

revises the CFR to conform to the findings of EPA in accordance with the court decision, and requires no notice and public comment.

EFFECTIVE DATE: This document is effective on June 28, 1994.

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SUPPLEMENTARY INFORMATION: In the Federal Register of July 12, 1989 (54 FR 29460), EPA issued a final rule under section 6 of the Toxic Substances Control Act (TSCA)(15 U.S.C. 2605) that prohibited the manufacture, importation, processing, and distribution in commerce of most asbestos-containing products in three stages over 7 years (40 CFR 763.160 through 763.179). Stage 1 of the ban went into effect in August 1990. Stages 2 and 3 were scheduled to go into effect in 1993 and 1996 respectively.

On October 18, 1991, the United States Court of Appeals for the Fifth Circuit vacated and remanded most of the ABPO Rule. *Corrosion Proof Fittings v. EPA*, 947 F.2d 1201 (5th Cir., 1991). In a latter clarification, the court stated that product categories in the ABPO Rule that were no longer being manufactured, imported, or processed on July 12, 1989, when the ABPO Rule was issued were still subject to the rule. *Id.* at 1230. The court left it to EPA to resolve any factual disputes about which product categories in the ABPO Rule were no longer in commerce on July 12, 1989.

As a result, in order to determine which product categories in the ABPO Rule were still subject to the rule, EPA published a document in the Federal Register of April 2, 1992 (57 FR 11364), that requested information on the commercial status on July 12, 1989, of 14 product categories in the rule that may no longer have been manufactured, processed, or imported when the rule was published on July 12, 1989. In addition, EPA solicited information on the commercial status of any other product category in the ABPO Rule that also may no longer have been manufactured, processed, or imported on July 12, 1989. EPA supplemented the original information in the RIA with the comments received in response to the Federal Register notice and with additional research.

EPA published a document in the Federal Register of November 5, 1993 (58 FR 58964), that announced its

findings concerning the regulatory status of the product categories in the ABPO Rule. EPA concluded that six asbestos-containing product categories were not being manufactured, processed, or imported on July 12, 1989, and thus are still subject to the rule. The remaining product categories were being manufactured, processed, or imported on July 12, 1989, and are no longer subject to the rule.

Accordingly, EPA is issuing this document to revise the language of the ABPO Rule in the CFR to conform to the October 1991 court decision that remanded the rule and to the November 1992 factual findings of EPA, in accordance with the court decision.

List of Subjects in 40 CFR Part 763

Environmental protection, Asbestos, Hazardous substances.

Dated: June 21, 1994.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 763 is amended as follows:

PART 763—[AMENDED]

1. The authority citation for part 763 continues to read as follows:

Authority: 15 U.S.C. 2605 and 2607(c).

2. By revising § 763.163 to read as follows.

§ 763.163 Definitions.

For purposes of this subpart:

Act means the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*

Agency means the United States Environmental Protection Agency.

Asbestos means the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); tremolite; anthophyllite; and actinolite.

Asbestos-containing product means any product to which asbestos is deliberately added in any concentration or which contains more than 1.0 percent asbestos by weight or area.

Chemical substance, has the same meaning as in section 3 of the Act.

Commerce has the same meaning as in section 3 of the Act.

Commercial paper means an asbestos-containing product which is made of paper intended for use as general insulation paper or muffler paper. Major applications of commercial papers are insulation against fire, heat transfer, and corrosion in circumstances that require a thin, but durable, barrier.

Corrugated paper means an asbestos-containing product made of corrugated paper, which is often cemented to a flat

40 CFR Part 763

[OPPTS-82114B; FRL-4776-7]

Technical Amendment in Response to Court Decision on Asbestos; Manufacture, Importation, Processing and Distribution Prohibitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical amendment.

SUMMARY: EPA is revising the language of the Prohibition of the Manufacture, Importation, Processing, and Distribution in Commerce of Certain Asbestos-containing Products; Labeling Requirements Rule (also known as the Asbestos Ban and Phase Out or ABPO Rule) in the Code of Federal Regulations (CFR) to conform to a court decision that vacated and remanded part of the ABPO Rule and to an EPA factfinding conducted in accordance with the court's decision. The ABPO Rule prohibited the manufacture, importation, processing, and distribution in commerce of most asbestos-containing products in three stages over 7 years beginning in 1990. On October 18, 1991, the United States Court of Appeals for the Fifth Circuit (the court) vacated and remanded most of the ABPO Rule. In a subsequent clarification, the court said the rule continued to govern asbestos-containing products that were not being manufactured, imported, or processed on July 12, 1989. EPA conducted a factfinding and concluded that six asbestos-containing product categories in the ABPO Rule were not being manufactured, processed, or imported on July 12, 1989, and thus are still subject to the rule. This document

backing, may be laminated with foils or other materials, and has a corrugated surface. Major applications of asbestos corrugated paper include: thermal insulation for pipe coverings; block insulation; panel insulation in elevators; insulation in appliances; and insulation in low-pressure steam, hot water, and process lines.

Customs territory of the United States means the 50 States, Puerto Rico, and the District of Columbia.

Distribute in commerce has the same meaning as in section 3 of the Act, but the term does not include actions taken with respect to an asbestos-containing product (to sell, resale, deliver, or hold) in connection with the end use of the product by persons who are users (persons who use the product for its intended purpose after it is manufactured or processed). The term also does not include distribution by manufacturers, importers, and processors, and other persons solely for purposes of disposal of an asbestos-containing product.

Flooring felt means an asbestos-containing product which is made of paper felt intended for use as an underlayer for floor coverings, or to be bonded to the underside of vinyl sheet flooring.

Import means to bring into the customs territory of the United States, except for: (1) Shipment through the customs territory of the United States for export without any use, processing, or disposal within the customs territory of the United States; or (2) entering the customs territory of the United States as a component of a product during normal personal or business activities involving use of the product.

Importer means anyone who imports a chemical substance, including a chemical substance as part of a mixture or article, into the customs territory of the United States. *Importer* includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf. The term includes as appropriate:

- (1) The consignee.
- (2) The importer of record.
- (3) The actual owner if an actual owner's declaration and superseding bond has been filed in accordance with 19 CFR 141.20.
- (4) The transferee, if the right to withdraw merchandise in a bonded warehouse has been transferred in accordance with subpart C of 19 CFR Part 144.

Manufacture means to produce or manufacture in the United States.

Manufacturer means a person who produces or manufactures in the United States.

New uses of asbestos means commercial uses of asbestos not identified in § 763.165 the manufacture, importation or processing of which would be initiated for the first time after August 25, 1989.

Person means any natural person, firm, company, corporation, joint-venture, partnership, sole proprietorship, association, or any other business entity; any State or political subdivision thereof, or any municipality; any interstate body and any department, agency, or instrumentality of the Federal Government.

Process has the same meaning as in section 3 of the Act.

Processor has the same meaning as in section 3 of the Act.

Rollboard means an asbestos-containing product made of paper that is produced in a continuous sheet, is flexible, and is rolled to achieve a desired thickness. Asbestos rollboard consists of two sheets of asbestos paper laminated together. Major applications of this product include: office partitioning; garage paneling; linings for stoves and electric switch boxes; and fire-proofing agent for security boxes, safes, and files.

Specialty paper means an asbestos-containing product that is made of paper intended for use as filters for beverages or other fluids or as paper fill for cooling towers. Cooling tower fill consists of asbestos paper that is used as a cooling agent for liquids from industrial processes and air conditioning systems.

State has the same meaning as in section 3 of the Act.

Stock-on-hand means the products which are in the possession, direction, or control of a person and are intended for distribution in commerce.

United States has the same meaning as in section 3 of the Act.

3. By revising § 763.165 to read as follows:

§ 763.165 Manufacture and importation prohibitions.

(a) After August 27, 1990, no person shall manufacture or import the following asbestos-containing products, either for use in the United States or for export: flooring felt and new uses of asbestos.

(b) After August 26, 1996, no person shall manufacture or import the following asbestos-containing products, either for use in the United States or for export: commercial paper, corrugated paper, rollboard, and specialty paper.

(c) The import prohibitions of this subpart do not prohibit:

(1) The import into the customs territory of the United States of products imported solely for shipment outside the customs territory of the United States, unless further repackaging or processing of the product is performed in the United States; or

(2) Activities involving purchases or acquisitions of small quantities of products made outside the customs territory of the United States for personal use in the United States.

4. By revising § 763.167 to read as follows:

§ 763.167 Processing prohibitions.

(a) After August 27, 1990, no person shall process for any use, either in the United States or for export, any of the asbestos-containing products listed at § 763.165(a).

(b) After August 26, 1996, no person shall process for any use, either in the United States or for export, any of the asbestos-containing products listed at § 763.165(b).

5. By revising § 763.169 to read as follows:

§ 763.169 Distribution in commerce prohibitions.

(a) After August 25, 1992, no person shall distribute in commerce, either for use in the United States or for export, any of the asbestos-containing products listed at § 763.165(a).

(b) After August 25, 1997, no person shall distribute in commerce, either for use in the United States or for export, any of the asbestos-containing products listed at § 763.165(b).

(c) A manufacturer, importer, processor, or any other person who is subject to a ban on distribution in commerce in paragraph (a) or (b) of this section must, within 6 months of the effective date of the ban of a specific asbestos-containing product from distribution in commerce, dispose of all their remaining stock-on-hand of that product, by means that are in compliance with applicable local, State, and Federal restrictions which are current at that time.

6. By revising § 763.171 to read as follows:

§ 763.171 Labeling requirements.

(a) After August 27, 1990, manufacturers, importers, and processors of all asbestos-containing products that are identified in § 763.165(a) shall label the products as specified in this subpart at the time of manufacture, import, or processing. This requirement includes labeling all manufacturers', importers', and

processors' stock-on-hand as of August 27, 1990.

(b) After August 25, 1995, manufacturers, importers, and processors of all asbestos-containing products that are identified in § 763.165(b), shall label the products as specified in this subpart at the time of manufacture, import, or processing. This requirement includes labeling all manufacturers', importers', and processors' stock-on-hand as of August 25, 1995.

(c) The label shall be placed directly on the visible exterior of the wrappings and packaging in which the product is placed for sale, shipment, or storage. If the product has more than one layer of external wrapping or packaging, the label must be attached to the innermost layer adjacent to the product. If the innermost layer of product wrapping or packaging does not have a visible exterior surface larger than 5 square inches, either a tag meeting the requirements of paragraph (d) of this section must be securely attached to the product's innermost layer of product wrapping or packaging, or a label must be attached to the next outer layer of product packaging or wrapping. Any products that are distributed in commerce to someone other than the end user, shipped, or stored without packaging or wrapping must be labeled or tagged directly on a visible exterior surface of the product as described in paragraph (d) of this section.

(d)(1) Labels must be either printed directly on product packaging or in the form of a sticker or tag made of plastic, paper, metal, or other durable substances. Labels must be attached in such a manner that they cannot be removed without defacing or destroying them. Product labels shall appear as in paragraph (d)(2) of this section and consist of block letters and numerals of color that contrasts with the background of the label or tag. Labels shall be sufficiently durable to equal or exceed the life, including storage and disposal, of the product packaging or wrapping. The size of the label or tag must be at least 15.25 cm (6 inches) on each side. If the product packaging is too small to accommodate a label of this size, the label may be reduced in size proportionately to the size of the product packaging or wrapping down to a minimum 2.5 cm (1 inch) on each side if the product wrapping or packaging has a visible exterior surface larger than 5 square inches.

(2) Products subject to this subpart shall be labeled in English as follows:

NOTICE

This product contains *ASBESTOS*. The U.S. Environmental Protection Agency has banned the distribution in U.S. commerce of this product under section 6 of the Toxic Substances Control Act (15 U.S.C. 2605) as of (insert effective date of ban on distribution in commerce). Distribution of this product in commerce after this date and intentionally removing or tampering with this label are violations of Federal law.

(e) No one may intentionally remove, deface, cover, or otherwise obscure or tamper with a label or sticker that has been applied in compliance with this section, except when the product is used or disposed of.

7. In § 763.173 by revising the section heading and paragraphs (a), (b), (c), and (g) to read as follows:

§ 763.173 Exemptions.

(a) Persons who are subject to the prohibitions imposed by §§ 763.165, 763.167, or 763.169 may file an application for an exemption. Persons whose exemption applications are approved by the Agency may manufacture, import, process, or distribute in commerce the banned product as specified in the Agency's approval of the application. No applicant for an exemption may continue the banned activity that is the subject of an exemption application after the effective date of the ban unless the Agency has granted the exemption or the applicant receives an extension under paragraph (b)(4) or (5) of this section.

(b) Application filing dates. (1) Applications for products affected by the prohibitions under §§ 763.165(a) and 763.167(a) may be submitted at any time and will be either granted or denied by EPA as soon as is feasible.

(2) Applications for products affected by the ban under § 763.169(a) may be submitted at any time and will be either granted or denied by EPA as soon as is feasible.

(3) Applications for products affected by the ban under §§ 763.165(b) and 763.167(b) may not be submitted prior to February 27, 1995. Complete applications received after that date, but before August 25, 1995, will be either granted or denied by the Agency prior to the effective date of the ban for the product. Applications received after August 25, 1995, will be either granted or denied by EPA as soon as is feasible.

(4) Applications for products affected by the ban under § 763.169(b) may not be submitted prior to February 26, 1996. Complete applications received after

that date, but before August 26, 1996, will be either granted or denied by the Agency prior to the effective date of the ban for the product. Applications received after August 26, 1996, will be either granted or denied by EPA as soon as is feasible.

(5) The Agency will consider an application for an exemption from a ban under § 763.169 for a product at the same time the applicant submits an application for an exemption from a ban under § 763.165 or § 763.167 for that product. EPA will grant an exemption at that time from a ban under § 763.169 if the Agency determines it appropriate to do so.

(6) If the Agency denies an application less than 30 days before the effective date of a ban for a product, the applicant can continue the activity for 30 days after receipt of the denial from the Agency.

(7) If the Agency fails to meet the deadlines stated in paragraphs (b)(3) and (b)(4) of this section for granting or denying a complete application in instances in which the deadline is before the effective date of the ban to which the application applies, the applicant will be granted an extension of 1 year from the Agency's deadline date. During this extension period the applicant may continue the activity that is the subject of the exemption application. The Agency will either grant or deny the application during the extension period. The extension period will terminate either on the date the Agency grants the application or 30 days after the applicant receives the Agency's denial of the application. However, no extension will be granted if the Agency is scheduled to grant or deny an application at some date after the effective date of the ban, pursuant to the deadlines stated in paragraphs (b)(3) and (b)(4) of this section.

(c) Where to file. All applications must be submitted to the following location: TSCA Docket Receipts Office (7407), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, Rm E-G99, 401 M St., SW., Washington, DC 20460, ATTENTION: Asbestos Exemption. For information regarding the submission of exemptions containing information claimed as confidential business information (CBI), see § 763.179.

(g) If the application does not include all of the information required in paragraph (d) of this section, the Agency will return it to the applicant as incomplete and any resubmission of the application will be considered a new application for purposes of the availability of any extension period. If

the application is substantially inadequate to allow the Agency to make a reasoned judgment on any of the information required in paragraph (d) of this section and the Agency chooses to request additional information from the applicant, the Agency may also determine that an extension period provided for in paragraph (b)(5) of this section is unavailable to the applicant.

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