

required by the Act to be disclosed, records falling within the categories covered by several exemptions including (2) may be made available to the extent, but only to the extent, that the appropriate Departmental official determines that such disclosure will further the public interest and will not impede the discharge of any of the Department's functions. § 70.23 deals specifically with exemption (2). Subsection (c) provides that a discretionary determination (under §§ 70.11 and 70.22(b)) to release documents protected by this exemption ordinarily cannot be made in the case of internal rules and instructions relating to investigations and enforcement activities concerned with questions of compliance with or violations of law.

As shown above, there are two categories of staff manuals, first, administrative staff manuals and instructions to staff affecting a member of the public which are disclosed under FIA subsection (a)(2)(C) and § 70.15 of the regulations, and second, law enforcement manuals which are protected from disclosure by subsection (b)(2) (exemption (2)) and section 70.23 of the regulations since they are related solely to the internal personnel rules and practices of an agency.

An example of the first category is the Compliance Operations Manual (OSHA-2006) which, as the Occupational Safety and Health Administration stated in its letter denying your request, contains all instructions provided to inspectors which do have an effect on members of the public. This Manual may be purchased from the Government Printing Office. The Training Course, on the other hand, falls within the second category since it is a law enforcement manual within the express language of § 70.23(a) of the regulations quoted in the first paragraph of page 2 of this letter.

The distinction between the two categories of manuals is clearly explained in the *City of Concord* case, *supra*. The court said at 333 F.Supp. pp. 959-960 (as indicated on page 1 of this letter) that the purpose of the word "administrative" in subsection (a)(2)(C) is to limit that provision to those materials "which pertain to administrative matters rather than law enforcement matters", in order to protect "the traditional confidential nature of instructions to Government personnel prosecuting violations in court"; and the court then quoted from H. Rept. No. 1497 the statement that "an agency may not be required to make available those portions of its staff manuals and instructions which set forth criteria or guidelines in auditing and inspection procedures, or *** operational tactics ***."

On appeal to me under §§ 70.50-70.52 of the regulations I have accordingly determined *de novo* that the Training Course in question is not an administrative manual or other document under FIA subsection (a)(2)(C) but instead is a law enforcement manual protected from disclosure by FIA exemption (2) because it is designed for the guidance of Department personnel and comprises solely internal rules and instructions relating to investigations and enforcement activities concerned with questions of compliance with or violations of provisions of law. I have further determined that disclosure of the Training Course would not serve the public interest and would impede the discharge of the Department's compliance and enforcement functions under the Occupational Safety and Health Act.

Your appeal is therefore denied.

Sincerely,
/s/ Richard F. Schubert
Solicitor of Labor

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION PROGRAM DIRECTIVE 72-1A REVISION OF ASBESTOS SAMPLING DATA SHEET

OSHA SAMPLING DATA SHEET NO. 2 (REVISED)

Substance:

Asbestos.

Standard: 29 CFR 1910.93a(b), (1) and (3) of June 7, 1972

8-hour time weighted average: 5 fibers, longer than 5 micrometers, per cubic centimeter of air.

Ceiling concentration: 10 fibers, longer than 5 micrometers, per cubic centimeter of air.

Analytical Method:

Fibers counted at 400-450 magnification, using phase contrast illumination, with sample mounted in high-viscosity solution of membrane filter material.

Sampling Equipment:

Personal sampling pump plus Millipore type AA Filter (37mm, 0.8 µ pore size). Face cap is removed and filter

used open face during sampling. Sample rate: 2 l/m. (liters per minute)

Sample Size:

Minimum period of 15 minutes for evaluation of ceiling limit. Several samples of up to 4 hours for evaluation of 8-hour average. Samples with a visible deposit may be too heavy to count. Compare with a clean filter. Heavy concentrations of visible dust in the air (100 to 500 fibers/cc) may require short sampling periods of only 5 minutes, or less.

Blanks:

With each batch of samples submit two fibers which are subjected to exactly the same handling as for the samples except that no air is drawn through them. Label these as blanks.

Shipping:

The cassettes in which the samples are collected should be shipped in a suitable container, designed to prevent damage in transit.

Inminent Danger Situations:

Generally not applicable.

Serious Violation:

More than 5 fibers longer than 5 micrometers, per cubic centimeter of air, for an 8-hour time-weighted average, or an individual sample of more than 10 fibers, longer than 5 micrometers, per cubic centimeter of air. The times permitted at 10 fibers longer than 5 micrometers per cubic centimeter can be obtained from the attached graph. Times permitted at fiber counts between 5 and 10 fibers (including 10 fibers) can be worked out

with the C_1/T_1 formula using the 5 fibers standard as the 8-hour time-weighted average.

$$\frac{C_1}{T_1} + \frac{C_2}{T_2} + \dots + \frac{C_n}{T_n} = 1$$

Nonserious Violation:

Not applicable.

De Minimus Violation:

Not applicable.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION PROPOSED EXTENSION OF DEADLINE FOR REQUIRING WEIGHT MARKING ON MARITIME CARGO CONTAINERS

DEPARTMENT OF LABOR

Occupational Safety and Health
Administration

[29 CFR Part 1918]

[S-72-5]

LONGSHORE STANDARD

Weight Markings on Cargo Containers; Proposed Delay in Effective Date

Paragraph (a) of § 1918.85, Title 29, Code of Federal Regulations, requires that each cargo container be permanently marked in pounds with the following: (1) The weight of the container when empty; (2) the maximum cargo weight that the container is intended and designed by its manufacturer to carry; and (3) the sum of these two weights. The Institute of International Container Lessors, Airwork House, 35 Piccadilly, London, United Kingdom, has petitioned on behalf of its member companies to extend by 9 months the present effective date, August 27, 1972 (37 F.R. 11058, June 2, 1972), in the case of the second requirement concerning maximum cargo weight. The requested extension would be limited to leased cargo containers.

The members of the Institute of International Container Lessors are:

- (1) CONTRANS Gesellschaft für Containerverkehr m.b.H.
- (2) CTI—Container Transport International, Inc.
- (3) Integrated Container Service, Inc.
- (4) Interpool, Ltd.
- (5) Sea Containers Ltd.
- (6) Sea Containers, Inc., and
- (7) SSI Container Corp.

The petitioner states that its members have not had sufficient time to mark, or have marked all their containers as a result of their constant use by other shippers and carriers. The 9-month extension is said to be needed to come into full compliance with the regulation.

Accordingly, pursuant to section 41 of the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1444, as amended; 33 U.S.C. 941) and to the Sec-

retary of Labor's Order No. 12-71 (36 F.R. 8754), the Assistant Secretary of Labor for Occupational Safety and Health is considering whether to grant the petition to suspend and postpone the effective date of the requirement in § 1918.85(a)(2), which is presently enforceable under section 4(b)(2) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1592; 29 U.S.C. 653).

Interested persons are invited to submit written data, views, and arguments concerning the issue of extension presented by the petition to the Office of Standards, Occupational Safety and Health Administration, Room 500, 400 First Street NW., Washington, DC 20210, within 30 days after the publication of this notice in the *FEDERAL REGISTER*. The data, views, and arguments will be available for public inspection and copying at the above address. In addition, oral views and arguments concerning the petition will be received by Hearing Examiner Francis E. Dowd at an informal hearing beginning at 11 a.m. on November 14, 1972, in Rooms 216 A, B, C, and D, Main Labor Building, U.S. Department of Labor, 14th Street and Constitution Avenue NW., Washington, D.C. 20210. Persons desiring to appear at the hearing must file with the Office of Standards a notice of intention to appear, postmarked no later than October 28, 1972. The notice must state the name and address of the person to appear, the capacity in which he will appear, and the approximate amount of time required for his presentation. The notice must also include, or be accompanied by, a statement of the position to be taken with regard to the petition, and of the evidence to be adduced in support of the position.

Beginning at 10 a.m. on November 14, 1972, the hearing examiner will hold a brief prehearing conference in order to establish the order and time for the presentation of statements and to settle any other matters which may be relevant to the proceeding. All documents that are intended to be submitted for the record at the hearing should be submitted in duplicate.

The hearing shall be reported verbatim, and a transcript shall be available

to any interested person on such terms as the presiding officer may provide. The use of prepared statements by witnesses is encouraged.

Upon completion of the oral presentations, the transcript thereof, together with written submissions on the petition, exhibits filed during the hearing, and any posthearing comments, recommendations, and supporting reasons, shall be certified by the hearing examiner to the Assistant Secretary of Labor.

The hearing examiner shall have all the powers necessary or appropriate to conduct a fair and full informal hearing, including the powers:

- (a) To regulate the course of the proceeding;
- (b) To dispose of procedural requests, objections, and comparable matters;
- (c) To confine the presentations to matters pertinent to the petition;
- (d) To regulate the conduct of those present at the hearing by appropriate means;
- (e) In his discretion, to permit cross-examination of any witness; and
- (f) In his discretion, to keep the record open for a reasonable, stated time to receive written recommendations, and supporting reasons, and additional data, views, and arguments from any person who has participated in the oral proceeding.

During the pendency of this proceeding, no citation for violation of the requirement in § 1918.85(a)(2) will be issued with respect to a container used by a lessee, which is permanently marked in pounds with: (1) The weight of the container when empty; and (2) the sum of the weight of the container when empty and the maximum cargo weight which the container is designed by its manufacturer to carry. The maximum cargo weight which such a leased container is designed by its manufacturer to carry need not be separately marked during the pendency of this proceeding.

Signed at Washington, D.C., this 19th day of September 1972.

G. C. GUENTHER,
Assistant Secretary of Labor.

[FR Doc. 72-16293 Filed 9-25-72; 8:45 am]

[37 FR 20120]

INTEROFFICE MEMORANDUM

TO: Roy Couch	DATE: December 21 1972
FROM: C.A. Bland	SUBJECT: 'Asbestos' Blankets
COPIES TO:	REPLYING TO YOUR LETTER

Further to our conversation today on Asbestos fire blankets, we should as soon as possible change our specifications to a "Treated" asbestos blanket to preclude the "dusting" problems with present blankets.

I had sent some info on treated Asbestos to J. Hurley some time ago; he probably has it somewhere.

You may want to have a Sales representative out to discuss new materials.

Thanks
CAB

CAB
Xtra copy

SHELL CHEMICAL COMPANY
HOUSTON PLANT

ASBESTOS HANDLING

SAFETY S-35
PAGE 1 OF 2
SEPTEMBER 5, 1972

Asbestos, a mineral silicate, has been recognized as a hazardous material which can cause respiratory problems if individuals are exposed to excessive airborne concentrations over prolonged periods. The fine airborne fibers of asbestos can pass through the upper respiratory tract to the lower parts of the lungs to cause irritation and to form "asbestos bodies" where the fibers are encapsulated; these can lead to pneumoconiosis.

This order establishes procedures to be followed by personnel who have occasion to work with materials containing asbestos.

General

Enclosures, exhaust collection systems and vacuum sweeping should be used when these facilities are available. When these measures are not applicable or do not reduce the asbestos concentration to permissible levels, protective respiratory devices must be worn.

1. Dust masks (such as the Welsh Model 7165 or 3M Brand 8710 respirator) should be worn by personnel any time there is a possibility of asbestos fibers becoming airborne in their work area.
2. Fresh air masks, coveralls, and head covering should be worn if working in an enclosed area or where heavy airborne concentrations of asbestos may be encountered.

The Safety Section should be contacted if there are any questions concerning protective equipment requirements.

Precautions should be taken to minimize airborne concentrations of asbestos fibers. The following measures should be taken where practical.

1. Asbestos dust accumulation should be cleaned up by vacuum cleaner or by water washing (effluent permit required); dry sweeping or blowing it away should not be permitted. Dust accumulation should be held to an absolute minimum.
2. Scrap materials and bags which contained asbestos should be disposed of in plastic bags or some other sealed container. Boxes which contained insulation may be used for disposing scrap if the boxes are properly sealed (i.e., taped). A caution label is to be affixed to each container of scrap material identifying the contents as containing asbestos; these labels may be obtained from the Tool Room.
3. Drop cloths and "curtains" may be required to confine and minimize spread of asbestos dust.

DPMC-00676

LAM 007164

Insulating Work Practices for Asbestos Materials

1. Insulating materials which do not contain asbestos should be used where effective installation will result.
2. Materials should normally be cut in the Insulation Shop where local exhaust ventilation is present; field cutting should be minimized.
3. Asbestos cement, mortar, coating, grout, plaster, or similar materials containing asbestos must be mixed with water in the bags or containers in which they are shipped.

Dismantling of Equipment

1. Protective respiratory devices as described above should be worn during demolition of piping, structures or equipment when insulation is being removed.
2. Care should be exercised in removing insulation to minimize airborne asbestos; that is, insulation should not be indiscriminately knocked off piping. When wrecking out asbestos, it should be wet down sufficiently to minimize airborne particles.
3. Scrap material or debris should not be permitted to collect in the work area. Cleanup should be by vacuum or "wet" methods. Bulk pieces of insulation may be placed in load luggers where the likelihood of "dusting" is minimal. Small pieces of scrap and fibers collected by vacuum cleaner should be placed in sealed containers with "Asbestos Caution" labels attached.
4. Personnel should not remain in the vicinity where airborne concentrations of asbestos may exist unless their work requires it.

Handling of Asbestos at CA Unit Cell Room

The diaphragms of the cathode assemblies used at the CA Unit are prepared from a slurry of "long" asbestos fibers. Generally, emission of asbestos fibers during this operation is minimal; the following measures, however, should be followed to assure personnel are not exposed to airborne fibers.

1. Respiratory protection must be worn while handling and adding asbestos to the depositing slurry mix tank.
2. Before opening the bags of asbestos, they should be moistened to minimize "dusting".
3. Empty bags and scrap material should be placed in sealed plastic bags and "Asbestos Caution" label attached.
4. Loose asbestos fibers should not be permitted to accumulate around the depositing vat; the area should be kept clean by washing down.
5. While the asbestos is added to the mix tank, personnel not involved in the depositing operation should keep clear of the immediate area.

DFMC-00677

ACTION ITEMS RELATED TO OSHA ASBESTOS STANDARD

Maintenance Engineering

1. Insulator shop revisions (high priority).
 - a. Revamp exhaust system.
 - b. Install ventilated work table.
 - c. Purchase vacuum cleaner (Garver).
2. Need to prohibit eating lunch in Insulator Shop.
3. Mixing of cement and mortar.
 - a. Must be purchased and mixed in bags.
4. Possible need to provide special clothing.
 - a. Dependent upon results of air sampling.

Safety & Training

1. Plant order covering demolition of insulated equipment.
 - a. Respiratory protection
 - b. Cleanup methods
 - c. Disposal
2. Warning signs
 - a. Insulator Shop
 - b. CA Unit cell room
3. Warning labels for scrap disposal containers.
4. Physical examinations
 - a. First exam immediately - repeat annually.
 - (1) All Insulators
 - (2) CA Cellroom Operator who slurries asbestos, plus his backup.
 - (3) Operators involved in mixing asbestos with Epocrile.
 - b. Termination examinations

Action Items Related to OSHA Asbestos Standard

2

5. Air sampling (need Environmental Lab assistance).
 - a. Within six months, but after Insulator Shop revisions.
 - b. Coordination by DOSH.

EWS:ljp
7/11/72

DPMC-00679

LAM 007167