

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

November 7, 2025

Via electronic submission to www.regulations.gov

**Re: Docket ID No. EPA-HQ-OPPT-2025-0260; Multistate Comments in Response to the
U.S. Environmental Protection Agency’s Proposed Procedures for Chemical Risk
Evaluation Under the Toxic Substances Control Act**

The undersigned Attorneys General of Illinois, Massachusetts, Connecticut, the District of Columbia, Hawaii, Maine, Maryland, Michigan, Minnesota, New Jersey, New York, Oregon, Rhode Island, Vermont, and Washington, and Wisconsin and the Corporation Counsel of the City of New York (collectively, the “Attorneys General”) submit these comments concerning the U.S. Environmental Protection Agency’s (“EPA” or the “Agency”) proposed amendments (the “Proposal”) to the procedural framework for Agency-conducted risk evaluations on existing chemical substances under the Toxic Substances Control Act (“TSCA”).¹

The Proposal deviates from EPA’s legal mandate under TSCA—to look comprehensively at whether a chemical substance presents an unreasonable risk to health or the environment. Unlike the existing rules, the Proposal would require EPA neither to consider all conditions of use for a chemical substance, nor to consider all potential exposure pathways by which chemical substances could cause harm. Furthermore, EPA’s Proposal would change regulations in ways that threaten residents burdened by environmental justice concerns in our states and for people who could be subject to chemical exposure in the workplace.

EPA’s approach will lead to flawed risk evaluations that arbitrarily underestimate significant risks from chemical exposures, undermining the Agency’s mandate under TSCA to protect human health and the environment. For these and other reasons detailed below, the Attorneys General strongly oppose this Proposal.

I. TSCA’s Chemical Risk Evaluation Process

A. History of TSCA

Congress enacted TSCA in 1976 for the express purpose of “prevent[ing] unreasonable risks of injury to health or the environment associated with the manufacture, processing, distribution in commerce, use, or disposal of chemical substances.”² As such, TSCA authorized

¹ 15 U.S.C. §§ 2601 *et seq.* (TSCA); 90 Fed. Reg. 45,690 (Sept. 23, 2025).

² 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).

EPA “to look at the hazards in total,”³ and to assess for regulation the “chemicals themselves”—as opposed to looking only at individual products containing chemicals, or specific chemical discharges and emissions.⁴

In 2016, the 114th Congress, recognizing that TSCA was failing in its purpose, passed the Frank R. Lautenberg Chemical Safety for the 21st Century Act (the “Lautenberg Act”)⁵ with bipartisan support, reforming TSCA to better carry out its purpose of preventing unreasonable risks of injury to health and the environment. The Lautenberg Act 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 banning the use and distribution of that substance “to the extent necessary so that the chemical substance . . . no longer presents such risk.”⁶

To carry out this goal, the Lautenberg Act created a comprehensive risk evaluation process.⁷ 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.”⁸ 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.”⁹ The term “‘conditions of use’ means the circumstances, as determined by [EPA], under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.”¹⁰ 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.”¹¹ 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.”¹²

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;¹³ (2) analyze

³ *Id.*

⁴ *Safer Chems.*, 943 F.3d at 406.

⁵ Pub. L. No. 114–182, 130 Stat. 448 (2016) (codified at 15 U.S.C. §§ 2601 *et seq.*).

⁶ 15 U.S.C. § 2605(a).

⁷ *See* 15 U.S.C. § 2605(b); H. Rep. No. 114–176 at 23–25.

⁸ 15 U.S.C. § 2605(b)(4)(A).

⁹ *Id.*

¹⁰ *Id.* § 2602(4).

¹¹ *Id.* § 2602(12).

¹² *Id.* § 2625(h)–(i), (k); 40 C.F.R. § 702.37.

¹³ *See* 15 U.S.C. § 2605(b)(4)(D).

“available information” on the hazards and exposures;¹⁴ and (3) determine whether the chemical presents an unreasonable risk to health or the environment.¹⁵ A determination that a chemical poses no unreasonable risk ends the TSCA process and is “final agency action” subject to judicial review.¹⁶ 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.¹⁷

B. EPA’s Prior Regulatory Actions to Implement Risk Evaluation and Related Court Decisions

In 2017, EPA published a set of procedures for risk evaluations.¹⁸ 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.”¹⁹ Citing statutory ambiguity, 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” (called “associated disposal”); and (3) “disposals that have already occurred” (called “legacy disposal”).²⁰ The Ninth Circuit Court of Appeals subsequently ruled that TSCA requires EPA to consider the first two of these legacy activities—“legacy uses” and “associated disposal”—which EPA addressed in its 2024 final rule, discussed below.²¹

The 2017 rule provided that EPA would “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”²² That is, under the 2017 rule EPA would have the discretion to reach a final decision on some conditions of use for a chemical while continuing to evaluate others.

Following notice and comment, EPA published a rule in 2024 updating EPA’s process for conducting risk evaluations under TSCA.²³ The 2024 Rule also addressed the Ninth Circuit’s decision in *Safer Chemicals*, including requiring the regulation of legacy uses.²⁴ The 2024 Rule

¹⁴ *Id.* § 2605(b)(4)(F); *see* 40 C.F.R. § 702.39(b).

¹⁵ *See* 15 U.S.C. § 2605(b)(4)(A); 40 C.F.R. § 702.39(f).

¹⁶ *See* 15 U.S.C. §§ 2605(i)(1), 2618(a)(1)(A).

¹⁷ *See id.* § 2605(a); 40 C.F.R. § 702.43(e).

¹⁸ 82 Fed. Reg. 33,726, 33,728 (July 20, 2017).

¹⁹ *Id.* at 33,728.

²⁰ *Id.* at 33,729.

²¹ *See Safer Chems.*, 943 F.3d at 397.

²² 82 Fed. Reg. at 33,729.

²³ Procedures for Chemical Risk Evaluation Under the Toxic Substances Control Act (TSCA), 89 Fed. Reg. 37,028 (May 3, 2024) (the “2024 Rule”).

²⁴ *Id.* at 37,029.

further finalized improvements to the risk evaluation process based on EPA’s experience since the passage of the Lautenberg Act. Most significantly, the 2024 Rule: (1) required consideration of all conditions of use and inclusion of all exposure pathways when conducting a risk evaluation; (2) moved to a single risk determination for a chemical substance instead of requiring a risk evaluation for each condition of use; (3) specified the considerations that EPA would take into account during a risk evaluation to avoid underestimation of risks; (4) updated the definition of “potentially exposed or susceptible subpopulations” to ensure consideration of all vulnerable groups, including “overburdened communities;” and (5) updated procedures for manufacturer-requested risk evaluations to clarify EPA’s expectations and reduce burdens on the Agency.²⁵ Many of the undersigned submitted comments to the docket in support of these changes.²⁶

C. *Safer Chemicals* and Other Judicial Opinions

1. *Safer Chemicals v. EPA*

In *Safer Chemicals v. EPA*, the Ninth Circuit reviewed whether the 2017 risk evaluation rule was consistent with TSCA and its newly amended provisions. Environmental groups challenged the 2017 rule on several grounds, arguing “(1) that TSCA requires EPA to evaluate risks associated with a chemical’s uses collectively before determining that the chemical is safe; (2) that EPA must consider all of a chemical’s conditions of use in that evaluation; and (3) that, when considering conditions of use, EPA must evaluate past disposals of all chemicals, as well as the use and subsequent disposal of chemicals not currently or prospectively manufactured or distributed in commerce for that use.”²⁷

Challengers succeeded on the third claim but failed on jurisdictional and substantive grounds on the first and second claims, respectively. In ruling in favor of challengers on the third claim, the Ninth Circuit held that EPA must consider “legacy uses and associated disposals” as part of any risk evaluation.²⁸ The court did not reach the merits of the first claim, holding instead that petitioners had not sufficiently established standing or that the claim was ripe for judicial review.²⁹ On the second claim, the court held that the relevant TSCA provisions grant EPA “discretion to exclude conditions of use from evaluation,” and that therefore the Agency is entitled to exclude certain conditions of use when determining the scope of a risk evaluation.³⁰ EPA incorporated the Ninth Circuit’s ruling into its interpretation of the risk evaluation process in the 2024 Rule to cover legacy uses, as discussed above.

²⁵ *Id.*

²⁶ Attorneys General of Illinois *et al.*, Comment Letter on Proposed Rule on Procedures for Chemical Risk Evaluation under the Toxic Substances Control Act (Oct. 30, 2023), https://downloads.regulations.gov/EPA-HQ-OPPT-2023-0496-0237/attachment_1.pdf.

²⁷ *Safer Chems.*, 943 F.3d at 405.

²⁸ *Id.* at 420–26.

²⁹ *Id.* at 409–16.

³⁰ *Id.* at 416, 419–20.

2. *Food & Water Watch v. EPA*

In 2024, the Northern District of California weighed in on EPA’s interpretation of the scope of the conditions of use that it considers in risk evaluations. In a challenge to EPA’s finding that fluoride in drinking water does not pose an unreasonable risk, the court considered whether EPA’s risk evaluation complied with the obligations of TSCA as amended in 2016.³¹ In its evaluation of EPA’s fluoride risk evaluation, the court noted that EPA had failed to properly set the hazard and exposure levels because it had only considered exposure from drinking fluoridated water for pregnant women—a susceptible population—rather than accounting for all exposure pathways and “consider[ing] the *additive* effect of the chemical under the subjected condition of use.”³² The court emphasized that “the Amended TSCA[] expressly contemplates that the *aggregate* exposure to a chemical will be considered when conducting a risk assessment.”³³ Thus, the court concluded that in order to properly account for the risk of harm, EPA was required to take into account all conditions of use that might lead to a harmful aggregate exposure.³⁴

D. EPA’s Current Proposal

EPA’s Proposal would unlawfully and arbitrarily unwind several key aspects of the 2024 Rule. Under the Proposal, EPA would: (1) remove the 2024 Rule’s requirement to consider all conditions of use and exposure pathways; (2) return to a use-by-use risk determination process; (3) assert new interpretations of the Agency’s discretion to consider and exclude conditions of use when determining the scope of a risk evaluation; (4) roll back the 2024 Rule’s exclusion of exposure controls in occupational exposure scenarios; (5) remove the requirement that EPA explain the basis for not considering aggregate exposure in a risk evaluation; and (6) amend the regulatory definition of “potentially exposed or susceptible subpopulations” to remove “overburdened communities.”³⁵ EPA largely proposes to make each of these changes in furtherance of its so-called deregulatory agenda,³⁶ rather than for reasons grounded in TSCA’s language or purpose. And, as next discussed, each such change would unlawfully and arbitrarily eliminate critical provisions from EPA’s 2024 Rule—flouting TSCA’s mandate to preserve public health and the environment.

³¹ *Food & Water Watch, Inc. v. EPA*, No. 17 Civ. 2162, 2024 WL 4291497 (N.D. Cal. Sept. 24, 2024), *appeal docketed*, No. 25-384 (9th Cir. Jan. 21, 2025).

³² *Id.* at *3 (emphasis in original).

³³ *Id.* (citing 15 U.S.C. § 2605(b)(4)(F)) (emphasis in original).

³⁴ *Id.* at *3–4. The court ultimately held based on the requirement to consider all conditions of use that fluoride in drinking water did pose an unreasonable risk of injury to health due to the resulting aggregate exposure and that EPA was required to take risk management actions in response.

³⁵ *See generally* 90 Fed. Reg. 45,690.

³⁶ 89 Fed. Reg. at 45,691 (citing in part Executive Order 14,219, “Ensuring Lawful Governance and Implementing the President’s ‘Department of Government Efficiency’ Deregulatory Initiative” as the basis for the proposed rule).

II. State Interests in TSCA Risk Evaluations

Many of the undersigned have a demonstrated interest in ensuring that their citizens are protected from harmful exposures to chemical substances. The below examples describe laws passed in our jurisdictions in ways that can complement or rely on EPA's mandate to regulate under TSCA.

Illinois

Illinois has enacted several laws to protect its residents from harmful exposures to chemical substances. For example, the Environmental Toxicology Act directs the Illinois Department of Public Health to investigate public health concerns that may be related to environmental hazards, including by conducting a health study to assess potential exposures to hazardous substances.³⁷ Additionally, the Illinois General Assembly has adopted legislation expanding legal remedies for some exposures to toxic substances, such as by making exceptions to the statute of limitations on certain claims³⁸ and expanding personal jurisdiction for citizens who have been harmed by toxics.³⁹

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 under TURA, the thresholds for reporting for those chemicals are lowered. To date, the TURA program has designated 14 chemicals or chemical categories as Higher Hazard Substances,⁴⁰ including four of the initial ten of EPA's "priority" TSCA chemicals: trichloroethylene, perchloroethylene, 1-bromopropane, and methylene chloride.⁴¹

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

³⁷ 415 ILCS 75/1 *et seq.*

³⁸ *See* 820 ILCS 305/1 *et seq.*

³⁹ 735 ILCS 5/2-209, 805 ILCS 5/13.20.

⁴⁰ *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).)

⁴¹ That six of the Initial Ten TSCA Chemicals are not designated as Higher Hazard Substances 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.

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.

Minnesota

State and federal remediation activities, such as those conducted under the Minnesota Environmental and Responsibility Liability Act (MERLA) or Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), utilize the risk information generated by TSCA to identify and clean up contaminated sites. Excluding certain conditions of use from EPA chemical assessments could reduce the availability of hazard and exposure data needed for Minnesota's remediation programs under MERLA and CERCLA. This may increase costs and liability risks for Minnesota manufacturers if chemicals later prove harmful, while also prompting the state to adopt its own reporting or monitoring rules. The result could be inconsistent, state-by-state regulations that complicate compliance for businesses operating in Minnesota.

New York

New York understands how crucial it is to evaluate risks from multiple exposure sources and pathways. New York regulates numerous hazardous substances⁴² that are identified as "high-priority" under TSCA⁴³ such as asbestos and 1,4-dioxane. New York regulates both asbestos and 1,4-dioxane in air,⁴⁴ drinking water,⁴⁵ and other media; New York further regulates asbestos in occupational settings⁴⁶ and children's products⁴⁷ and 1,4-dioxane in household cleansing products⁴⁸ and cosmetic and personal care products.⁴⁹ In addition, New York has identified numerous hazardous substances that have yet to be regulated under TSCA.⁵⁰

Oregon

In 2018, Oregon adopted its Cleaner Air Oregon program, which regulates emissions of toxic air contaminants from industrial and commercial facilities based on local risks to health, closing a gap in federal air toxics regulations.⁵¹ Oregon relies on EPA as a principal authoritative

⁴² 6 NYCRR pt. 597.

⁴³ EPA, Ongoing and Completed Chemical Risk Evaluations Under TSCA, <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/ongoing-and-completed-chemical-risk-evaluations-under> (last updated Sept. 17, 2025).

⁴⁴ 6 NYCRR § 200.1.

⁴⁵ 10 NYCRR pt. 5-1.

⁴⁶ N.Y. Lab. Law § 906.

⁴⁷ N.Y. Env't Conserv. Law § 37-0909.

⁴⁸ N.Y. Env't Conserv. Law § 35-0105.

⁴⁹ N.Y. Env't Conserv. Law § 37-0117.

⁵⁰ 6 NYCRR pt. 597.

⁵¹ Or. Admin. R. 340-245-0005 through 340-245-0400 and 340-247-0010 through 340-247-8010.

scientific agency for toxicity reference values underpinning the risk assessments that determine requirements for emissions reductions.

Washington

Washington has enacted laws that, like TSCA, address risks to public health and the environment from toxic chemicals in consumer products. These include the Toxic Pollution law,⁵² administered by the Safer Products for Washington program, that authorizes the Washington Department of Ecology to require manufacturers to report the use of priority chemicals in consumer products or to restrict such chemicals in products when safer alternatives are feasible. The Washington Departments of Ecology and Health are filing comments explaining those agencies' scientific and policy concerns about EPA's proposed amendments to the framework rule for conducting existing chemical risk evaluations.

III. EPA's Proposal is Arbitrary and Contrary to TSCA's Mandates

EPA's Proposal threatens to underestimate the magnitude of unreasonable risk to human health and the environment while evaluating chemical substances. Indeed, the Proposal runs counter to several specific recommendations by EPA's group of scientific experts, the Science Advisory Committee on Chemicals ("SACC"). Established under the authority of the 2016 TSCA amendments,⁵³ the SACC provides independent scientific advice and recommendations to EPA on the scientific and technical aspects of its risk analyses and has repeatedly identified the need to include all conditions of use,⁵⁴ cumulative risk,⁵⁵ and explicit consideration of overburdened communities.⁵⁶ Rather than relying on these recommendations, EPA has instead chosen to revise its rules. By taking this route in its Proposal, EPA will fail to adequately protect health and the environment undermining its mandate under TSCA. Furthermore, by weakening or eliminating the analysis of unreasonable risk in these ways, the Proposal is contrary to the

⁵² Wash. Rev. Code ch. 70A.350, *see also*, e.g., Wash. Rev. Code ch. 70A.430 (restricting lead, cadmium, and phthalates in children's product and specified flame retardants in children's products and residential upholstered furniture); Wash. Rev. Code § 70A.222.070 (restricting PFAS in food packaging).

⁵³ *See* 15 U.S.C. § 2625(o).

⁵⁴ *See*, e.g., SACC, *Meeting Minutes and Final Report No. 2022-2* at 17 (Apr. 19-21, 2022), <https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0414-0044> ("The goal should be to provide an overall assessment of evidence level (sufficient or insufficient) for each toxic endpoint, and then proceed to evaluate dose response information relevant to points of departure . . . where sufficient evidence for that toxic endpoint exists.").

⁵⁵ *See*, e.g., SACC, *Meeting Minutes and Final Report No. 2023-01* at 22 (May 8-10, 2023), <https://www.regulations.gov/document/EPA-HQ-OPPT-2022-0918-0067> ("Regarding existing data sources that EPA may consider for developing the cumulative fenceline assessment, the committee provided numerous resources, references, and input regarding fenceline exposures and co-exposures to other agents and stressors. Overall, the committee noted a potential for underestimation of exposure and recommended inclusion of all potential sources of exposure, including diet, air/dust sources, and dermal routes.").

⁵⁶ *See*, e.g., SACC, *Meeting Minutes and Final Report No. 2022-01* at 15 (Mar. 15-17, 2022), <https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0415-0095> ("Narrowing the scope of these [first 10 chemical] risk evaluations left some chemical exposures to the general population unaccounted for, which failed to abide by TSCA's statutory direction to evaluate exposures to potentially exposed or susceptible subpopulations, including fenceline communities that are near industrial facilities and may be disproportionately exposed to chemicals over long periods of time.").

Administrative Procedure Act. As detailed below, EPA's proposed changes to the 2024 Rule fail to consider many of the ways that chemical substances can create an unreasonable risk. By disregarding this aspect of the risk evaluation process, the Proposal is arbitrary and capricious.⁵⁷

A. EPA Must Consider All Conditions of Use in Its TSCA Risk Evaluations

TSCA requires EPA to conduct chemical risk evaluations “to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by the Administrator, under the conditions of use.”⁵⁸ And TSCA 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.”⁵⁹ The plain meaning of the statute requires EPA to evaluate the risks of each chemical substance identified for evaluation under all circumstances for which exposures can be reasonably anticipated. In other words, to fulfill TSCA's express purpose of preventing unreasonable risks of injury to health or the environment, EPA's risk evaluations must comprehensively consider the many ways that a chemical substance may be present in the environment, including consideration of how individual, small exposures can aggregate from different sources to create an unreasonable risk of harm to human health or the environment, as further discussed below.

EPA's Proposal would rescind the existing requirement that the Agency “make a single determination as to whether the chemical substance presents an unreasonable risk”⁶⁰ across all conditions of use and impermissibly allow EPA to conduct “separate risk determinations for each condition of use . . . either in a single decision document or in multiple decision documents.”⁶¹ The proposed approach threatens to splinter EPA's risk evaluation process and will cause EPA to fail to properly consider, as it must, the impact of total risk associated with combined chemical exposures through separate conditions of use. Far from providing “greater clarity”⁶² as to how or whether a chemical substance presents unreasonable risk, the Proposal could lead to risk evaluations that forgo consideration of potential exposures with significant harmful cumulative effects. The Attorneys General strongly oppose this deleterious, piecemeal approach.

Moreover, the Attorneys General oppose EPA's proposed removal of regulatory language that prohibits the Agency from excluding conditions of use from the scope of its risk evaluations.⁶³ Despite TSCA's directive that EPA conduct risk evaluations to determine “whether

⁵⁷ See *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

⁵⁸ 15 U.S.C. § 2605(b)(4)(A).

⁵⁹ *Id.* § 2602(4).

⁶⁰ 40 C.F.R. § 702.39(f)(1).

⁶¹ 90 Fed. Reg. at 45,703.

⁶² *Id.* at 45,702.

⁶³ *Id.* at 45,696–97.

a chemical substance presents an unreasonable risk . . . under the conditions of use[.]”⁶⁴ the Agency anticipates, for instance, excluding what it deems as *de minimis* conditions of use,⁶⁵ again ignoring the significant potential for multiple, relatively small exposures to, in aggregate, lead to significant health or environmental risk.

By allowing risk evaluations to omit certain conditions of use and isolating analysis of the remaining conditions of use, the Proposal ignores the potential for exposures from a variety of conditions of use to unreasonably harm health and the environment. In this way, EPA has arbitrarily ignored an important aspect of the problem in violation of the APA.⁶⁶

B. EPA Must Consider All Exposure Pathways in TSCA Risk Evaluations

EPA proposes to remove the existing regulation’s requirement that a risk evaluation must “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.”⁶⁷ This change would ignore the fact that a single chemical substance may present risk to human health or the environment in multiple ways—for example, inhalation through the air, ingestion through water, or absorption through the skin—and improperly pave the way for the Agency to choose not to evaluate risk from one or several potential exposure pathways. Removing this requirement would lead to piecemeal risk evaluations, reintroducing major regulatory flaws. The Attorneys General strongly oppose this change.

EPA interprets TSCA § 9(b)(1) to support the Proposal, arguing that this statutory provision gives the Agency “discretion to scope risk evaluations in a manner that reflects existing activities of its other program offices”⁶⁸ For example, EPA asserts that it could decide not to evaluate a chemical’s risks to human health or the environment when inhaled if that exposure route “could be more effectively and efficiently assessed and managed by other EPA offices[.]”⁶⁹

However, EPA is obligated to consider all exposure pathways, and TSCA § 9 cannot be interpreted to relieve EPA of this independent obligation. Under this provision, EPA must “coordinate actions taken” under TSCA with actions EPA takes under other Federal laws.⁷⁰ Section 9 requires EPA to use its authority under other federal laws “[i]f the Administrator determines that a risk to health or the environment associated with a chemical substance or mixture could be eliminated or reduced[.]”⁷¹ EPA may still regulate a chemical substance pursuant to its authority under TSCA, however, if “the Administrator determines, in the

⁶⁴ 15 U.S.C. § 2605(b)(4)(A).

⁶⁵ See 90 Fed. Reg. at 45,695.

⁶⁶ See *State Farm*, 463 U.S. at 43.

⁶⁷ 90 Fed. Reg. at 45,698 (citing 40 C.F.R. § 702.39(d)(9)).

⁶⁸ *Id.* (citing 15 U.S.C. § 2608(b)(1)).

⁶⁹ *Id.* at 45,698.

⁷⁰ 15 U.S.C. § 2608(b)(1).

⁷¹ *Id.*

Administrator’s discretion, that it is in the public interest[.]”⁷² Far from granting the Agency discretion to determine when evaluation of risk is unnecessary, this statutory provision is entirely predicated on EPA’s determination of whether risk to health or the environment exists in the first place. That is, TSCA § 9 instructs EPA how to manage a risk that has been identified, rather than when it should ignore potentially harmful exposure pathways.

EPA argues that its interpretation is supported by legislative intent, citing congressional records that describe TSCA as originally intended for “filling gaps in Federal law” and describing the 2016 TSCA amendments as intended to “avoid confusion, complication, and duplication[.]”⁷³ Here, EPA ignores that Congress passed TSCA to address the lack of appropriate regulatory authority to comprehensively address the risk of toxics exposure, including by considering other statutes’ regulatory regimes.⁷⁴ As the 1978 Commerce Committee’s TSCA reform report states, EPA’s statutory authority to assess an individual chemical is unique: “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 associated with the same chemical. The bill would grant [EPA] the authority to look at the hazards in total.”⁷⁵

In the Proposal, EPA is explicitly returning to the flawed approach it took with regard to its 2018 risk evaluations of ten chemicals.⁷⁶ In analyzing these chemicals, EPA declined to include in its risk evaluation chemical exposures that occur via 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, Safe Drinking Water Act, Clean Water Act, and Resource Conservation and Recovery Act.⁷⁷ EPA thus did not include exposures to perchloroethylene from these pathways in its analysis. As EPA states in its Proposal, these less-than-comprehensive risk evaluations were “premised on an argument that those pathways [purportedly covered by other statutes] were already adequately assessed and managed—or *could be* adequately assessed and managed[.]”⁷⁸ In other words, EPA’s purpose in removing exposure pathways from consideration is not to appropriately evaluate what risks exist and how to most effectively manage them, but rather how to make the risk evaluation process less

⁷² *Id.*

⁷³ 90 Fed. Reg. at 45,699 (*citing* H. Rep. No. 114-176 at 28).

⁷⁴ See Report to Senate from the Committee on Commerce, S. Rep. No. 94-698 (Mar. 16, 1978).

⁷⁵ *Id.*

⁷⁶ 83 Fed. Reg. 26,998 (Jun. 11, 2018). A group of state Attorneys General, including some of the undersigned, 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), <https://www.regulations.gov/comment/EPA-HQ-OPPT-2018-0210-0013>.

⁷⁷ See EPA, Problem Formulation of the Risk Evaluation for Perchloroethylene (Ethene, 1,1,2,2-Tetrachloro), CASRN: 127-18-4, at 59 (May 2018), https://www.epa.gov/sites/default/files/2018-06/documents/perc_problem_formulation_5-31-2018v3.pdf.

⁷⁸ 90 Fed. Reg. at 45,697 (emphasis added).

thorough and less protective. That is inconsistent with the purpose and authority granted to EPA under TSCA.

By allowing piecemeal risk evaluations, EPA could avoid analysis of major exposure pathways. The Proposal would, if adopted, run afoul of EPA's mandate under TSCA and dramatically weaken the risk evaluation process. EPA must use its authority under TSCA to analyze potentially harmful chemicals, regardless of whether other federal statutes also address those same chemicals, in order to create a complete picture of whether a chemical presents unreasonable risk of harm. By allowing risk evaluations to analyze an incomplete set of potential exposure pathways, EPA has also arbitrarily ignored potentially significant sources of harm in violation of the APA.⁷⁹

C. EPA Must Appropriately Consider Aggregate Exposures or Risks

Recognizing that multiple exposures to chemical substances can create an unreasonable risk to human health and the environment, even if any individual exposure does not, TSCA requires that EPA's risk evaluations "describe whether aggregate or sentinel exposures to a chemical substance under the conditions of use were considered, and the basis for that consideration[.]"⁸⁰ Under the existing 2024 Rule's risk evaluation procedures, if EPA does not consider aggregate exposures, it must "explain in the risk evaluation the basis for not including such an assessment."⁸¹

The Proposal would change this provision and allow the Agency to decline to consider aggregate exposures without providing any rationale.⁸² The Attorneys General are deeply concerned that allowing EPA to forgo conducting an aggregate exposure analysis without explaining its decision—especially in conjunction with the other ways EPA proposes to narrow the scope of risk evaluations—will compromise the Agency's risk evaluations. As EPA itself has recognized, in piecemeal risk evaluations that consider only some aspects of how chemical exposures occur, one specific adverse health effect may appear relatively small, but when added together with risks from a range of chemicals that have the same health effects, the cumulative risk across aggregated exposures may be quite significant.⁸³ The Proposal, if finalized, would decimate how the Agency assesses aggregate effects from toxic chemicals. Ignoring these exposure pathways will lead to a severe understatement of human health impacts. As no other

⁷⁹ See *State Farm*, 463 U.S. at 43.

⁸⁰ 15 U.S.C. § 2605(b)(4)(F)(ii).

⁸¹ 40 C.F.R. § 702.39(d)(8).

⁸² See 90 Fed. Reg. at 45,705.

⁸³ Taking into account the aggregate or cumulative effects of all exposures is essential because "[c]umulative impacts characterize the potential state of vulnerability or resilience of a community." EPA, *Cumulative Impacts Research: Recommendations for EPA's Office of Research and Development*, EPA/600/R-2214a, at vii (Sep. 30, 2022), <https://www.epa.gov/system/files/documents/2023-05/CUMULATIVE%20IMPACTS%20RESEARCH-FINAL%20REPORT-EPA%20600-R-22-014A%20%2812%29.PDF>

environmental law enables EPA to evaluate exposure across all environmental media, TSCA analyses must address the additive and cross-media risks of toxics.

EPA's Proposal is arbitrary because it contravenes the best available science.⁸⁴ The Proposal runs counter to the National Academies' report on cumulative impact assessments, which emphasized that "[a]ddressing cumulative risk or impact is critically important in ultimately understanding the etiology of diseases and disorders and thus advancing their prevention or treatment."⁸⁵ These multiple stressors can take the form of chemical exposures, from which "different risk factors may produce a common downstream effect," or from "[n]onchemical risk factors [that] . . . may interact with chemical exposures to produce effects."⁸⁶ Decades of studies have concluded that most human diseases and disorders arise from the overlapping effects of "environmental, structural, and genetic factors, psychosocial stressors, and social and economic factors such as poverty."⁸⁷ Consideration of aggregate or cumulative risks and impacts is grounded in well-established science that "reinforce[s] that many of the techniques and approaches needed for informative [cumulative impact assessments] are readily available."⁸⁸ EPA's Proposal is arbitrary it contradicts the longstanding scientific consensus by proposing to depart from the Agency's commitment to comprehensively evaluating aggregate exposures—including all chemical and nonchemical risk factors—and would ease obligations on the Agency to explain its decision.

Allowing EPA to more easily forgo consideration of aggregate exposures would disproportionately endanger populations already burdened by chemical and non-chemical stressors, as further described below⁸⁹. As noted above, the risk of harm to the health of individuals and communities from a chemical substance is driven by "exposures to combinations of chemical and non-chemical stressors and their effects on health, well-being, and quality of life outcomes"⁹⁰ that must be considered together to properly assess risk. Those stressors disparately affect individuals "due to intrinsic factors, such as age, existing health or genetic conditions, or

⁸⁴ This would also run afoul of TSCA's requirement that EPA use the best available science in reaching its determinations. 15 U.S.C. § 2625(H).

⁸⁵ Nat'l Acads. of Scis., Eng'g, & Med., *State of the Science and the Future of Cumulative Impact Assessment* 23 (2025), <https://nap.nationalacademies.org/catalog/29182/state-of-the-science-and-the-future-of-cumulative-impact-assessment>.

⁸⁶ *Id.*

⁸⁷ *Id.* at 24 (citations omitted).

⁸⁸ *Id.* at 25.

⁸⁹ Several of the undersigned Attorneys General have submitted comments with robust discussion of cumulative impacts and how they disproportionately harm vulnerable and overburdened communities. *See* Comments of the Attorneys General of Mass. *et al.* on EPA's Interim Framework for Advancing Consideration of Cumulative Impacts, EPA-HQ-OLEM-2024-0360 (Feb. 19, 2025), https://stateimpactcenter.org/files/AG_Actions_Massachusetts_Cumulative_Impacts_Comments_2.19.2025.pdf

⁹⁰ EPA, *Interim Framework for Advancing Consideration of Cumulative Impacts*, at vii (Nov. 2024) [hereinafter "Interim Framework"].

extrinsic factors, such as socioeconomic vulnerability and structural drivers of inequality[.]”⁹¹ among the many social and political determinants of health.⁹² Moreover, health disparities tied to “longstanding place-based inequalities in exposures to environmental hazards”⁹³ and exacerbated by intrinsic and extrinsic vulnerabilities “can result in heightened cumulative health risks across a population.”⁹⁴ Non-spatially defined populations, including populations defined based on race, class, age, disability, gender, and sexuality, as well as immigration, employment, and housing status, may also experience distinct vulnerabilities to individual and compounding stressors.⁹⁵ The cumulative effect of exposure to multiple sources of pollution has significant proven health impacts, including higher rates of many health conditions like hypertension, heart disease, stroke, asthma, obesity, diabetes, and lung cancer.⁹⁶ Given the significant ways in which risk to individuals and populations can be affected by intrinsic and extrinsic factors, it is essential that EPA properly considers aggregate exposures and cumulative impacts from all sources to adequately assess risk and at minimum explain its decision where it does not consider aggregate exposures.

In defending the Proposal to allow EPA to omit any discussion of aggregate exposures, EPA argues that “[t]here are a variety of reasons why EPA would not be able to perform an aggregate exposure assessment, or why an aggregate exposure assessment would not be appropriate for one or more conditions of use.”⁹⁷ Even if many different reasons might justify

⁹¹ *Id.* at 22 (citing Cliona M. McHale *et al.*, *Assessing Health Risks from Multiple Environmental Stressors: Moving from G×E to I×E*, 775 *Mutation Rsch.* – Revs. in *Mutation Rsch.* 11 (2018), <https://doi.org/10.1016/j.mrrev.2017.11.003>; Zinzi D. Bailey *et al.*, *Structural Racism and Health Inequities in the USA: Evidence and Interventions*, 389 *Lancet* 1453 (2017); Devon C. Payne-Sturges *et al.*, *Confronting Racism in Environmental Health Sciences: Moving the Science Forward for Eliminating Racial Inequities*, 129 *Env’t Health Persps.* 5 (2021), <https://doi.org/10.1289/ehp8186>; Gina M. Solomon *et al.*, *Cumulative Environmental Impacts: Science and Policy to Protect Communities*, 37 *Ann. Rev. Pub. Health* 83 (2016), <https://doi.org/10.1146/annurev-publhealth-032315-021807>).

⁹² See Nat’l Acad. of Scis., Eng’g, & Med., *Constructing Valid Geospatial Tools For Environmental Justice* 46 (2024), <https://nap.nationalacademies.org/catalog/27317/constructing-valid-geospatial-tools-for-environmental-justice> [hereinafter “Nat’l Acad. 2024 Report”].

⁹³ Interim Framework, *supra* note 90, at 4 (citing Spencer Banzhaf, Lala Ma & Christopher Timmins, *Environmental Justice: The Economics of Race, Place, and Pollution*, 33 *J. Econ. Persps.* 185 (2019), <https://www.jstor.org/stable/26566983>; EPA, *Climate Change and Social Vulnerability in the United States: A Focus on Six Impacts*, EPA 430-R-21-003 (2021), <https://www.epa.gov/cira/social-vulnerability-report>; Paul D. Juarez *et al.*, *The Public Health Exposome: A Population-Based Exposure Science Approach to Health Disparities Research*, 11 *Int. J. Env’t Res. Pub. Health* 12866 (2014), <https://doi.org/10.3390/ijerph111212866>; Charles Lee, *Confronting Disproportionate Impacts and Systemic Racism in Environmental Policy*, 51 *Env’t L. Rep.* 10207 (2021); Paul Mohai, David Pellow & J. Timmons Roberts, *Environmental Justice*, *Ann. R. Env’t & Res.* 405 (2009), <https://doi.org/10.1146/annurevenviron-082508-094348>).

⁹⁴ Solomon *et al.*, *supra* note 91, at 84.

⁹⁵ Nat’l Acad. 2024 Report, *supra* note 92, at 38–39, 43.

⁹⁶ Rachel Morello-Frosch *et al.*, *Understanding the Cumulative Impacts of Inequalities in Environmental Health: Implications for Policy*, 30 *Health Affs.* 879, 880 (2011), <https://escholarship.org/content/qt1kq0196d/qt1kq0196d.pdf>; Philip J. Landrigan, *Environmental Justice and the Health of Children*, 77 *Mt. Sinai J. Med.* 178, 180 (2010), <https://doi.org/10.1002/msj.20173>; Eun-Hye Yoo & John E. Roberts, *Differential Effects of Air Pollution Exposure on Mental Health: Historical Redlining in New York State*, 948 *Sci. Total Env’t* 174516 (2024), <https://doi.org/10.1016/j.scitotenv.2024.174516>.

⁹⁷ 90 Fed. Reg. at 45,705.

omission of an aggregate exposure assessment, EPA must explain its rationale, as the Agency claims.⁹⁸ Moreover, as noted above, the Agency’s rationale is arbitrary and inconsistent with the NAS’s conclusion that “many of the techniques and approaches needed for informative [cumulative impact assessments] are readily available.”⁹⁹

Removing this language will severely weaken EPA’s analysis of aggregate effects and undermine the risk evaluation process, making it more likely that toxic chemicals will harm human health and the environment. The Attorneys General urge EPA to retain the language in its current regulations that it proposes to delete and ensure proper consideration of cumulative impacts and risks.

D. The Proposal Arbitrarily Departs from the Existing Definition of “Potentially Exposed or Susceptible Subpopulations”

Toxic chemicals threaten populations burdened by environmental justice concerns in our states. As discussed above, many of these populations suffer harms from chemical substances and non-chemical stressors both due to their increased susceptibility to negative effects from exposure as well as the disproportionate concentration of toxic hazards and exposures in communities with higher concentrations of residents who are people of color, low-income, and Indigenous Peoples and members of Tribal Nations.

TSCA explicitly requires EPA to evaluate risks to “potentially exposed or susceptible subpopulations,”¹⁰⁰ which includes individuals and communities that “may be at greater risk than the general population of adverse health effects from exposure to a chemical substance or mixture.”¹⁰¹ As discussed above, to adequately assess risk, it is essential that EPA account for the differences in exposures and cumulative burdens from varying sources of pollution and environmental stressors. By removing “overburdened communities” from the definition of “potentially exposed or susceptible subpopulations,”¹⁰² EPA’s Proposal would arbitrarily weaken protections for the most threatened communities in our states, in violation of EPA’s obligations under both TSCA and the Administrative Procedures Act.¹⁰³

Communities of color, low-income communities, and Indigenous Peoples and Tribal Nations have traditionally borne a disproportionately high burden of environmental and public health harms, including unreasonable risks from exposures to toxic chemicals. EPA’s own research has concluded that “communities nationwide that are located near facilities using extremely hazardous substances are indeed disproportionately populated with Black, Asian, Hispanic, and low-income residents; and that even greater proportions of these historically

⁹⁸ EPA argues that “the burden of explaining the absence of an aggregate risk evaluation [sic] is significant[.]” *Id.*

⁹⁹ Nat’l Acads. Cumulative Impact Assessment Report, *supra* note 85, at 25.

¹⁰⁰ 15 U.S.C. § 2605(b)(4)(A).

¹⁰¹ *Id.* § 2602(12).

¹⁰² *See* 89 Fed. Reg. at 37,031.

¹⁰³ 5 U.S.C. §§ 551–559.

underserved populations are located near facilities with histories of chemical accidents involving fires, explosions, and/or toxic vapors.”¹⁰⁴ Low-income communities and communities of color also “experience unusually high [toxic] exposures in home and neighborhood [and] . . . are also disproportionately affected by hazardous occupational exposures.”¹⁰⁵ Indigenous Peoples and members of Tribal Nations also suffer heightened exposure to environmental contaminants on or near tribal lands, which present a disproportionate risk of adverse health impacts, including on reproductive health.¹⁰⁶ Moreover, Tribal Nations face numerous toxic hazards, with 141 Superfund sites on or within 10 miles of Tribal land in 2024,¹⁰⁷ the remediation of which has significantly lagged behind that of sites in non-Indigenous communities.¹⁰⁸

These communities are also often burdened by other sources of pollution and environmental stressors like climate change,¹⁰⁹ which disproportionately harm communities of color, communities with higher concentrations of low-income residents, and Indigenous Peoples and members of Tribal Nations.¹¹⁰ As a result of cumulative and varied exposures—including from oil and gas extraction, concentrated animal agriculture, industrial pollution, and releases of hazardous materials from disasters—communities of color and low-income communities are

¹⁰⁴ Dennis Guignet *et al.*, EPA Nat’l Ctr. for Env’t Econ., *Disproportionate Environmental Risks: An Analysis of Chemical Facilities and Accidents in the U.S.* 20 (Oct. 2024), https://www.epa.gov/system/files/documents/2024-10/2024-08_0.pdf.

¹⁰⁵ Michael Gochfeld & Joanna Burger, *Disproportionate Exposures in Environmental Justice and Other Populations: The Importance of Outliers*, 101 Am. J. of Pub. Health S53 (2011), <https://pmc.ncbi.nlm.nih.gov/articles/PMC3222496/pdf/S53.pdf>.

¹⁰⁶ Elizabeth Hoover *et al.*, *Indigenous Peoples of North America: Environmental Exposures and Reproductive Justice*, 120 Env’t Health Perspectives 1645, 1647 (Dec. 2012). For an example of disproportionate risk of adverse health impacts, see Raoul S. Liévanos, *Air-Toxic Clusters Revisited: Intersectional Environmental Inequalities and Indigenous Deprivation in the U.S. Environmental Protection Agency Regions*, 11 Race & Soc. Probs. 161 (2019) (finding that spatial concentrations of multiply marginalized Indigenous peoples in the U.S. were a significant predictor of area exposure to airborne carcinogenic pollution in the Mid-Atlantic EPA region).

¹⁰⁷ National Indian Health Board, *Superfund Sites & Tribal Land* (Sept. 6, 2023), <https://storymaps.arcgis.com/stories/6dd33a110f354f61bd920fef6722eda5>.

¹⁰⁸ EPA, *Tribal Superfund Program Needs Clear Direction and Actions to Improve Effectiveness*, Report no. 2004-P00035 (2004), <https://www.epa.gov/sites/default/files/2015-12/documents/20040930-2004-p-00035.pdf>.

¹⁰⁹ See Interim Framework, *supra* note 90, at 4 (“Environmental public health research has shown that the cumulative impacts of longstanding place-based inequalities in exposures to environmental hazards are significant, with health disparities linked to these inequalities” (citations omitted)); see also Rachel Morello-Frosch *et al.*, *supra* note 96.

¹¹⁰ Christopher W. Tessum *et al.*, *PM2.5 Polluters Disproportionately and Systemically Affect People of Color in the United States*, 7 Sci. Advances 1 (2021); see also United Church of Christ Comm’n For Racial Just., *Toxic Wastes And Race In The United States: A National Report On The Racial And Socio-Economic Characteristics Of Communities With Hazardous Waste Sites* (1987), <https://perma.cc/6L8E-E4GW>; United Church Of Christ Just. & Witness Ministries, *Toxic Wastes and Race At Twenty, 1987–2007* (2007), <https://perma.cc/SM6W-A7DD>; see also 9 Ihab Mikati *et al.*, *Disparities in Distribution of Particulate Matter Emission Sources by Race and Poverty Status*, 108 Am. J. Pub. Health 480 (2018), <https://perma.cc/Z9CZ-UXLE>; Qian Di *et al.*, *Air Pollution and Mortality in the Medicare Population*, 376 New Eng. J. Med. 2513 (2017), <https://pmc.ncbi.nlm.nih.gov/articles/PMC5766848/>; Alique Berberian *et al.*, *Racial Disparities in Climate Change-Related Health Effects in the United States*, Current Env’t Health Rep. 451–52 (2022), <https://doi.org/10.1007/s40572-022-00360-w>; M. H. Hayden *et al.*, Human Health, in A. R. Crimmines *et al.*, Fifth National Climate Assessment (2023), <https://nca2023.globalchange.gov/chapter/15/>.

especially vulnerable to toxic substances.¹¹¹ Due to this heightened vulnerability, “overburdened communities” necessarily fall within TSCA’s definition of “potentially exposed or susceptible subpopulations.” Indeed in 2024 EPA itself recognized the danger of not properly accounting for the overlapping and compounding effects of chemical and non-chemical exposures on certain communities, and under the 2024 Rule bound the Agency to consider the particular harms that “overburdened communities” face.

EPA’s departure from the 2024 Rule is arbitrary because it fails to consider the impact of its decision on “overburdened communities,” provides no alternative procedures to protect those communities, and runs counter to the Agency’s obligations under TSCA. An agency’s rule is “arbitrary and capricious if the agency . . . entirely fail[s] to consider an important aspect of the problem.”¹¹² EPA’s Proposal to roll back the 2024 Rule’s consideration of “overburdened communities” fails to account for the significant harms and disproportionate burdens borne by these communities, as discussed above. In explaining its decision, EPA merely provides conclusory statements that the definition of “overburdened communities” is “overbroad” and that “the ‘vague and expansive scope’ of this term is likely to make it more difficult for EPA to meet its statutory deadlines.”¹¹³ The Proposal fails altogether to address the important justifications the 2024 Rule’s introduction of the term “overburdened communities,” and does not propose any alternative measures that the Agency will undertake to ensure that those communities are adequately protected. Instead, EPA’s Proposal seeks to eliminate consideration of the particular burdens borne by our overburdened communities in violation of TSCA’s mandate to consider “potentially exposed or susceptible subpopulations” under TSCA § 6(b)(4)(A).

EPA’s Proposal is also arbitrary because it fails to consider the harms to states and the states’ reliance interests in EPA’s continued consideration of “overburdened communities” in its risk evaluations. EPA must “assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns.”¹¹⁴ EPA entirely failed to consider that its Proposal will undermine the states’ ongoing efforts to address the disproportionately high burden of environmental and public health harms on overburdened communities by removing a mechanism by which to ensure greater protection for these communities. Without proper consideration of the cumulative harms borne by these “overburdened communities,” EPA will not adequately evaluate the full risk that a chemical substance may pose to the health of those populations. Furthermore, this approach would weaken or eliminate essential risk management measures that would ensure sufficient protections for our most vulnerable residents. The undersigned Attorneys General strongly oppose EPA’s Proposal

¹¹¹ See Jill Johnston & Lara Cushing, *Chemical Exposures, Health and Environmental Justice in Communities Living on the Fenceline of Industry*, 7 Current Env’t Health Reps. 48–57 (2021), <https://pmc.ncbi.nlm.nih.gov/articles/PMC7035204/#ABS1>.

¹¹² *State Farm*, 463 U.S. at 43 (1983).

¹¹³ 90 Fed. Reg. at 45,705.

¹¹⁴ *Dep’t of Homeland Sec. v. Regents of Univ. of Cal.*, 591 U.S. 1, 33 (2020).

and urge the Agency to take steps to more fully assess risks from chemical substances to “overburdened communities” and communities with environmental justice concerns.

E. EPA’s Proposal Contravenes TSCA by Underestimating Occupational Exposures

The existing risk evaluation regulations take an effective, real-world approach to evaluating what risk from chemical substances may be present in occupational settings, recognizing that workers may not always appropriately use or even have access to effective personal protective equipment (“PPE”) that could reduce the risk of exposure. By assuming otherwise, EPA would significantly underestimate the risks that chemical substances currently pose to workers. Downplaying this reality, EPA proposes to rescind important parts of the 2024 Rule, which currently requires EPA to account for “known and reasonably foreseeable circumstances where subpopulations of workers are exposed due to the absence or ineffective use of personal protective equipment” and prohibits EPA from considering “assumed use of personal protective equipment[.]”¹¹⁵

The Proposal would rescind both parts of this provision. EPA appears to assert that considering the misuse or absence of PPE in risk evaluations, “is unnecessarily confusing” and that the current language forbidding EPA from relying on broad assumptions concerning PPE use “appears to be biased[.]”¹¹⁶ These justifications are arbitrary and capricious and do not excuse EPA from considering the real-world chemical exposures that workers can reasonably be anticipated to face, which includes exposure that occurs when workers are not provided with or otherwise do not properly wear PPE.

The Proposal inverts existing protections and directs the Agency simply to “take into account reasonably available information on the implementation and use of occupational exposure measures such as engineering and administrative controls and personal protective equipment.”¹¹⁷ EPA’s revisions would discount the risk to workers on the assumption that workers will properly use PPE that is effective to protect against toxics exposure. These assumptions will greatly underestimate risk from chemical substances in risk evaluations, and the Attorneys General strongly oppose these proposed changes.

IV. Conclusion

The Attorneys General urge EPA to address the major flaws in its Proposal. If the EPA adopts its Proposal as a final rule, future risk evaluations will fail to consider significant sources of unreasonable risk, leading to harm to human health and the environment from chemical substances, undermining the Agency’s mandate under TSCA and violating the APA.

¹¹⁵ 40 C.F.R. § 702.39(f)(2).

¹¹⁶ 90 Fed. Reg. at 45,704.

¹¹⁷ See 90 Fed. Reg. at 45,704.

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