



Federal Register

**Thursday,
September 18, 2003**

Part II

Environmental Protection Agency

40 CFR Part 61

**National Emission Standards for
Hazardous Air Pollution for Asbestos;
Direct Final Rule and Proposed Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[OAR-2002-0082, FRL-7561-2]

National Emission Standards for Hazardous Air Pollutants for Asbestos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final 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 will 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. We are making the amendments by direct final rule,

without prior proposal, because we view the revisions as noncontroversial and anticipate no adverse comments.

DATES: The direct final rule is effective on November 17, 2003 without further notice, unless EPA receives adverse written comment by October 20, 2003 or if a public hearing is requested by September 29, 2003. If EPA receives such comments, it will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate, if possible) to: Air and Radiation Docket Center (6102T), Attention Docket Number OAR-2002-0082, 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 (6102T), 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*).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Fairchild, U.S. EPA, Minerals and Inorganic Chemicals Group (C-504-05), Emission Standards Division, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5167, facsimile number (919) 541-5600, electronic mail address: 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. The EPA has established an official public docket for this action under docket number OAR-2002-0082. The public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does

not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, Room B108, 1301 Constitution Ave., NW., 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 Public Reading Room is (202) 566-1744. The telephone number for the Air Docket is (202) 566-1742.

Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

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/> to 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.

Comments. We are publishing the direct final rule without prior proposal because we view the amendments as noncontroversial and do not anticipate adverse comments. We consider the

changes to be noncontroversial because the only effect is to correctly cite the appropriate OSHA labeling requirements referenced in the asbestos NESHAP for labeling containers of asbestos waste. The revisions adopted by the direct final rule retain the labeling requirements in 40 CFR 61.150. In the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal in the event that timely and significant adverse comments are received.

If we receive any relevant adverse comments on the amendments, we will publish a timely withdrawal in the **Federal Register** informing the public which provisions will become effective and which provisions are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule based on the proposed rule. Any of the distinct amendments in the direct final rule for which we do not receive adverse comment will become effective on the date set out above. We will not institute a second comment period on the direct final rule. Any parties interested in commenting must do so at this time.

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.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the direct final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by November 17, 2003. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the direct final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

Outline. The following outline is provided to aid in reading this preamble to the direct final rule.

I. Background

- II. Technical Amendment to the Asbestos NESHAP
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- III. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review
 - B. Paperwork Reduction Act
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 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
 - H. Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer and Advancement Act
 - J. Congressional Review Act

I. Background

On November 20, 1990, the **Federal Register** published EPA's revision of the National Emission Standards for Hazardous Air Pollutants for Asbestos (asbestos NESHAP), 40 CFR part 61, subpart M (55 FR 48406). That final rule contained regulatory provisions for the labeling of asbestos waste that cited to regulations then in place from OSHA for proper labeling of asbestos waste. Subsequent to the publication of that rule, OSHA has renumbered the provisions cited in the asbestos NESHAP. The direct final rule amendments identify the current OSHA regulatory citations for properly labeling asbestos waste that is managed under the asbestos NESHAP.

II. Technical Amendment to the Asbestos NESHAP

The current OSHA citations identified in 40 CFR 61.150 (a)(1)(iv) and Table 1 found at 40 CFR 61.156 do not correctly identify the appropriate OSHA regulations. The direct final rule amendments will correct the paragraph and table to conform with the applicable and appropriate OSHA regulations.

A. How Are We Changing the Labeling Citations?

When EPA last revised the asbestos NESHAP, EPA's regulations regarding labeling (40 CFR 61.150(a)(1)(iv) and Table 1 found at 40 CFR 61.156) cited to regulations then in place from the Occupational Safety and Health Administration (OSHA) for proper labeling of asbestos waste. Those citations were 29 CFR 1910.1001(j)(2) and 1926.58(k)(2)(iii). Since that time, OSHA has renumbered the regulations cited in the NESHAP for labeling asbestos waste (see 59 FR 40964, August

10, 1994; and 60 FR 33973, June 29, 1995). The asbestos NESHAP regulation at 40 CFR 61.150(a)(1)(iv) will now cite 29 CFR 1910.1001(j)(4) and 1926.1101(k)(8). In Table 1-Cross Reference to Other Asbestos Regulations, the left hand column under OSHA, the citation 28 CFR 1926.58 will be deleted and replaced with 29 CFR 1101.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 5173, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in standards that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that the amendments do not constitute a "significant regulatory action" because they do not meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Paperwork Reduction Act

The information collection requirements in the final rule were submitted to and approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned OMB control No. 2060-0101. An Information Collection Request (ICR) document was prepared by EPA (ICR No. 0111.10) and a copy may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW, Washington DC 20460, by e-mail at

auby.susan@epamail.epa.gov, or by calling (202) 566-1672. A copy may also be downloaded from the Internet at <http://www.epa.gov/icr>.

Today's action consists primarily of clarifications to the final rule that impose no new information collection requirements on industry or EPA. For that reason, we have not revised the ICR for the existing rule.

C. 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 Procedures 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. The EPA has determined that the amendments will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's technical amendments on small entities, small entities are defined as: (1) A small business that 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; and (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 direct final rule amendments on small entities, the EPA has concluded that this action will not have a significant impact on a substantial number of small entities. The direct final rule amendments will not impose any new requirements on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205

of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potential affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the direct final rule amendments do not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in aggregate, or the private sector in any one year, nor does the rule significantly or uniquely impact small governments, because it contains no requirements that apply to such governments or impose obligations upon them. Thus, the requirements of the UMRA do not apply to the direct final rule amendments.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The direct final rule amendments do not have federalism implications. The amendments change only the citation of the labeling requirements for asbestos waste and do not modify existing or

create new responsibilities among EPA Regional Offices, States, or local enforcement agencies. The technical amendments will not have new substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to the direct final rule amendments.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Government

Executive Order 13175 (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The direct final rule amendments do not have tribal implications as specified in Executive Order 13175. They would not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the direct final rule amendments.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. The direct final rule amendments are not subject to Executive Order 13045 because they do not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy, Supply, Distribution, or Use

The direct final rule amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Because today's action contains no new test methods, sampling procedures or other technical standards, there is no need to consider the availability of voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and

other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. The direct final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 61

Environmental protection, Air pollution control, Hazardous substances.

Dated: September 12, 2003.

Marianne L. Horinko,
Acting Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 61 is amended as follows:

PART 61—[AMENDED]

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart M—[AMENDED]

■ 2. Section 61.150 is amended by revising paragraph (a)(1)(iv) to read as follows:

§ 61.150 Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations.

* * * * *

(a) * * *

(1) * * *

(iv) Label the containers or wrapped materials specified in paragraph (a)(1)(iii) of this section using warning labels specified by Occupational Safety and Health Standards of the Department of Labor, Occupational Safety and Health Administration (OSHA) under 29 CFR 1910.1001(j)(4) or 1926.1101(k)(8). The labels shall be printed in letters of sufficient size and contrast so as to be readily visible and legible.

* * * * *

■ 3. Section 61.156 is amended by revising Table 1 to read as follows:

§ 61.156 Cross-reference to other asbestos regulations.

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TABLE 1.—CROSS-REFERENCE TO OTHER ASBESTOS REGULATIONS

Agency	CFR citation	Explanation
EPA	40 CFR part 763, subpart E	Requires schools to inspect for asbestos and implement response actions and submit asbestos management plans to States. Specifies use of accredited inspectors, air sampling methods, and waste disposal procedures.
	40 CFR part 427	Effluent standards for asbestos manufacturing source categories
	40 CFR part 763, subpart G	Protects public employees performing asbestos abatement work in States not covered by OSHA asbestos standard.
OSHA	29 CFR 1910.1001	Worker protection measures—engineering controls, worker training, labeling, respiratory protection, bagging of waste, 0.2 f/cc permissible exposure level.
	29 CFR 1926.1101	Worker protection measures for all construction work involving asbestos, including demolition and renovation work practices, worker training, bagging of waste, 0.2 f/cc permissible exposure level.
MSHA	30 CFR part 56, subpart D	Specifies exposures limits, engineering controls, and respiratory protection measures for workers in surface mines.
	30 CFR part 57, subpart D	Specifies exposure limits, engineering controls, and respiratory protection measures for workers in underground mines.
DOT	49 CFR parts 171 and 172	Regulates the transportation of asbestos-containing waste material. Requires waste containment and shipping papers.