

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 61**

[OAR-2002-0082, FRL-7561-1]

**National Emission Standards for Hazardous Air Pollutants for Asbestos**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; amendments.

**SUMMARY:** On November 20, 1990, the EPA issued national emission standards for hazardous air pollutants (NESHAP) for asbestos under section 112 of the Clean Air Act (CAA). This action would amend the citation for labeling containers of asbestos waste materials, based on requirements in the Occupational Safety and Health Administration (OSHA) asbestos standard for the construction industry for proper labeling of asbestos waste. The amendments are being made to correctly cite the appropriate numbering of the provisions in the OSHA regulations.

In the Rules and Regulations section of this **Federal Register**, we are taking direct final action on the proposed amendments because we view the amendments as noncontroversial and anticipate no adverse comments. We have explained our reasons for the amendments in the preamble to the direct final rule. If we receive no significant adverse comments, we will take no further action on the proposed amendments. If we receive significant adverse comments, we will withdraw

only those provisions on which we received significant adverse comments. We will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn. If part or all of the direct final rule in the Rules and Regulations section of today's **Federal Register** is withdrawn, all comments pertaining to those provisions will be addressed in a subsequent final rule based on the proposed amendments. We will not institute a second comment period on the subsequent final action. Any parties interested in commenting must do so at this time.

**DATES: Comments.** We must receive written comments on or before October 20, 2003, unless a hearing is requested by September 29, 2003. If a timely hearing request is submitted, we must receive written comments on or before November 3, 2003.

**ADDRESSES: Comments.** By U.S. Postal Service, send comments (in duplicate, if possible) to: Air and Radiation Docket Center (6102T), EPA West, Room B-108, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate, if possible) to: Air and Radiation Docket Center, Attention Docket Number OAR-2002-0082, U.S. EPA, 1301 Constitution Avenue, NW., Room B-108, Washington, DC 20460. We request that a separate copy of each public comment also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

**Public Hearing.** If a public hearing is held, it will be held at 10 a.m. at the EPA Facility Complex in Research Triangle Park, North Carolina or at an alternate site nearby.

**Docket.** Docket ID No. OAR-2002-0082 contains supporting information used in developing the proposed amendments. The docket is located at the U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460, Room B-108, and may be inspected from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Fairchild, U.S. EPA, Minerals and Inorganic Chemicals Group, Emissions Standards Division (Mail Code C504-05), Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, telephone number (919) 541-5167, electronic mail address, [fairchild.susan@epa.gov](mailto:fairchild.susan@epa.gov).

**SUPPLEMENTARY INFORMATION: Regulated Entities.** Entities potentially regulated by this action are owners and operators of: asbestos mills, fabricating and manufacturing operations that involve asbestos or asbestos-containing products, demolition and renovation operations involving asbestos-containing building materials, operations in which asbestos-containing materials are spray applied, and active and inactive asbestos waste disposal sites.

Categories and entities potentially regulated by this action include those listed in the following table:

Category	NAICS	Examples of Regulated Entities
Industrial .....	23	Construction.
Industrial .....	23594	Wrecking and Demolition Contractors.
Industrial .....	562112	Hazardous Waste Collection.
Industrial .....	562211	Hazardous Waste Treatment and Disposal.
Industrial .....	5629	Remediation and Other Waste Management Services.
Industrial .....	56191	Packaging and Labeling Services.
Industrial .....	332992	Small Arms Ammunition Manufacturing.
Industrial .....	33634	Motor Vehicle Systems Manufacturing.
Industrial .....	327	Nonmetallic Mineral Product Manufacturing.
Industrial .....	3279	Other Nonmetallic Mineral Product Manufacturing.
Industrial .....	32791	Abrasive Product Manufacturing.
Industrial .....	32799	All Other Nonmetallic Mineral Product Manufacturing.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 61.140 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person

listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

**Docket.** EPA has established an official public docket for this action under Docket ID Number OAR-2002-0082. The official public docket is the collection of materials that is available for public viewing at U.S. EPA, 1301 Constitution Avenue, NW., Room B-108, Washington, DC 20460. The EPA Docket Center Public Reading Room is

open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744. The telephone number for the Air Docket is (202) 566-1742.

**Electronic Access.** An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://>

[www.epa.gov/edocket/](http://www.epa.gov/edocket/) to submit or view public comments, access the index of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, select "search" and key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as confidential business information (CBI) and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket material through the docket facility identified in this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available to public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period.

Comments received after the close of the comment period will be marked late. The EPA is not required to consider these late comments.

*Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. The EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket>, and follow the online instructions for submitting comments. Once in the system, select "search" and then key in Docket ID No. OAR-2002-0082. The system is an anonymous access system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to [air-and-r-docket@epa.gov](mailto:air-and-r-docket@epa.gov), Attention: Docket ID No. OAR-2002-0082. In contrast to EPA's electronic public docket, EPA's e-mail system is not an anonymous access system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in this document. These electronic submissions will be accepted in WordPerfect or ASCII file

format. Avoid the use of special characters and any form of encryption.

*By Mail.* Send your comments (in duplicate, if possible) to: EPA Docket Center (6102T), Attention: Docket ID No. OAR-2002-0082, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

*By Hand Delivery or Courier.* Deliver your comments (in duplicate, if possible) to: Air and radiation Docket, Attention Docket ID No. OAR-2002-0082, U.S. EPA, 1301 Constitution Avenue, NW., Room B-108, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation as identified in this document. We request that a separate copy also be sent to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

*By Facsimile.* Fax your comments to: (202) 566-1741, Attention Docket ID No. OAR-2002-0082.

*CBI.* Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Office (C404-02), Attention: Ms. Susan Fairchild, U.S. EPA, 109 TW Alexander Drive, Research Triangle Park, NC 27711, Attention Docket ID No. OAR-2002-0082. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

*Public Hearing.* Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Mrs. Pamela Garrett, Minerals and Inorganic Chemicals Group, Emission Standards Division (C504-05), Research Triangle Park, NC 27711, telephone number (919) 541-7966, at least two days in advance of the potential date of the public hearing. Persons interested in attending the public hearing must also call Mrs. Garrett to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public

docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM clearly that is does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

*Worldwide Web (www).* In addition to being available in the docket, an electronic copy of this action will also be available through the WWW. Following signature, a copy of this action will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules: <http://www.epa.gov/ttn/oarpg>. The TTN at EPA's Web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

*Direct Final Rule.* A direct final rule identical to the proposal is published in the Rules and Regulations section of today's **Federal Register**. If we receive any significant adverse comment pertaining to the amendments in the proposal, we will publish a timely notice in the **Federal Register** informing the public that the amendments are being withdrawn due to adverse comment. We will address all public

comments concerning the withdrawn amendments in a subsequent final rule. If no relevant adverse comments are received, no further action will be taken on the proposal and the direct final rule will become effective as provided in that action.

The regulatory text for the proposal is identical to that for the direct final rule published in the Rules and Regulations section of today's **Federal Register**. For further supplementary information, the detailed rationale for the proposal and the regulatory revisions, see the direct final rule published in a separate part of this **Federal Register**.

#### **Statutory and Executive Order Reviews**

##### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule amendments on small entities, a small entity is defined as: (1) A small business whose

parent company has fewer than 750 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule amendments on small entities, we certify that this action will not have a significant economic impact on a substantial number of small entities. We believe there will be little or no impact on small entities because the purpose of today's proposed amendments is to update the rule with the correct OSHA labeling citations, and the amendments would not impose new requirements or compliance costs on industry.

For information regarding other administrative requirements for this action, please see the direct final rule located in the Rules and Regulations section of today's **Federal Register**.

#### **List of Subjects in 40 CFR Part 61**

Environmental protection, Air pollution control, Hazardous substances.

Dated: September 12, 2003.

**Marianne L. Horinko,**

*Acting Administrator.*

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