

## Questions and Answers

2/29/24

EPA received the questions below from stakeholders and is sharing them with minor edits along with answers provided by the Agency as a resource for reporting under this rule. EPA may publish additional questions and answers as they are identified during the reporting period.

1. **Q:** The only sources of asbestos relevant to reporting are those associated with asbestos in the raw materials that ultimately became a product in commerce. Correct?

*A: In general, mining and milling of bulk asbestos and bulk materials containing asbestos are also relevant to reporting. Processing of asbestos in a product or mixture, including as an impurity, after its manufacture, for distribution into commerce is also relevant to reporting. Any amounts/sources that were manufactured or processed for commercial purposes are to be reported (e.g., imported in bulk, even any portions ultimately discarded before being incorporated in a final commercial product).*

2. **Q:** Which of the following two interpretations of the preamble and rule with respect to “processors” and “articles” are correct?
  - a. Entities that (1) import raw materials for their products, (2) import a finished product (of any sort), (3) import components for assembly, or (4) build finished products using components (where any of those scenarios could potentially include asbestos) at some concentration have a duty to report.

*A: The reporting standard requires that manufacturers (including importers) and processors report information to the extent that the information is known to or reasonably ascertainable by (KRA) the manufacturer (including importer) or processor (see TSCA section 8(a)(2)). The term “known to or reasonably ascertainable by” is defined at 40 CFR 704.3 as “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.” Under the “known to” portion of the reporting standard (i.e., reporting information insofar as is “known to or reasonably ascertainable” by the submitter), a submitter must ascertain what it knows about the processing and use of a chemical substance it manufactures (including imports) or processes, without confining its inquiry to what is known to managerial and supervisory employees. A submitter would also be expected to review other information which the manufacturer (including importer) or processor may have in its possession. This standard requires that submitters conduct a reasonable inquiry within the full scope of their organization (not just the information known to managerial or supervisory employees). The inquiry would be as extensive as a reasonable person, similarly situated, might be expected to perform within the organization. Information derived from customer or supplier surveys or other customer or supplier contacts, like any other information, would be “known to” the submitter if it is available after a reasonable inquiry within the organization. The standard does not necessarily require that the manufacturer conduct an exhaustive survey of all employees.*

**or**

- b. There is no theoretical basis for the absence of asbestos that inherently relieves any entity from reporting (that is to say, all manufacturers must inquire with their supply chain in order to meet the due diligence standard described in the preamble). Correct?

*A: Based on the reporting standard described above, correct, there is no theoretical basis that inherently relieves any entity from reporting. If an entity does not know nor can reasonably ascertain that they have [manufactured or processed asbestos, then they are not covered by this rule's reporting requirements.*

3. **Q:** Do automotive service shops that, for example, replace asbestos containing disc brake pads fall under the definition of “*Secondary processor*” - meaning a person who further processes asbestos, after primary processing of asbestos is completed, including as a component of a mixture, or an article containing asbestos?

*A: Automotive service shops that replace asbestos containing brake pads not sourced domestically (i.e., directly imported) may fall under the importer of articles activity. Automotive service shops that replace asbestos containing brake pads sourced domestically would be considered end users and would not be subject to the rulemaking.*

4. **Q:** Would insulation surrounding ductwork or pipes in older manufacturing factories fall under the reporting rule? Or would they be a “non-isolated intermediate” or “byproduct”? I understand that asbestos as an impurity in something like vermiculite is subject to the rule, but I’m just not clear what a “non-isolated intermediate” or “byproduct” might be.

*A: Possibly. For example, if the insulation and/or ductwork were removed and manufactured into another product, mixture, or article, including as an impurity, for distribution into commerce, that would be considered processing.*

*Per TSCA, byproduct means a chemical substance produced without a separate commercial intent during the manufacture, processing, use, or disposal of another chemical substance or mixture. Because asbestos fibers are naturally-occurring chemicals, they are unlikely to be produced during manufacture, process, use, or disposal of another chemical substance or mixture. Similarly, TSCA defines non-isolated intermediate as “any chemical substance that is consumed, in whole or in part, in chemical reactions used for the intentional manufacture of other chemical substances or mixtures, or that is intentionally present for the purpose of altering the rates of such chemical reactions.” Asbestos is unlikely to qualify as a non-isolated intermediate.*

5. **Q:** Shall the below substances be applied to the rule and, if they are found in the article, the article manufacturer shall report for his product?

winchite [CASRN 12425-92-2], and richterite [CASRN 17068-76-7])

*A: Provided the manufacturer is otherwise subject to the reporting requirements, they will likely only report secondary processing if they start with the asbestos fibers (i.e., winchite and richterite) when they are components of a mixture which they incorporate into their own products (including articles) if the winchite and richterite are components comprising Libby amphibole.*

6. **Q:** I could see Libby amphibole asbestos has a CASRN 1318-09-8 on both below websites, so why doesn't the final rule include that CASRN and mention that CASRN is not applicable?

- [https://iris.epa.gov/ChemicalLanding/&substance\\_nmbr=1026](https://iris.epa.gov/ChemicalLanding/&substance_nmbr=1026)
- <https://comptox.epa.gov/dashboard/chemical/details/DTXSID70873869>

*A: As noted in the final rule, the term ‘‘Libby amphibole asbestos’’ refers to the naturally occurring mixture of amphibole mineral fibers of varying elemental composition (winchite, richterite, tremolite, etc.) that have been identified in the Rainy Creek complex near Libby, Montana. CASRN 1318-09-8 represents any amphibole (i.e., amphibole-group minerals) and is not limited to Libby amphibole asbestos or asbestiform amphiboles. (See Amphibole-group minerals. CAS Common Chemistry. CAS, a division of the American Chemical Society, n.d. [https://commonchemistry.cas.org/detail?cas\\_rn=1318-09-8](https://commonchemistry.cas.org/detail?cas_rn=1318-09-8) (retrieved 2023-08-04) (CAS RN: 1318-09-8). Licensed under the Attribution-Noncommercial 4.0 International License (CC BY-NC 4.0).)*

7. **Q:** The only sources of asbestos relevant to reporting are those associated with asbestos in the raw materials that ultimately became a product in commerce. Correct?

*A: Asbestos relevant to reporting is not limited to asbestos in raw materials. It is also possible that an end product containing asbestos (e.g., insulation) that is manufactured into another product, mixture, or article, including as an impurity, for distribution into commerce, would be considered processing and would be relevant to reporting.*

8. **Q:** Asbestos fiber is present in an imported gasket used in the manufacture and repair of pumps or engines. Which of the following facilities must report under the rule:

- a. The importer of the gasket that incorporates asbestos fiber
- b. The facility that includes the gasket in a pump that is then sold in commerce in the U.S.
- c. The facility that incorporates the pump containing the gasket containing asbestos in a skid mounted water treatment unit that is then sold in commerce in the U.S.

*A: The three entities described above are manufacturers (including importers) and/or primary processors or secondary processors of the gasket—an article—containing asbestos for distribution into commerce rather than end users. It is unclear from the scenario provided in ‘‘a’’ whether the gasket, as imported, contained any asbestos. If it contained asbestos, then the facility would be considered a manufacturer because it imported a product containing asbestos. If the gasket did not contain asbestos when imported, but the facility produced or manufactured asbestos to then incorporate into the gasket, then it would be considered a manufacturer. The facility described in ‘‘a’’ is likely also a primary processor since it is incorporating asbestos into the product that it is producing and distributing into commerce. The facilities described in ‘‘b’’ and ‘‘c’’ are likely secondary processors because they start with asbestos when it is a component of an article (i.e., the gasket) and incorporate the article into their own products (i.e., the pump, and then the treatment unit) that are then distributed into commerce. They would all be subject to reporting. Note that a downstream recipient that directly sells one of these products to a consumer/user would likely also be a secondary processor (assuming they are not further processing the product) and therefore be subject to reporting.*

9. **Q:** Which of the following two interpretations of the preamble and rule with respect to ‘‘processors’’ and ‘‘articles’’ are correct?

This question is with respect to if the rule applies to (1) all importers and manufacturers, (2) all importers and manufacturers with potential for inclusion of asbestos or (3) the subset of importers and manufacturers with actual knowledge of inclusion of asbestos.

Which firms would have to seriously evaluate compliance with the rule with an eye toward “known to or reasonably ascertainable by”? Which would actually have to report?

Four firms are preparing an aggregate mix for construction, they are respectively:

- a. Firm 1 prepares an aggregate mix using quarried minerals; it purchases the components based on specific physical characteristics (size, density, pH, etc.); it has no records of suppliers, who are themselves wholesalers, over time aside from payment of invoices and no subsequent record of testing for asbestos (e.g., facility can neither prove the presence of asbestos or absence of asbestos).

*A: The KRA reporting standard, by definition, permits a compliance determination that may limit reporting burden for the identified entities when that information cannot be known to or reasonably ascertainable by an entity, or another person similarly situated. Generally, a person should contact at least some suppliers, even wholesalers, to see if information is available. Where no information is available (e.g., given lack of records of discrete suppliers alongside a general lack of information regarding the presence of asbestos in the materials), reporting is not required. EPA recommends that a facility document its efforts, or inability thereof, to determine what information is available.*

- b. Firm 2a prepares an aggregate mix using domestic quarried minerals extracted from the same locations for the last 50 years and none of those locations are within 20 miles of a known asbestos containing geology BUT it is a matter of record that asbestos occurs in the general metamorphic geology as shown in a 1:500,000 scale map of the state (just to illustrate what a 1:500,000 scale map would look like see -- [https://ngmdb.usgs.gov/Prodesc/proddesc\\_34878.htm](https://ngmdb.usgs.gov/Prodesc/proddesc_34878.htm)).

*A: Given Firm 2a is aware of the general metamorphic geology of the state, if the source (i.e., the quarry) of the aggregate is known, Firm 2a would be expected to contact that quarry for additional information about the asbestos content of its aggregate. If the quarry does not have or does not supply additional information, then Firm 2a would likely have fulfilled its KRA duties and would not be expected to conduct further inquiries. If the quarry does supply additional information, Firm 2a would need to base its reporting determination on that additional information. Similarly, if the source location would suggest the presence of asbestos, then, depending on the facts involved, it might be appropriate for the firm to base potential reporting on known average concentration percentages of the presence of asbestos in aggregate from the region.*

- c. Firm 2b prepares an aggregate mix using domestic quarried minerals extracted from quarries where asbestos fibers have been recovered during required OSHA safety monitoring but has never been observed in the aggregate mix delivered to customers.

*A: Because Firm 2b knows that the aggregate originates from quarries where asbestos fibers have been recovered, the KRA standard would require Firm 2b to contact the quarry for additional information about the asbestos content of its aggregate. If the quarry does not have or does not supply additional information, then Firm 2b may report asbestos (CASRN 1332-21-4) (because it is unable to determine the specific type) in bulk material (i.e., aggregate) with either an estimated quantity of bulk material processed and percent of the bulk material that is asbestos. If Firm 2b is unable to make such estimates, indicate that the quantity processed and/or percent asbestos are not known or reasonable ascertainable.*

- d. Firm 3 prepares an aggregate mix using imported quarried minerals known to always co-occur with asbestos and asbestos has been observed at trace levels in process monitoring.

*A: Because the imported quarried materials are known to always co-occur with asbestos and because asbestos has been observed in process monitoring, Firm 3 would be expected to at least report the specific type of asbestos (if known) and the concentrations observed during process monitoring. If the specific type is not identified in the process monitoring, Firm 3 would report importation of asbestos (CASRN 1332-21-4) in a bulk material. Firm 3 need not conduct specific process monitoring to comply with this rule, but if existing monitoring data were responsive to this reporting rule, then reporting would be required.*

- 10. Q:** Is there clarification available on the definition of “product” in the rule? Is this reporting rule specific to products being produced and sold OR the existence of asbestos anywhere in the processing?

*A: For purposes of this rulemaking, “product” may include any manufactured (including imported) or processed asbestos, asbestos-containing articles (including those containing asbestos as an impurity), as well as mixtures of which asbestos is a component. It is also possible that an end product containing asbestos (e.g., insulation) that is manufactured into another product, mixture, or article, including as an impurity, for distribution into commerce, would be considered processing and would be relevant to reporting.*

*This rule applies to asbestos anywhere in the processing, including by primary and secondary processors, provided the presence of asbestos is known or reasonable ascertainable (KRA). Note that the KRA reporting standard, by definition, permits a compliance determination that may limit reporting burden for the identified entities when that information cannot be known to or reasonably ascertainable by an entity, or another person similarly situated. When products are being produced and sold, generally, a person should contact at least some suppliers, even wholesalers, to see if information is available. Where no information is available (e.g., given lack of records of discrete suppliers alongside a general lack of information regarding the presence of asbestos in the materials), reporting is not required. EPA recommends that a facility document its efforts, or inability thereof, to determine what information is available.*

*Note that this rule requires compliance by manufacturers, primary processors, and secondary processors of asbestos. As an example, a retail operation that sells a product containing asbestos would not be required to report on the asbestos in that product (e.g., the site received a pump containing a gasket lined with asbestos from a U.S. supplier and then sold that pump in commerce in the U.S.), unless the site also incorporated the asbestos fiber into the product in which case it would be regulated by this rule (e.g., if the site incorporated a gasket containing asbestos into a pump that it then sold in commerce in the U.S.).*

- 11. Q:** Will the reporting form include an optional free text or attachment prompt for companies to submit any additional information they wish to include in their submittals? If so, please also confirm whether this will be included on both Form A and Form B.

*A: The reporting application does not require any additional documentation. However, Form B does have an option for reporting sites to upload test result files, which a site could also use to voluntarily attach and submit miscellaneous documents.*

- 12. Q:** Could EPA clarify what is meant by “end product” reporting for companies that perform both primary and secondary processing of asbestos, as those terms are defined in the rule? As an

example: primary processing results in composition X, and then the same company performs secondary processing to convert composition X into a product it then sells. Would the only “end product” the company reports be the product it sells, or does the company need to report two “end products” – composition X (which the company uses, but does not sell) and the product the company sells?

**A:** *In the scenario described, this site would report both primary processing as described at 40 CFR 704.180(e)(4)(i)(D)) and secondary processing as described at 40 CFR 704.180(e)(4)(i)(E); they would report on both “composition x” and the end product.*