PLAINTIFF'S EXHIBIT
BOND-268

Federal Register

WEDNESDAY, MARCH 2, 1977

PART III



ENVIRONMENTAL PROTECTION AGENCY

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ASBESTOS

Hazardous Air Pollutants National Emission Standards

BON - 01134

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 684-4]

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

Amendment to Asbestos Standard

• *Purpose.* The purpose of this amendment is to clarify that the demolition and renovation provisions of the asbestos standard apply when friable asbestos materials used for insulation and fireproofing are removed from non-load-supporting structural members, such as non-supporting walls and ceilings, as well as from load-supporting structural members. •

Under section 112 of the Clean Air Act, as amended, 42 U.S.C. 1857c-7, (the "Act"), the Administrator of the Environmental Protection Agency promulgated the national emission standard for the hazardous air pollutant asbestos on April 6, 1973 (38 FR 8820). Amendments to this standard were promulgated on May 3, 1974 (39 FR 15396) and on October 14, 1975 (40 FR 48292). The standard does not include a definition for the term "structural member", and questions have arisen concerning what constitutes a structural member. The definition of "structural member" is therefore being added to 40 CFR 61.21 to clarify that the standard applies to both load-supporting and non-load-supporting structural members. The latter category includes such items as ceilings and non-load-supporting walls.

The preamble to the proposed amendments (39 FR 38064, October 25, 1974) that were promulgated on October 14, 1975, clearly stated that EPA intended to cover non-load-supporting structural members. No contrary intent was expressed at the time of final promulgation. The amendment promulgated below clarifies EPA's intent and should answer future questions on the applicability of the standard.

The Administrator finds that a pre-promulgation public comment period on this amendment would be "impracticable, unnecessary, or contrary to the public interest" within the meaning of 5 U.S.C. 553(b)(B) because the rulemaking clarifies and interprets an existing regulation, does not alter the intended content of that regulation, and enables EPA to enforce the existing standard in a consistent and proper manner. Also, the Administrator finds that this rulemaking should be effective upon promulgation without a 30-day deferral within the meaning of 5 U.S.C. 553(d), because of the immediate effectiveness required by section 112(b)(1)(C) of the Act and the interpretive nature of this rulemaking.

Other questions have been raised recently about the applicability of the asbestos standard to decorative coatings. The words of the current standard do not apply to such coatings. EPA is proposing amendments to the asbestos standard elsewhere in this issue of the FEDERAL REGISTER to regulate such coatings.

(Sec. 112, Clean Air Act as aded by sec. 4(a) of Pub. L. 91-604, 84 Stat. 1685 (42 U.S.C. 1857c-7); sec. 114, Clean Air Act, as added by sec. 4(a) of Pub. L. 91-604, 84 Stat. 1687, and amended by Pub. L. 93-319, sec. 6(a)(4), 88 Stat. 259 (42 U.S.C. 1857c-9); sec. 301(a), Clean Air Act, as amended by sec. 15(c)(2) of Pub. L. 91-604, 84 Stat. 1713 (42 U.S.C. 1857g(a)).)

Dated: February 23, 1977.

JOHN QUARLES,
Acting Administrator.

In Part 61 of Chapter I, Title 40 of the Code of Federal Regulations, § 61.21 is amended by adding paragraph (x) as follows:

Subpart B—National Emission Standard for Asbestos

§ 61.21 Definitions.

* * * * *

(x) "Structural member" means any load-supporting member, such as beams and load-supporting walls; or any non-load-supporting member, such as ceilings and non-load-supporting walls.

[FR Doc.77-5981 Filed 3-1-77;8:45 am]

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