

ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF PESTICIDES AND TOXIC SUBSTANCES

40 CFR PART 763

[OPTS-62036C; FRL]

ASBESTOS; RELEASE OF INFORMATION

AGENCY: Environmental Protection Agency (EPA).

ACTION: Release of Additional Information.

SUMMARY: Under the authority of section 14(a)(4) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2613(a)(4), EPA is announcing its decision to release all the information currently treated as Confidential Business Information (CBI) contained in three draft documents supporting the TSCA asbestos ban and phase out rulemaking proceeding. The three draft documents are: the Asbestos Exposure Assessment, the Asbestos Modeling Study, and the Regulatory Impact Analysis. These three draft documents contain analyses necessary to support the rulemaking proceeding for the final rule to ban and phase out the use of asbestos.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. BACKGROUND

In 1986, EPA proposed a rule under section 6 of TSCA which would ban immediately the manufacture, import, and processing of certain asbestos products, and would phase out the remaining products over a 10-year period (50 FR 3738, January 29, 1986). This proposal outlined several options for implementing the ban and phase out and allowed 5 months for public comment.

EPA has since updated its information base with data collected in a 1986 telephone survey and a 1986-1987 Asbestos Exposure Assessment Questionnaire. This updated information base has been used in the analyses supporting the final rule. The three draft documents containing these analyses and supporting the final rule soon will be released to the public. These three documents are the Asbestos Exposure Assessment, the Asbestos Modeling Study, and the Regulatory Impact Analysis.

In December 1987, EPA announced its intention to release the information currently treated as CBI which is contained in these three documents (52 FR 48286, December 21, 1987). The release of information was proposed under the authority of section 14(a)(4) of TSCA, which authorizes disclosure of CBI when relevant in a TSCA proceeding. EPA received 11 comments in response to this

proposal within the deadline for comment. Two other comments were received after the January deadline. EPA is responding to all 13 comments. Eleven of the 13 comments supported the proposed release of this CBI. Only two commentators objected to the proposed release of information.

II. RATIONALE FOR THE RELEASE OF INFORMATION

The authority and rationale for the release of the information currently treated as CBI which is contained in the three documents were explained in the FEDERAL REGISTER notice proposing this release (52 FR 48286, December 21, 1987). As noted in the proposal, under 40 CFR 2.306(i), EPA may not release CBI under section 14(a)(4) until affected businesses have been informed that the Agency is considering making the information available to the public and have been afforded a reasonable opportunity to comment. EPA made known its intention to release this information to the public through the publication of a notice in the FEDERAL REGISTER on December 21, 1987. Further, EPA mailed a copy of that FEDERAL REGISTER notice to each of the businesses that provided EPA information which was treated as CBI. A 30-day comment period ending January 20, 1988 was established to afford these businesses and the general public a reasonable opportunity to comment.

During the comment period for the proposed release of the information currently treated as CBI and contained in the Asbestos Exposure Assessment, the Asbestos Modeling Study, or the

Regulatory Impact Analysis, EPA received 13 comments. A few of these comments had more than one signatory. All but two comments supported the Agency's proposed action.

The Agency received support for the proposed release of information from several trade associations, the Natural Resources Defense Council, Inc. (NRDC), several companies, and the offices of the Attorneys General of nine states. Only two individual companies objected to the proposed release.

The offices of the Attorneys General of nine states supported the release of information because they believe that the CBI should be released to allow full and effective public comment on this rulemaking proceeding. One manufacturer of roof coatings and the Asbestos Free Gasket Group, a group of gasket manufacturers who are replacing asbestos in their products, urged EPA to proceed with the release in order to expedite the rulemaking proceeding for the ban and phase out of asbestos.

The NRDC also supported the proposed release of the information currently treated as CBI which is contained in any of the three support documents. NRDC believes that release of this information is vital to meaningful public comment.

The Asbestos Information Association/North America (AIA/NA) and the Asbestos Institute (AI) also supported EPA's proposal to release this information but believe that two additional steps should be taken. AIA/NA and AI believe that the proposed release of information will be inadequate to allow full disclosure of

disputed material facts, as required by section 19(c)(1)(B) of TSCA. Consequently, AIA/NA and AI want EPA to release even more data, including "the facts lying behind these three reports."

AIA/NA and AI suggested two specific steps to release additional data. First, AIA/NA and AI suggested that EPA individually examine the validity of claims of confidentiality made with respect to information it obtained. Second, AIA/NA and AI suggested that EPA request permission to release the information from each submitter whose claimed confidential information it is using.

AIA/NA and AI suggested that the two steps mentioned above be taken because AIA/NA and AI believe that more information needs to be released. At present, EPA believes that the information to be released in the three documents is sufficient to provide adequate opportunity for public comment because the documents summarize all necessary data concerning the Agency's risk assessment and cost benefit analyses for the final rule. EPA, therefore, does not believe that it is necessary at this point to take the two additional steps AIA/NA and AI suggested.

EPA may consider the release of additional CBI should the Agency determine that disclosure is advisable because of the relevance of any such information to the asbestos ban and phase out rulemaking proceeding and the need for additional comment on the rulemaking proceeding. In such case, appropriate notice and opportunity to comment would be provided affected businesses.

Suggestions concerning the proposal's rationale for the release of the information currently treated as CBI were also received. The NRDC along with the offices of the Attorneys General of the nine states believe that EPA could have proposed the release of CBI under section 14(a)(3) of TSCA, instead of section 14(a)(4). Section 14(a)(3) calls for the release of CBI if the "Administrator determines it necessary to protect health or the environment against an unreasonable risk of injury to health or the environment." Because the Agency believes section 14(a)(4) provides appropriate and sufficient authority for release of the relevant and necessary information at this time, the Agency does not have to determine whether disclosure would also be authorized under section 14(a)(3).

Objections to the proposed release of information came from two companies. Both companies use asbestos in the manufacture of their products. These two companies were primarily concerned that the release of the information they claimed as CBI might cause them competitive harm.

Section 14(a)(4) of TSCA and 40 CFR 2.306(i) authorize the Agency to release CBI, after giving appropriate notice and opportunity for comment, irrespective of potential competitive harm if the information is relevant to a proceeding under TSCA, if EPA determines it in the public interest to release such information, and if the Agency preserves the confidentiality of the information to the extent practicable without impairing the proceeding. EPA believes that in deciding to release the

information treated as CBI and contained in any of the three support documents it has met each of these requirements.

The Agency believes it is releasing only that information which is necessary to support the final rule to ban and phase out the use of asbestos, while preserving confidentiality to the extent practicable. Much of the information EPA will be releasing is aggregated because information generally will be released on a product category basis.

The General Counsel has concluded that the information is relevant to the subject of the TSCA section 6 rulemaking proceeding for the ban and phase out of the use of asbestos. Based upon the matters discussed in the notice published in the FEDERAL REGISTER on December 21, 1987 and after considering all comments, the Office of Toxic Substances remains convinced that the public interest would be served by making the described information publicly available.

Today's FEDERAL REGISTER notice informs all affected businesses that all of the information currently treated as CBI and contained in the Asbestos Exposure Assessment, the Asbestos Modeling Study, or the Regulatory Impact Analysis will be released to the public in the near future. In addition to the publication of this FEDERAL REGISTER notice, each company that provided the Agency with information claimed as CBI will receive individual notice of this release. The information treated as CBI which is contained in the Asbestos Exposure Assessment, the Asbestos Modeling Study, or the Regulatory Impact Analysis will

be disclosed no sooner than 5 calendar days after the businesses have received notice of this decision.

LIST OF SUBJECTS IN 40 CFR PART 763

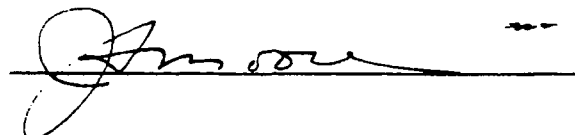
Environmental protection

Hazardous substances

Reporting and recordkeeping requirements

Asbestos

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