

SUMMARY OF REVISED REGULATORY IMPACT STATEMENT

a) Substantive changes. Substantive changes were made as follows:

1. Section 56-1.3 was amended to provide that rule won't apply to manufacture of asbestos or asbestos materials or manufacturing processes involving asbestos or asbestos materials, clarifying the rule's scope and application.

2. Section 56-1.4(p) (renumbered 56-1.4(o)) defining "asbestos project" was clarified relative to projects not believed to involve asbestos when undertaken. Upon initial disturbance of friable asbestos, projects become asbestos projects and further work on portion which resulted in the disturbance must be conducted in accordance with rule. Only individuals working on portion of the project on which asbestos was disturbed are subject to regulatory requirements.

3. In Section 56-1.4(q) (renumbered 56-1.4(p)) the definition of "asbestos supervisor" was amended, deleting supervisor's training in addition to basic training requirements. Such rulemaking

falls within jurisdiction of Department of Health. .

4. Section 56-1.4(pp) was added defining "in-plant operations" and clarifying operations not subject to licensing and certification requirements at this time. Rulemaking in this area has been reserved (See Section 56-2.3). Sections 56-2.1(a) and 56-2.2(a) were amended accordingly.

5. Section 56-1.4(eee) (renumbered 56-1.4(ccc)) was amended removing references to respiratory protection. This change is consistent with purpose and intent of rule and Article 30 of the Labor Law. References requiring respiratory protection were amended (Section 56-1.4(jjj), (renumbered 56-1.4(hhh); Section 56-1.4(d); Section 56-16.1(d)(1)) to clarify that such requirements do apply to authorized visitors as defined in Section 56-1.4(t) (renumbered 56-1.4(r)).

6. Section 56-1.4(kkk) (renumbered 56-1.4(iii), defining "satisfactory clearance air monitoring results", was amended to mean airborne concentrations of less than 0.01 fibers per cubic centimeter or background levels, whichever are greater. The amendment relieves contractors of the burden of achieving post-abatement results

relieve contractors of unnecessary disposal requirements.

11. Section 56-7.1(f) defining the term "surfactants" was amended deleting requirements that surfactants be non-toxic and not an eye, respiratory system or skin irritant, a requirement perceived as unreasonable. The section provides that surfactants not be carcinogenic or generally toxic in normal use.

12. Section 56-8.1(e)(3)(iii) was amended deleting the reference to smoke testing as the only acceptable method of demonstrating positive pressure. Deletion gives contractors flexibility in meeting rule requirements. A similar change was made to Section 56-8.1(s)(2) (renumbered Section 56-8.1(p)(2)).

13. Sections 56-8.1(p) through (r) relating to waste removal routes, elevator use for waste and floor openings imposed unnecessary requirements on contractors already responsible for safely containerizing and disposing of asbestos and asbestos materials and were deleted.

14. Section 56-8.1(t) (renumbered 56-8.1(q)) was amended requiring that toilet facilities be provided in the clean area of the

exceeding airborne levels existing prior to the project. Sections 56-17.7 and 56-17.8 were similarly amended.

7. Section 56-2.2(c) was amended deleting supplemental training for applicants who attend training programs which substantially comply with requirements for approved programs. Such rulemaking falls within the authority of the Department of Health.

8. Section 56-2(e)(6) was deleted from the rule as it appeared to exceed statutory authority.

9. Section 56-3.1 was amended deleting the prohibition against production of airborne concentrations of asbestos fibers in excess of 0.01 fibers per cubic centimeter through use of asbestos materials and substituting references to "installation and application". The subpart was reserved to enable the Department to investigate the applicability of Part 56 to such activities.

10. Section 56-5.1(d) relating to recontainerizing of asbestos material and equipment, was amended deleting requirement that items be placed in hardwall containers. Placement in airtight plastic bags or sheeting will provide protection from release of asbestos and

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personal decontamination enclosure or in locations readily accessible to the enclosure, allowing flexibility to the contractor in complying with the rule.

15. Section 56-9.1(e) was amended deleting the requirement that plastic sheeting be thirty mil thick and substituting two layers of six mil reinforced plastic sheeting, which is more generally available. A similar change was made to Section 56-16.1(b) regarding glovebags which now provides that glovebags be at least six mil transparent plastic.

16. Section 56-12.1(c) relating to handling of asbestos material on detachment from the substrate was amended deleting prohibition against dropping material from a distance greater than six feet, recognizing that the height of a room is generally ten feet. Section 56-12.1(d) requires that asbestos dropped from a distance greater than ten feet be sent through dust free, tight, enclosed, inclined chutes. The maximum allowable chute inclination has been deleted.

17. Section 56-15.1(d) was amended to permit the use of

HEPA vacuums, and rubber or plastic dust pans, squeegees or shovels for asbestos cleanup, recognizing different, though equally effective, equipment for such purpose.

18. Sections 56-15.2(d) and (e) were amended to allow twelve not twenty-four hours between cleanings of work surfaces recognizing the need to expedite cleaning and evacuation of sites while allowing time for fibers to settle.

19. Section 56-15.4 was made applicable to tents and glovebags on minor asbestos projects. The same safety measures must be taken should either lose its integrity.

20. Section 56-15.4(b) was added requiring that if tent or glovebag loses integrity, approved negative air pressure equipment ventilation be installed and utilized, clarifying a requirement in the rule.

21. Section 56-16.1(b)(4), requiring that a minimum of two persons perform glovebag procedures was deleted as it is difficult for two persons to perform such procedures.

22. Section 56-16.1(b)(9) (renumbered 56-16.1(b)(8)) was

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amended to require use of a HEPA vacuum, not a wet-purpose shop vacuum, to collapse a glovebag.

23. Section 56-16.1(b)(12) was deleted as unnecessary and excessive given other requirements set forth in section.

24. Section 56-17.2(a) was amended prohibiting sampling until at least twelve, not twenty-four, hours after wet cleaning has been completed balancing the desirability of accurate, meaningful samples with the need to allow the project to progress in a timely fashion.

25. Section 56-17.6(a) was amended allowing seventy-two hour turn-around time for processing air samples, tripling the original hour period. Comments indicated that laboratory facilities are currently insufficient to allow for twenty-four hour turn-around.

b) Statutory authority. The proposed rule is promulgated pursuant to Article 30 of the Labor Law which mandates their promulgation.

c) Needs and benefits. Exposure to asbestos fibers poses a serious danger to the public health and safety and is not

confined to the workplace. The presence of potentially deadly asbestos fibers is an environmental problem, not an occupational safety concern alone.

Many public and private sector asbestos contractors have little or no experience handling asbestos, nor do they have a demonstrated safety record with the substance. The rule minimizes risks associated with asbestos by requiring contractor licensing, worker certification and the conduct of asbestos projects in a manner which will minimize the threat of public exposure.

d) Costs. (i) Additional costs may be incurred for implementation of and compliance with the rule by state agencies and local governments using staff for asbestos work. Where this occurs, such entities must secure licenses, certifications and necessary equipment, supplies and professional services. Similar costs would apply to school districts, educational institutions and building owners using regular staff for such work.

The rule will have the greatest impact upon asbestos contractors who must secure licenses and may choose to pay for training

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and certification of their workers and supervisors. Contractors must acquire necessary equipment and expendables to engage in asbestos projects in accordance with code requirements and pay for professional and laboratory testing services.

Workers whose employers do not pay certification and training fees on their behalf must pay such fees.

The agency has made changes to the rule which reduce costs for entities engaging in asbestos projects including deletion of additional supervisor's training, postponement of licensing and certification requirements for in-plant operations, deletion of refresher training courses, acknowledgment of background levels in air clearance standards and enlargement of turn-around time for air samples. The agency amended the rule to exempt manufacturers of asbestos and asbestos materials and individuals using asbestos in a manufacturing process from the rule.

(ii) The Department of Labor will incur costs of approximately \$1 million per year for the implementation and administration of the rule.

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e) Paperwork. There will be paperwork associated with application and renewal of asbestos handling licenses and certificates. Contractor must give notice of asbestos projects which includes the name, address and asbestos handling license number of the contractor, the amount of friable asbestos material present, scheduled starting and completion dates for removal and the procedures and equipment, including ventilating systems, that will be employed.

Each contractor must maintain for at least forty years a record of each asbestos project in which it engages, which shall contain the name and address of the person who supervised the project, the location and description of the project, the amount of asbestos or asbestos material that was involved and the name, address and social security number of all persons working on the project.

f) Duplication. The rule will require notification of asbestos projects as described above. Such notification must also be provided under federal law and regulations.

A number of standards in the rule are found in OSHA regulations protecting worker health and safety. In contrast, Labor

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Law Article 30 and the rule are broader in scope and intended to protect public health. The agency made substantive changes to the rule to ensure that requirements related solely to the protection of individual worker safety and health have been deleted. Where the rule mandates duplicative work practices, such practices protect the public and conform to the purpose and intent of Labor Law Article 30.

g) Alternative approaches. Article 30 of the Labor Law mandates promulgating of regulations necessary and proper to effectuate the purposes and provisions of the Article. The agency made substantive changes recognizing possible alternative approaches for certain asbestos-related work. The agency reserved sections applying to licensing and certification of in in-plant asbestos operations and installation and application of asbestos and asbestos material to allow the agency to examine the need for regulation and the possibility of adopting alternative approaches.

SUMMARY OF ASSESSMENT OF ISSUES RAISED BY PUBLIC COMMENT

The following is a summary of the major areas in which comments were received and the Department's response:

Representatives of manufacturers commented that application of the regulation to manufacturing operations would increase production costs and make New York products non-competitive with those of other states. The agency did not intend to cover manufacturing processes involving asbestos or asbestos materials and the rule made no reference to such processes in defining covered projects. For the sake of clarity, the final rule exempts such operations.

Other comments stated that the proposed rule should apply only to public sector work not covered by an OSHA standard. The comments stated that this position would be consistent with the intent of the legislature in enacting this statute.

The agency considered these arguments but decided

against the recommendation. There is nothing in the statutory language which can be read to limit the application of the law to public sector asbestos projects. The definitions of asbestos project and of contractor clearly apply to both public and private sector jobs. The statutory language indicates that the law was intended as a measure designed to protect the public health. This end is achieved, in part, through requiring the performance of asbestos projects only by licensed contractors and certified workers who have been properly trained in methods for safe handling of asbestos. Public exposure to asbestos is also limited through compliance with certain work rules and standards on the work site, a goal mentioned in the statement of legislative intent set forth in the law. The regulations, as proposed, are intended to implement that law.

Other comments stated that Article 30 was not intended to cover operations involving materials containing non-friable asbestos and recommend that the proposed regulations be modified so as to apply only to friable asbestos or asbestos material. The agency has no statutory authority to treat non-friable asbestos materials differently

from other asbestos material. However, it has reserved those portions of the regulations which cover installation and application of asbestos material to further consider this issue and determine an appropriate course of action.

Comments have also been received suggesting that the rule should not be made applicable to industries where the public is not likely to be exposed to asbestos. The agency has amended the rule to reserve those portions relating to licensing and certification requirements for such in-plant operations so that it may further study the need for modified regulation in this area.

However, the risk of public exposure to asbestos is not limited to circumstances in which the public may inadvertently wander in or near an asbestos worksite. The public may also be exposed to asbestos through fibers carried on the person or clothing of a worker employed at a closed facility or through disposal of debris containing asbestos originating at a closed site many miles from its place of disposal. The exemption of such industries from the work practices

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portion of the rule would, the agency believes, undermine the effectiveness of state law. With regard to the feasibility of compliance with certain safety standards in unorthodox work environments, asbestos contractors may apply for variances from the Commissioner pursuant to Section 30 of the Labor Law. Such variances, if granted, could allow for modification of the requirement in a manner which affords the same degree of public protection and is consistent with acceptable industry work practices.

The agency has also received comments seeking clarification of the applicability of the rule to minor asbestos projects, which include routine maintenance activities including plumbing repairs, installation of electrical or telephone lines, the repair of water damaged areas and the cleaning or repair of heating, ventilation and air conditioning systems. The agency has no statutory authority to exempt minor projects from the provisions of the rule but the safety standards do accommodate differences between large, small and minor projects.

The definition of asbestos handler generated a number of

comments that indicated the proposed wording was too broad. The agency has reviewed the definition and determined that it is consistent with other related definitions set forth in the law and rule.

The agency received comments relating to training and education requirements for asbestos handling certificate. These included questions regarding the criteria to be applied in evaluating training programs, the substitution of prior training to meet training requirements, the availability of non-written tests for certificate applicants, the desirability of periodic refresher courses and the need for additional training for job supervisors. Such issues should be addressed by the Department of Health pursuant to its statutory authority. In light of such authority, the requirement for additional training required by the definition of asbestos supervisor, has been deleted.

The definition of satisfactory clearance air monitoring results requiring airborne concentrations of asbestos fibers less than 0.01 fibers per cubic centimeter resulted in numerous comments from industry. In addition to some objections to the numerical figure,

those responding pointed out that in many instances the background levels would be greater and that these levels were caused by circumstances beyond the contractor's control. The agency has recognized the legitimacy of these comments by taking into account background levels in determining satisfactory air clearance standards.

A number of comments were received regarding the requirement for negative air pressure equipment on all asbestos abatement projects. It was not the intention to require this equipment on minor projects, except in special circumstances as required later in the rule. Therefore, the standard has been changed to clarify the original intent.

Several comments indicated that compliance with the requirement that surfactants be nontoxic and not an eye, respiratory system, or skin irritant was virtually impossible. It was pointed out that many people have allergies to various substances, and to find a surfactant that would meet all requirements of the standard would not be possible. The agency has dropped all requirements except that the surfactant shall be noncarcinogenic and not generally toxic in normal

use.

A number of comments were received relative to the plasticizing/sealing of various surfaces. The agency has reworded the requirements for purposes of clarity.

Another area that drew numerous comments involved waste removal routes, elevator use for waste and floor openings. The comments indicated that these requirements were excessive in light of other safety requirements found elsewhere in the rule. Upon review by the agency, it was determined that the comments were correct and the standards in questions were deleted. Several persons commented that the requirement for thirty mil plastic sheeting on the floor of the personal decontamination enclosure system was excessive. The agency determined that the requirement was excessive and changed the standard to require two layers of six mil reinforced plastic sheeting.

Several comments pointed out that the six foot maximum drop of asbestos materials and the maximum sixty degree angle for inclined chutes over six feet were impractical. It was noted that the story heights in most buildings approach ten feet and in many

instances, pipes, beams and other obstructions required chutes to be installed at an angle greater than sixty degrees. The agency has revised the maximum drop of asbestos materials to ten feet and eliminated the maximum degree of incline for chutes.

Under the general requirement section for cleanup procedures, the agency has, in response to several comments, clarified its position that these procedures are required for large and small abatement projects.

Several comments also indicated that twenty-four hour settling periods between cleaning sequences was excessive. Most felt that such a long period of time would result in excessive delays in reoccupancy of the area under abatement with no appreciable health or safety benefits. The agency agreed with these comments and lowered the time intervals to twelve hour periods with similarly reduced requirements for cleanup after failure of a glovebag or tent.

Numerous comments were received regarding air sampling and analysis on asbestos projects. Most indicated that one particular method should be mandated. The agency, upon reviewing the comments and

the technology involved, rejected this approach since in some instances, the necessary equipment is in very short supply.

Many comments were made relative to the requirement that the person(s) used to perform air sampling and analysis shall not be involved with the asbestos abatement project. Many large corporations have laboratories which are capable of sampling and analyzing air samples in the time periods required by the rule. The agency has considered this but has rejected this proposal on the grounds that testing and analysis of air samples by in-house laboratories would make the results suspect in the eyes of the public, undermine its confidence in the program and adversely impact on the agency's enforcement efforts.

Many comments were received on the requirement that work stop if air samples collected outside the work area indicate airborne asbestos fiber concentrations at or above 0.01 fibers per cubic centimeter. It was pointed out that in many instances the background levels in these areas might be higher than the 0.01 level due to

circumstances beyond the contractor's control. The agency agrees with this contention and has changed the standard to allow either the 0.01 level or the background level, whichever is greater.

Numerous comments were also received relative to the clearance air monitoring results criteria of 0.01 fibers per cubic centimeter and the associated background level. Again, the agency has recognized this problem by allowing the greater value.

The agency received comments with regard to the election of the local enforcement option under Section 910 of the Labor Law. The comments requested that a mechanism be established to enable workers and the public to participate in the enforcement of the rule through the filing of complaints. The agency has decided against promulgating formal rules in this regard as such rules may limit the agency's flexibility in responding to complaints.

A number of comments recommended that the proposed regulations provide a detailed analysis of enforcement procedures and penalties available against contractors and workers for violations of the law. The agency has decided against the suggested course. Sections

908 and 909 of the Labor Law already specify the full range of penalties available to the agency and publication of specific penalties for specific violations would deprive the agency of the discretion afforded it under the statute.

There have been other minor changes in the standard which are the result of comments received and further evaluation of rule content by the agency.