the Attorneys General of  
Illinois, Arizona, Connecticut, the District of Columbia, Hawaii, Massachusetts, Minnesota,  
New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Wisconsin and  
the Corporation Counsel of New York City**

December 14, 2023

*Via electronic submission to [www.regulations.gov](http://www.regulations.gov)*

U.S. Environmental Protection Agency  
Office of Pollution Prevention and Toxics  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

**Re: Docket ID No. EPA-HQ-OPPT-2023-0496-0001; Multistate Comments in Response to the U.S. Environmental Protection Agency’s Proposed Procedures for Chemical Risk Evaluation under the Toxic Substances Control Act**

Dear Administrator Regan:

The undersigned State Attorneys General of Illinois, Arizona, Connecticut, Hawaii, Massachusetts, Minnesota, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont and Wisconsin, the Attorney General of the District of Columbia, and the Corporation Counsel of New York City (“Attorneys General”) submit these comments supporting the U.S. Environmental Protection Agency’s (“EPA” or the “Agency”) proposed rules to amend the procedural framework for conducting risk evaluations under the Toxic Substances Control Act, 15 U.S.C. §§ 2601, *et seq.*, (“TSCA”) (the “Proposal”).<sup>1</sup>

The Attorneys General strongly support EPA’s efforts to strengthen the Agency’s risk evaluation procedures. The regulatory provisions in the Proposal reflect EPA’s statutory directive to look comprehensively at hazards presented by chemical substances. In particular, the Attorneys General strongly support the Proposal’s provisions requiring EPA to consider all identifiable conditions of use for a chemical substance and consider all exposure pathways by which a chemical substance could injure human health or the environment. These steps will help ensure that the risk evaluation process meets the legal requirements set by the 2016 TSCA amendments under the Frank R. Lautenberg Chemical Safety for the 21st Century Act (“Lautenberg Act”).<sup>2</sup>

We also support EPA’s efforts to prioritize environmental justice by expressly including “overburdened communities” in the regulatory definition of “potentially exposed or susceptible subpopulation.” However, we urge EPA to consider adding specific regulatory provisions that further ensure risk evaluations closely examine effects of chemical substances on overburdened communities, particularly with respect to aggregate exposures and cumulative risks.

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<sup>1</sup> 88 Fed. Reg. 74,292 (Oct. 30, 2023).

<sup>2</sup> Pub. L. No. 114-182, 130 Stat. 448 (Jun. 22, 2016).

However, the Attorneys General advocate that EPA consider altering the Proposal’s regulatory provisions for accidental releases, peer review, and fit-for-purpose risk evaluations. As explained below, strengthening the Proposal’s requirements with respect to these measures would improve the Agency’s risk evaluation process in carrying out its mandate under TSCA to protect human health and the environment from exposures to toxic chemical substances.

In these comments, the Attorneys General provide background information relevant to EPA’s Proposal, summarize the Proposal itself, describe our states’ interests, and offer the support of the Attorneys General with suggestions for strengthening the Proposal in accordance with the Agency’s mandate under TSCA to protect human health and the environment from toxic chemicals.

## **I. TSCA’s Risk Evaluation Process and EPA’s Procedural Rules and Policies**

### **a. TSCA’s Statutory Provisions on the Risk Evaluation Process**

Congress enacted TSCA in 1976 to “prevent unreasonable risks of injury to health or the environment associated with the manufacture, processing, distribution in commerce, use, or disposal of chemical substances.”<sup>3</sup> In enacting TSCA, Congress gave EPA “the authority to look at the hazards in total.”<sup>4</sup> To that end, TSCA authorized the Agency to regulate “chemicals themselves”—as opposed to products containing chemicals, or chemical discharges and emissions.<sup>5</sup>

In 2016, Congress enacted the Lautenberg Act,<sup>6</sup> which amended TSCA to provide that if EPA determines “that the manufacturing, processing, distribution in commerce, use, or disposal of a chemical substance . . . presents an unreasonable risk of injury to health or the environment,” EPA must take regulatory measures— up to and including a complete prohibition on use and distribution—“to the extent necessary so that the chemical substance . . . no longer presents such risk.”<sup>7</sup>

To carry out this goal, the 2016 amendments created a comprehensive risk evaluation process.<sup>8</sup> Through this process, EPA must determine whether a chemical “presents an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors.”<sup>9</sup> Among other things, that analysis must consider any “unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by [EPA], under the conditions of use.”<sup>10</sup> The term “‘conditions of use’ means the circumstances, as determined by [EPA], under which a chemical substance is intended, known, or reasonably

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<sup>3</sup> S. Rep. No. 94- 698, at 1 (1976); see *Safer Chems. v. EPA*, 943 F.3d 397, 406-07 (9th Cir. 2019) (discussing Congress’s purpose in enacting TSCA).

<sup>4</sup> *Id.*

<sup>5</sup> *Safer Chems.*, 943 F.3d at 406.

<sup>6</sup> Pub. L. No. 114-182, 130 Stat. 448 (2016) (codified at 15 U.S.C. §§ 2601 *et seq.*).

<sup>7</sup> 15 U.S.C. § 2605(a).

<sup>8</sup> See 15 U.S.C. § 2605(b); H. Rep. No. 114-176 at 23-25.

<sup>9</sup> 15 U.S.C. § 2605(b)(4)(A).

<sup>10</sup> *Id.*

foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.”<sup>11</sup> And a “‘potentially exposed or susceptible subpopulation’ means a group of individuals within the general population identified by [EPA] who, due to either greater susceptibility or greater exposure, may be at greater risk than the general population of adverse health effects from exposure to a chemical substance or mixture, such as infants, children, pregnant women, workers, or the elderly.”<sup>12</sup> When conducting the risk evaluation, EPA is required to make a determination based on the “weight of scientific evidence,” using the “best available science” and all “reasonably available information.”<sup>13</sup>

In conducting a risk evaluation, EPA must: (1) prepare an initial scope document that identifies the focus of the risk evaluation, including the hazards, exposures, conditions of use, and potentially exposed or susceptible subpopulations that EPA expects to consider;<sup>14</sup> (2) analyze “available information” on the hazards and exposures;<sup>15</sup> and (3) determine whether the chemical presents an unreasonable risk to health or the environment.<sup>16</sup> A determination that a chemical poses no unreasonable risk ends the TSCA process and is deemed “final agency action” subject to judicial review.<sup>17</sup> If EPA determines that a chemical presents an unreasonable risk to health or the environment, the Agency must immediately start the risk management process to reduce or eliminate those identified unreasonable risks.<sup>18</sup>

#### **b. EPA’s Prior Regulatory Actions to Implement Risk Evaluation**

In 2017, EPA codified a set of procedures for risk evaluations.<sup>19</sup> In this regulation, EPA stated that the conditions of use for a chemical “encompass all known, intended, and reasonably foreseen activities,” but also stipulated that “EPA has authority to exercise judgment in making its determination of whether a condition of use is known, intended, or reasonably foreseen.”<sup>20</sup> EPA excluded three categories of uses and activities from its definition of “conditions of use”: (1) “circumstances associated with activities that do not reflect ongoing or prospective manufacturing, processing, or distribution” (called “legacy uses”); (2) “disposals from such [legacy] uses” (“associated disposal”); and (3) “disposals that have already occurred” (called “legacy disposal”), citing statutory ambiguity.<sup>21</sup> The U.S. Court of Appeals for the Ninth Circuit has subsequently ruled that TSCA requires EPA to consider the first two of these legacy activities—“legacy uses” and “associated disposal”—and the current rulemaking addresses that judicial decision.<sup>22</sup>

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<sup>11</sup> *Id.* § 2602(4).

<sup>12</sup> *Id.* § 2602(12).

<sup>13</sup> *Id.* § 2625(i), (h), and (k); 40 C.F.R. § 702.33.

<sup>14</sup> *See* 15 U.S.C. § 2605(b)(4)(D).

<sup>15</sup> 15 U.S.C. § 2605(b)(4)(F); *see* 40 C.F.R. § 702.41(a), (d), (e).

<sup>16</sup> *See* 15 U.S.C. § 2605(b)(4)(A); 40 C.F.R. § 702.47.

<sup>17</sup> *See* 15 U.S.C. §§ 2605(i)(1), 2618(a)(1)(A).

<sup>18</sup> *See* 15 U.S.C. § 2605(a); 40 C.F.R. § 702.49(c).

<sup>19</sup> 82 Fed. Reg. 33,726, 33,728 (July 20, 2017).

<sup>20</sup> *Id.* at 33,728.

<sup>21</sup> 82 Fed. Reg. at 33,729.

<sup>22</sup> *See Safer Chems.*, 943 F.3d at 397.

The 2017 rule authorized EPA to “conduct its risk evaluations in stages,” so “in cases where EPA has sufficient information to determine whether or not the chemical substance presents an unreasonable risk under particular conditions of use, the Agency may issue an early determination for that subset of conditions of use . . . .”<sup>23</sup> That is, EPA has the discretion to reach a final decision on some conditions of use for a chemical while continuing to evaluate others.

EPA has conducted several risk evaluations under these procedural rules. For example, EPA conducted risk evaluations for ten chemical substances specifically listed by the revised TSCA provisions. As part of this process, EPA requested comments on its problem formulation documents for those chemicals.<sup>24</sup> In analyzing these chemicals, EPA declined to include in its risk evaluation chemical exposures that occur via exposure pathways that the Agency deemed adequately assessed and effectively managed by other environmental statutes administered by EPA. For instance, EPA noted that releases of the chemical perchloroethylene to the air, water, and land are regulated under the Clean Air Act, the Safe Drinking Water Act, Clean Water Act, and Resource Conservation and Recovery Act.<sup>25</sup> EPA thus did not include exposures to perchloroethylene from these pathways in its analysis.

On January 20, 2021, President Biden issued an executive order directing EPA, among other things, to review the 2017 risk evaluation procedures rule in accordance with his policy of improving public health, protecting the environment, limiting exposure to dangerous chemicals, and prioritizing environmental justice.<sup>26</sup> Later that year, EPA announced several policy changes in accordance with the executive order.<sup>27</sup> EPA’s Proposal would codify many of these policy changes, as discussed below.

## **II. State Interests in TSCA Risk Evaluations**

### **a. Arizona**

The state of Arizona is eager to protect its citizens from toxic chemical exposure risks. For example, The Arizona Attorney General’s Office recently launched an investigation into the use of lead-covered telecommunications cables across the state to understand the risks posed to the public.<sup>28</sup>

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<sup>23</sup> *Id.* at 33,729.

<sup>24</sup> 83 Fed. Reg. 26,998 (Jun. 11, 2018). A group of state Attorneys General, including some of the undersigned states to this comment, filed comment in response to EPA’s problem formulation documents. *See* Comments of the Attorneys General of Massachusetts, *et al.*, EPA-HQ-OPPT-2018-0210-0001 (Aug. 7, 2018), *available at* <https://www.regulations.gov/comment/EPA-HQ-OPPT-2018-0210-0013>.

<sup>25</sup> *See* Problem Formulation of the Risk Evaluation for Perchloroethylene (Ethene, 1,1,2,2-Tetrachloro), CASRN: 127-18-4 (May 2018), p. 59

<sup>26</sup> 88 Fed. Reg. 7037 (Jan. 25, 2021), *see also* [Fact Sheet: List of Agency Actions for Review | The White House](#)

<sup>27</sup> [EPA Announces Path Forward for TSCA Chemical Risk Evaluations | US EPA](#)

<sup>28</sup> AZPM Radio, “Arizona Attorney General initiates investigation into hazardous lead-covered cables, telecommunications infrastructure” (Dec. 5, 2023), *available at* <https://news.azpm.org/p/news-articles/2023/12/5/218383-arizona-attorney-general-initiates-investigation-into-hazardous-lead-covered-cables-telecommunications-infrastructure/>.

## **b. District of Columbia**

The District of Columbia also has a strong interest in protecting its residents and environment from the risks associated with harmful exposure to toxic chemicals. For example, the District regulates the removal and abatement of asbestos through its own licensing and permitting requirements to ensure the safe removal and disposal of asbestos-containing material and the safety of asbestos abatement workers and the surrounding community.<sup>29</sup>

In addition, the District's Lead Hazard Prevention and Elimination Act ("LHPEA"), which is administered by the District's Department of Energy and the Environment, protects residents from exposure to toxic lead paint.<sup>30</sup> And the District's Hazardous Waste Management Act includes provisions for toxic chemical source reporting and reduction.<sup>31</sup> Businesses identified by the Standard Industrial Classification ("SIC") as the largest generators or within the top 25% of all hazardous waste generators within the District, or that release a toxic chemical subject to regulation are required to file an annual Toxic Release Inventory ("TRI") Form R for each TRI-listed chemical it manufactures, processes or otherwise uses in quantities above the threshold reporting quantity.<sup>32</sup> Furthermore, reporting facilities must prepare and submit a toxic chemical source reduction plan which must be updated every four years.<sup>33</sup>

## **c. Illinois**

The state of Illinois has a strong interest in protecting its citizens from risks presented by toxic chemicals. For instance, the Illinois General Assembly recently passed new legislation making exceptions to the statute of limitations on legal remedies to injuries caused by workplace exposures to toxic substances such as asbestos.<sup>34</sup>

## **d. Massachusetts**

Under the Massachusetts Toxics Use Reduction Act, G.L. c. 21I ("TURA"), large-quantity chemical users in the Commonwealth are required to report annually on their use of toxic chemicals and conduct toxics use reduction planning every two years. And the TURA program may designate "Higher" or "Lower Hazard Substances" within the larger TURA list of Toxic or Hazardous Substances. If a chemical is designated as a Higher Hazard Substance ("HHS") under TURA, the thresholds for reporting for those chemicals are lowered. To date, the TURA program has designated 14 chemicals or chemical categories as HHS,<sup>35</sup> including four of

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<sup>29</sup> 20 D.C. Municipal Regulations § 20-800.

<sup>30</sup> Code of the District of Columbia ("D.C. Code") § 8-231.01 et seq.

<sup>31</sup> D.C. Code Chapter 13, Subchapter II.

<sup>32</sup> D.C. Code § 8-1317.

<sup>33</sup> D.C. Code § 8-1318.

<sup>34</sup> See 820 ILCS 305/1 et seq.

<sup>35</sup> See Commonwealth of Massachusetts, Executive Office of Environmental Affairs, *Designation of TURA Higher & Lower Hazard Substances in Massachusetts*, [https://www.turi.org/content/download/9620/166751/file/Fact+Sheet.+HHS+and+LHS.+2017.pdf#:~:text=in%20Massachusetts,Lower%20Hazard%20Substances%20\(LHS\).](https://www.turi.org/content/download/9620/166751/file/Fact+Sheet.+HHS+and+LHS.+2017.pdf#:~:text=in%20Massachusetts,Lower%20Hazard%20Substances%20(LHS).)

the initial ten of EPA’s “priority” TSCA chemicals: trichloroethylene (“TCE”), perchloroethylene, 1-bromopropane, and methylene chloride.<sup>36</sup>

In Massachusetts, the Toxics Use Reduction Institute (“TURI”), created under TURA, Section 6, and the Massachusetts Office of Technical Assistance and Technology (“OTA”), its partner agency, work with Massachusetts businesses to reduce the use of toxic chemicals in the state. TURI and OTA are engaged in on-going work to help Massachusetts businesses and communities reduce their use of toxic chemicals, work that complements other regulatory activities within the Commonwealth to protect workers, communities, and the environment from toxic chemicals

#### **e. Minnesota**

In the wake of a massive civil settlement with an industrial manufacturer that exceeded its TCE permit limits, Minnesota became the first state in the nation to ban most permitted uses for TCE altogether. While the ban went into effect as of June 2022, the regulated sites (130 separate facilities) were able to comply ahead of schedule.<sup>37</sup>

#### **f. New York**

New York State has acted to protect residents from many chemicals that have been or will be evaluated under TSCA. For example, New York regulates asbestos, polybrominated diphenyl ethers, trichloroethylene, tetrabromobisphenol A (4,4'-(1-methylethylidene)bis[2, 6-dibromophenol]), 1,4-dioxane, formaldehyde, perchloroethylene, carbon tetrachloride, tris(2-chloroethyl) phosphate, hexachlorobutadiene, di-ethylhexyl phthalate, methylene chloride, phosphoric acid triphenyl ester (triphenyl phosphate), and pentachlorothiophenol.<sup>38</sup> New York has also identified n-methylpyrrolidone, butyl benzyl phthalate, and di-isobutyl phthalate as chemicals of concern.<sup>39</sup>

#### **g. Oregon**

In 2018, Oregon adopted its Cleaner Air Oregon program regulating emissions of toxic air contaminants from industrial and commercial facilities based on local risks to health, closing a gap in federal air toxics regulations.<sup>40</sup> Oregon relies on EPA as a principal authoritative scientific agency for toxicity reference values underpinning the risk assessments that determine requirements for emissions reductions.

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<sup>36</sup> That six of the Initial Ten TSCA Chemicals are not designated as HHS in Massachusetts does not mean that the TURA program considers them to be less toxic than others. Rather, it means that those chemicals have not yet been addressed under this regulatory process.

<sup>37</sup> Minn. Stat. § 116.385, available at <https://www.revisor.mn.gov/statutes/cite/116.385>. See also Minnesota Pollution Control Agency, “How Minnesota Passed the Country’s First Ban on Trichloroethylene,” available at <https://www.pca.state.mn.us/news-and-stories/tce-ban-in-effect>.

<sup>38</sup> See New York Environmental Conservation Law Chapter 43-B, Articles 35 and 37; 6 NYCRR § 200.1.

<sup>39</sup> *Id.*

<sup>40</sup> Or. Admin. R. 340-245-0005 through 340-245-0400 and 340-247-0010 through 340-247-8010.

### III. Comments of the Attorneys General on EPA's Proposed Risk Evaluation Procedures

The Attorneys General strongly support EPA's proposal to revise the TSCA risk evaluation procedures. The risk assessment process, as it currently exists, fails to capture many harms from a variety of toxic chemicals. If adopted, the new procedures will better ensure that the risk evaluation process complies with statutory requirements from the 2016 TSCA Amendments to evaluate comprehensively the risks posed to human health and the environment by chemical substances. Below, we discuss several specific aspects of the Proposal that we support and identify several aspects of the Proposal we urge EPA to strengthen in its final rule.

#### a. EPA to Consider All Conditions of Use in its TSCA Risk Evaluations

TSCA's plain language defines "conditions of use" as the circumstances under which a chemical substance is "intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of."<sup>41</sup> This mandate requires EPA to evaluate the risks of each chemical substance identified for evaluation under *all* circumstances for which exposures can be anticipated. EPA's risk evaluations must comprehensively consider the many ways that a chemical substance may be present in the environment, and therefore the many avenues through which a chemical substance may present unreasonable risk to human health or the environment. The Attorneys General strongly support the provisions in the Proposal that "make clear that the scope of TSCA risk evaluations will not exclude any 'conditions of use'".<sup>42</sup> The proposed regulatory text provides that "EPA will not exclude conditions of use from the scope of risk evaluation"<sup>43</sup> and that "EPA will determine whether a chemical substance does or does not present an unreasonable risk after considering the risks posed under all of the conditions of use . . . ."<sup>44</sup>

Importantly, the Proposal would ensure that "legacy" uses are not excluded from risk evaluation. Several recent risk evaluations have not considered legacy uses, perhaps most notably regarding asbestos, and therefore failed to identify and assess risks from chemical exposures from the full range of known and likely exposure pathways. By including these and all other known conditions of use, the Proposal corrects errors in the existing risk evaluation procedures. In this way, the Proposal includes all conditions of use in the risk evaluation process, allowing EPA better to satisfy TSCA's mandate to eliminate unreasonable risks of injury to health or the environment, without consideration of costs or other non-risk factors, including unreasonable risks to a potentially exposed or susceptible subpopulation.

In the context of conditions of use, the Proposal's preamble discusses EPA's treatment of accidental exposures, stating that "regular or predictable exposures from equipment leaks as part of the manufacturing process" would be the type of accidental exposure that is "reasonably foreseen" and therefore included in the scope of risk evaluation.<sup>45</sup> However, it would not

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<sup>41</sup> 15 U.S.C. § 2602(4).

<sup>42</sup> 88 Fed. Reg. at 74,296.

<sup>43</sup> Proposed § 702.37(a)(4), 88 Fed. Reg. at 74,321.

<sup>44</sup> *Id.* at proposed § 702.37(a)(5), 88 Fed. Reg. at 74,321.

<sup>45</sup> 88 Fed. Reg. at 74,298.

consider hurricanes, wildfires, or other extreme weather events, deeming these events as not regular or predictable.<sup>46</sup> EPA provided a caveat, noting that risks created by climate change-related harms such as rising sea levels or warmer average temperatures could be considered regular and predictable, and the Agency solicited comment on this issue.

The Attorneys General urge EPA to consider not only climate harms from rising sea levels and warmer average temperatures, but also extreme weather events that intensifying climate change makes predictably, regularly more likely. For example, new flood risk models—used by EPA’s environmental justice screening tool—consider the effects of precipitation and climate change.<sup>47</sup> Furthermore, EPA should consider regulatory language codifying these events as predictable contributors to risks that the Agency must evaluate.

### **b. EPA to Consider All Exposure Pathways in its TSCA Risk Evaluations**

A single chemical substance may present risk to human health or the environment in multiple ways—for example, inhalation through the air, ingesting through water, or absorption through the skin following direct dermal exposure—that the Proposal terms exposure “routes” or “pathways.”<sup>48</sup> The Proposal provides that the Agency must consider all exposure pathways when conducting a risk evaluation of a chemical substance, correcting a major flaw in the risk evaluation process. Under the existing risk evaluation procedures, EPA at times failed to consider pathways that may have been considered in the context of other Federal statutes. Correcting this flaw, the Proposal provides that “EPA will assess all exposure routes and pathways relevant to the chemical substance under the conditions of use, including those that are regulated under other Federal statutes.”<sup>49</sup>

Under the existing procedures, EPA failed to appropriately consider exposures resulting from uses of a chemical substance because they were purportedly addressed in the context of a different federal statute. For example, during the risk evaluation process for the chemical perchloroethylene—a dry cleaning solvent also used as a metal degreaser—EPA noted that the Clean Air Act, Safe Drinking Water Act, Clean Water Act, and Resource Conservation and Recovery Act all authorized the regulation of the chemical.<sup>50</sup> Under this theory, EPA assumed that those statutes “adequately assess and effectively manage exposures” to perchloroethylene and did not plan to consider those exposure pathways in its risk evaluation.<sup>51</sup> The Proposal corrects this misguided approach and conforms with the legislative intent of TSCA to address lack of regulatory authority under other statutes to address the risk of toxics exposure.<sup>52</sup> As the Commerce Committee TSCA reform report notes: “there is no agency which has the authority to look comprehensively at the hazards associated with the chemical. Existing authority allows the agencies to only look at the hazards within their jurisdiction in isolation from other hazards

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<sup>46</sup> *Id.*

<sup>47</sup> *E.g.*, First Street Foundation, *Flood Model Methodology* (July 31, 2023), available at <https://firststreet.org/methodology/flood/>.

<sup>48</sup> Proposed § 702.33, 88 Fed. Reg. at 74,320.

<sup>49</sup> Proposed section 702.39(d)(9), 88 Fed. Reg. at 74,322.

<sup>50</sup> *See* Problem Formulation of the Risk Evaluation for Perchloroethylene (Ethene, 1,1,2,2-Tetrachloro), CASRN: 127-18-4 (May 2018), p. 59-63.

<sup>51</sup> *Id.*

<sup>52</sup> *See* Report to Senate from the Committee on Commerce, S. Rep. No. 94-698 (Mar. 16, 1976).



associated with the same chemical. The bill would grant [EPA] the authority to look at the hazards in total.”<sup>53</sup> Accordingly, the Attorneys General strongly support this necessary course correction.

### **c. EPA to Consider Environmental Justice and Impacts to Susceptible Subpopulations**

Communities of color and low-income communities in our states have traditionally borne a disproportionately high burden of environmental and public health harms, including unreasonable risks from exposures to toxic chemicals. The Attorneys General have focused on addressing this disproportionate burden on environmental justice communities within their own states. For example, the Illinois Attorney General’s Office has worked to address extensive environmental contamination from asbestos-containing material in a disproportionately burdened residential area of Springfield, Illinois.<sup>54</sup> EPA’s Proposal strengthens how its risk evaluations address environmental justice concerns. The Attorneys General support these steps while also suggesting that EPA codify specific provisions to ensure that the Agency fully assesses risks from chemical substances to environmental justice communities in the future.

TSCA directs EPA to evaluate risk to “potentially exposed or susceptible subpopulation[s].”<sup>55</sup> In the preamble to its Proposal, EPA states that it will interpret these terms to include fenceline communities “e.g., those communities in close proximity to facilities emitting air pollutants or living near effluent releases to water”<sup>56</sup> and add “overburdened communities” (“communities that may be disproportionately exposed or impacted by environmental harms”)<sup>57</sup> to example susceptible subpopulations. EPA also pledges to “engage with the public throughout the TSCA prioritization and risk evaluation processes,” “use available [environmental justice] screening tools,” and “develop [new] risk evaluation approaches to help determine risk from all relevant exposure pathways with an emphasis on exposures to these commonly overburdened communities.”<sup>58</sup>

Despite this discussion in the Proposal’s preamble, the proposed regulatory text does not fully detail EPA’s stated plans to evaluate risks to overburdened communities besides adding “overburdened communities” to its definitions.<sup>59</sup> To ensure that environmental justice is fully considered throughout the risk evaluation process, the Attorneys General urge EPA to include the measures discussed in its preamble within the regulatory text. Codifying environmental justice considerations in the regulatory text will provide a more durable means for assessing risk to

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<sup>53</sup> *Id.*

<sup>54</sup> Illinois Attorney General’s Office, “Attorney General Announces Consent Orders that Conclude Prolonged Legal Battle over Pillsbury Mills Site” (Apr. 21, 2022), *available at* <https://illinoisattorneygeneral.gov/dA/947f7eed07/202204-21%20CONSENT%20ORDERS%20THAT%20CONCLUDE%20PROLONGED%20LEGAL%20BATTLE%20OVR%20PILLSBURY%20MILLS%20SITE.pdf>.

<sup>55</sup> 15 U.S.C. § 2605(b)(4)(A).

<sup>56</sup> 88 Fed. Reg. at 74,306.

<sup>57</sup> *Id.*

<sup>58</sup> 88 Fed. Reg. at 74,307.

<sup>59</sup> Proposed § 702.33; 88 Fed. Reg. at 74,320.

overburdened communities in the future.

#### **d. EPA to Employ Fit-for-Purpose Risk Evaluations and Consideration of Aggregate Effects and Cumulative Risk**

While recognizing the importance of a comprehensive risk assessment that evaluates all conditions of use and all exposure pathways of a chemical substance, EPA's Proposal also provides for "fit-for-purpose" evaluations intended to "be reliably completed within the time frames required by [TSCA]" by "allowing for varying types and levels of analysis" during the evaluation process.<sup>60</sup> The proposed regulatory text provides that the "extent to which EPA will refine its evaluations for one or more condition of use in any risk evaluation will vary as necessary to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment."<sup>61</sup> EPA also acknowledges that, as part of this "fit-for-purpose" approach, the Agency may use qualitative (*i.e.*, non-numerical) exposure assessments for short, infrequent or low-intensity exposures.<sup>62</sup> The Attorneys General urge EPA to consider strengthening its regulatory text in a manner that provides strong assurance that EPA will thoroughly evaluate all conditions of use and all exposure pathways in fit-for-purpose evaluations.

We are concerned that by using qualitative analysis on what EPA may consider less significant avenues of exposure, the Agency may compromise its analysis of aggregate exposures and cumulative risk. As EPA acknowledges, aggregate exposures to chemical substances can lead to unreasonable risks in total, even if any one individual exposure does not: "it is the Agency's responsibility to consider the aggregation of what may be lower individual exposures from individual conditions of use and routes of exposure."<sup>63</sup> Because qualitative assessments alone are insufficient to perform this kind of aggregation, the risk evaluation procedures should explicitly limit their use. We support the use of qualitative methods to complement quantitative methods in identifying use and exposure pathways that otherwise may have been uncharacterized and may disproportionately affect environmental justice communities. As but one example, ensuring risk evaluations properly consider that hair, nail, and cleaning products containing formaldehyde and phthalates may be aggressively marketed to and used more often by women of color in personal and occupational settings.

With respect to how the Agency evaluates cumulative risk, the preamble acknowledges that many chemicals "may have the same health effects" and that TSCA grants the authority for EPA to "consider the combined risk from multiple chemical substances or a category of chemical substances."<sup>64</sup> Again, an adverse health effect from an individual chemical may be relatively small, but when added together with risks from a range of chemicals that have the same health effects, the cumulative risk may be quite significant. We urge EPA to include in its regulatory text limits on the use of the fit-for-purpose analysis to allow for a full analysis of aggregate exposures and cumulative risks.

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<sup>60</sup> 88 Fed. Reg. at 74,300.

<sup>61</sup> 88 Fed. Reg. at 74,321.

<sup>62</sup> 88 Fed. Reg. at 74,298.

<sup>63</sup> 88 Fed. Reg. at 74,305.

<sup>64</sup> 88 Fed. Reg. at 74,305.

#### **e. EPA's Consideration of Peer Review in its TSCA Risk Evaluations**

EPA proposes to change peer review requirements in risk evaluations. TSCA requires EPA to establish an advisory committee “to provide independent advice and expert consultation with respect to the scientific and technical aspects of issues relating to the implementation of TSCA.”<sup>65</sup> Although the existing rule provides for peer review, the Proposal instead provides that “EPA expects that peer review activities on risk evaluations . . . or portions thereof” will be consistent with applicable policies.<sup>66</sup>

EPA states that this change is intended to apply only where, for example, a risk evaluation relies on peer reviewed products conducted by another EPA office or authoritative body. However, the proposed regulatory text states only that the peer review process—including decisions to only apply peer review to portions of the risk evaluation—must comply with applicable guidance documents and TSCA itself. The Attorneys General are mindful this open-ended provision could allow future policy or guidance changes from the Agency to subvert the peer review process, potentially allowing large portions of risk evaluations to proceed without peer review. For this reason, the Attorneys General urge EPA to consider leaving the regulatory text as it exists in the current rule or implement additional regulatory guidelines on when a partial peer review may be acceptable.

#### **f. EPA Process for Reviewing Requests**

EPA has proposed changes to how it will review Manufacturer-Requested Risk Evaluations (“MRREs”).<sup>67</sup> We support the Agency’s emphasis on transparency and public engagement through EPA’s commitment to providing notice of receipt for MRREs within 15 days and initiating a public comment period underscores the importance of inclusivity in decision-making. This approach allows for diverse perspectives, including those from communities potentially impacted by chemical substances, contributing to more robust and science-based risk evaluations.

We believe the proposed amendments also appropriately handle MRREs more efficiently. The streamlined approach for MRRE submissions, public notice, and comment periods demonstrates a commitment to efficiency without compromising scientific integrity. This approach not only facilitates a timely risk evaluation process but also ensures that resources are used judiciously, aligning with the overarching goal of achieving sustainable TSCA implementation, and the Attorneys General express our appreciation for this approach to manufacturers’ requests for risk evaluations.

### **IV. Conclusion**

The Attorneys General appreciate EPA’s efforts, reflected in the Proposal, to revise its procedures for chemical risk evaluations under TSCA to address flaws that were codified in the Agency’s 2017 rules. By committing to a risk evaluation process that considers all conditions of

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<sup>65</sup> 88 Fed. Reg. at 74,307, citing 15 U.S.C. § 2625(o).

<sup>66</sup> 88 Fed. Reg. at 74,323, § section 702.41.

<sup>67</sup> 88 Fed. Reg. at 74,314.

use and all exposure pathways, the final rule, when adopted, will ensure that future risk evaluations comprehensively consider the potential harms to human health and the environment from chemical substances, as intended by TSCA.

EPA also expresses a strong willingness to bolster other aspects of the process, such as how it considers impacts to environmental justice communities and, relatedly, how it accounts for aggregate risk and cumulative impacts. Though we strongly support such efforts, we urge EPA to consider adding regulatory provisions to strengthen protections for all susceptible subpopulations, including overburdened communities, to ensure that this approach is taken in future risk evaluations. And the Attorneys General urge EPA to address our concerns with how the Agency will implement fit-for-purpose risk evaluations and partial peer review by adopting a final rule whose regulatory text ensures that these changes to the risk evaluation process are conducted in a way that is fully in accordance with TSCA and ensures protection of human health and the environment from unreasonable risks presented by chemical substances.

Sincerely,

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