

UNITED STATES GOVERNMENT

U.S. CONSUMER PRODUCT
SAFETY COMMISSION

Memorandum

THE COMMISSION

TO : THRU: Office of the Secretary *AH2/K* DATE: AUG 8 1979
THRU: Andrew S. Krulwich, General Counsel *MAF*
THRU: Margaret A. Freeston, Acting Executive Director
FROM : THRU: Bert G. Simson, Director, Office of Program Management
David Melnick, OGC *SM*
Francine Shacter, OPM *AS*

SUBJECT: Consumer products containing asbestos.

Attached for Commission consideration is: (1) a draft advance notice of proposed rulemaking (ANPR) proposing and soliciting comment on CPSC's approach to investigation and possible regulation of consumer products containing asbestos and soliciting general information on asbestos in consumer products; (2) a "preliminary" draft general order for the submission of specific information on a narrower group of specific consumer products containing asbestos yet to be determined; and (3) a joint CPSC-EPA draft statement of policy on coordination of regulatory activities.

The ANPR (Tab A) and general order (Tab B) have been prepared by OGC in close cooperation with the Chronic Hazards Team under the direction of OPM and the ad-hoc Chronic Hazards Task Force pursuant to the Commission's direction following the May 17, 1979 briefing on asbestos. That briefing discussed a May 15 OGC/OEX memorandum which recommended that the Commission, in a comprehensive fashion, identify consumer products containing asbestos and shape a regulatory program to treat, generically and/or on a case-by-case basis, any problems identified.

It was previously decided by the Commission that CPSC should closely coordinate any regulatory activities concerning asbestos with EPA. The joint statement of policy on cooperation (Tab C) was prepared by staff from CPSC and EPA to reflect this ongoing coordination and cooperation, which has included CPSC and EPA staff review of the respective agencies' ANPR's. We expect to continue to work closely with EPA throughout the investigation and possible regulation of asbestos.

Consumer products containing asbestos.
Page -2-

As reflected in the draft statement of policy on coordination, the staffs of CPSC and EPA have agreed that simultaneous publication of the two agencies' ANPR's, accompanied by the joint statement, would clearly indicate the agencies' intent to cooperate and would serve to explain to the public the inter-relationship of the agencies' activities concerning asbestos.

EPA's ANPR is presently undergoing internal review and is expected to be ready for publication in early to mid-September. Therefore it is recommended that CPSC aim for publication of its ANPR at that time.

The draft general order at Tab B is characterized as "preliminary" because the staff has not yet determined the products for which it should require the submission of information. The staff is in the process of developing criteria for the selection of products to be included within the scope of the general order. In addition, the specific questions to be included and other aspects of the order may need some refinement.

Before issuance, the general order would require General Accounting Office (GAO) clearance under the Federal Reports Act. Prior to submission for GAO clearance, the order must be approved by the Commission and a supporting statement must be prepared, which includes a narrative justification for the reporting requirement, an estimate of the number of persons (or firms) subject to the order, an estimate of the compliance burden associated with the order, and an estimate of the cost to the Commission for planning the reporting requirement and compiling the incoming data. The process of GAO clearance takes up to 45 days.

Accordingly, the general order is not being presented to the Commission at this time for formal consideration or a vote, but only for informational purposes. When the supporting staff work on the order, including assembly of the material necessary to support GAO clearance, is completed, the general order will be transmitted for the Commission's formal consideration. The May 15 OGC/OEX memorandum on asbestos recommended, in addition to an ANPR, special orders to be directed to manufacturers of asbestos paper. It was thought at the time that information on the uses of asbestos paper would be an effective means of determining which consumer products (particularly appliances) contained asbestos. We now believe that sufficient information is known on the general categories of consumer products containing asbestos to enable the staff to initially direct general orders to manufacturers of certain classes of products and eliminate the additional step of requiring manufacturers of asbestos paper to respond to special orders.

Consumer products containing asbestos
Page -3-

The draft statement of policy on coordination of regulatory activities is presented for Commission consideration in conjunction with the draft ANPR. We would point out, however, that the joint statement is also presently undergoing EPA internal review and is subject to possible revision during that process. Accordingly, while the Commission is asked to approve the joint statement, it may be necessary to return to the Commission prior to publication in the FEDERAL REGISTER to resolve any differences which may arise between the language as approved by EPA and the Commission.

Attachments

A

DRAFT

CONSUMER PRODUCT SAFETY COMMISSION
CONSUMER PRODUCTS CONTAINING ASBESTOS
Advance Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission

ACTION: Advance Notice of Proposed Rulemaking

SUMMARY: The Consumer Product Safety Commission ("CPSC" or "Commission") is concerned that consumer exposure to asbestos from consumer products may present an unreasonable risk of injury and that certain consumer products containing asbestos may present a substantial product hazard. CPSC proposes to investigate the use of asbestos in consumer products by soliciting general information on the use of asbestos in consumer products through this notice and by requiring, by general or special orders, the submission of information concerning certain consumer products on which CPSC intends to initially focus its attention. This notice describes CPSC's proposed regulatory approach to asbestos in consumer products and solicits public comment on the approach. The comments will be considered during the development of any proposed regulation or other remedial action to protect consumers.

DATE: Comments and information should be submitted on or before (insert date 60 days following publication). Comments received after this date will be considered only to the extent practicable.

ADDRESS: Comments should be sent, preferably in five copies, to Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, and should refer to "Asbestos." Received comments and other relevant information may be examined in and copies obtained from Office of the Secretary, 1111 18th Street, N.W., 3rd Floor, Washington, D.C. 20207, during business hours Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Francine Shacter, Program Manager, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207, telephone (301) 492-6557.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Asbestos is a general term for any of several naturally occurring mineral fibers composed of silica, oxygen, hydrogen, and other elements such as sodium, calcium, iron, or magnesium. There are six basic varieties of asbestos minerals that are found in fiber form: chrysotile (the most common variety, and that found in about 95% of in asbestos-containing products),

amosite, crocidolite, actinolite asbestos, tremolite asbestos, and anthophyllite asbestos.

The high tensile strength, flexibility and heat and chemical resistance of asbestos fibers make them adaptable to a large number of uses. Although accurate figures on the number of asbestos-containing products are not available, the Commission estimates that hundreds of consumer products contain asbestos in some form. Many consumer products, contain asbestos paper as a thermal or electrical insulating barrier. Asbestos is also commonly used in household building products to resist rotting and to provide strength and stability.

Health Risks Related to Asbestos Exposure

CPSC is concerned that the presence of asbestos in consumer products, under certain conditions, may present an unreasonable risk of injury or a substantial product hazard, specifically a risk of cancer and respiratory disease. On the basis of present information, it appears that consumer products containing asbestos fibers can pose a health hazard if the asbestos fibers are released into the ambient air. The hazard may be undetectable in the ordinary use of asbestos-containing products. The small asbestos fibers of a size capable of being inhaled into the lungs and lodging there are generally visible only through extreme magnification such as by an optical or electron microscope.

A large body of scientific evidence suggests that all major types of asbestos are carcinogens. Both animal data and human epidemiological studies support this conclusion. Since the early 1960's, there has been increasing evidence of asbestos related diseases in populations not occupationally exposed to asbestos. Epidemiological studies have demonstrated increased incidences of asbestos related diseases, including lung cancer and mesothelioma (a cancer of the linings of the pleura and peritoneum) among nonoccupationally exposed populations, including individuals with only brief or intermittent "bystander" exposures.

Autopsy studies of lung tissues of residents in urban areas in many parts of the world indicate that the general population is being exposed to respirable, albeit "background" levels of asbestos and that once inhaled, asbestos fibers can remain lodged in the lungs for life.

Asbestos released from consumer products poses several unique problems in the household. First, young children and infants, who may be most vulnerable to exposure to carcinogens, are subject to exposure. Second, unlike asbestos released into the general environment, where fibers can be readily disbursed by air currents, asbestos fibers released from consumer products into the living space can remain there over long periods of time and are subject to repeated cycles of setting and resuspension. The presence of asbestos fibers can thus pose an ongoing inhalation risk in the household. Third, unlike the workplace where engineering control systems and protective clothing are available to

minimize worker exposure to asbestos, household members have little or no protection from exposure to asbestos fibers released from consumer products.

Previous Commission Action Concerning Asbestos in Consumer Products

The Commission has issued rules declaring consumer patching compounds and artificial emberizing materials containing respirable asbestos as banned hazardous products under the Consumer Product Safety Act (CPSA). (16 CFR 1304 and 1305, 42 FR 63354, December 15, 1977.) These actions

were taken on the basis of Commission findings that the use of these products in the household would subject consumers to increased exposure to respirable free-form asbestos fibers. The Commission determined that this increased exposure, combined in many cases with exposure to asbestos from other sources, would result in an increased risk of cancer. In view of the seriousness of this injury and the cumulative effects of asbestos exposure, the Commission determined that continued use of these products in the household presented an unreasonable risk of injury and that no feasible consumer product safety standard under the CPSA could adequately protect the public from the risk.

The Commission has also been concerned with the use of asbestos in hair dryers in light of information initially indicating that a significant proportion of some 50 to 60 million hair dryers in consumers' hands or in the chain of distribution contained asbestos. As a result negotiations between the Commission's staff and firms which share approximately 90% of the consumer hair dryer market, the firms have agreed to cease production and distribution of hair dryers containing asbestos and to offer consumers some form of repair, replacement, or refund.

The Commission's concern with hair dryers containing asbestos has been broadened to include hair dryers used by consumers in commercial hair dressing establishments. Tests of hair dryers containing asbestos are being performed for CPSC by the National Institute of Occupational Safety and Health of the Department of Health, Education, and Welfare (NIOSH) to aid in the determination of the extent of emission of asbestos fibers from the hair dryers. The final NIOSH report is expected in August, 1979.

SCOPE OF THE PROBLEM;
CONSUMER PRODUCTS CONTAINING ASBESTOS

In order to determine the scope of the potential problem posed by consumer products containing asbestos, CPSC commissioned a study to determine what other categories of consumer products contain asbestos. As a result of a report by a Commission contractor, Review of Asbestos Use in Consumer Products, A.T. Kearney, Inc., Management Consultants (April, 1978) (Kearney report) and through consumer inquiries and staff follow-up, the Commission has developed information that indicates the presence of asbestos in a number of consumer products. Using the Kearney report and other available published sources, the Commission's staff has grouped the products according to the general form in which the asbestos

exists in the product. This list of consumer products or categories of products containing asbestos is set forth in Appendix A to this notice. The Commission requests comment and information from interested persons on the products listed in Appendix A as well as additional general information concerning other consumer products that may contain asbestos. Any information received in response to this notice will assist the Commission in determining the scope of the problem and in identifying specific products on which it may need to focus its attention.

The Commission intends to issue general or special orders under the authority of section 27(b)(1) of the CPSA (15 U.S.C. 2076(b)(1)) to require the submission of specific information on the use of asbestos in certain consumer products which the Commission believes, on the basis of existing information, merit initial attention.

The information which the Commission plans to require in the general or special orders includes for the products covered: specific product identification information; the function performed by the asbestos in the product; a description of the asbestos; the location of the asbestos in the product; available test or other data concerning asbestos

fiber emission; the promotion, marketing, and use patterns of the product; and information on possible substitutes for the asbestos in the product.

The Commission intends to coordinate the gathering of information under the general and special orders with the information gathering activities of the Environmental Protection Agency (EPA), which is proposing, in an Advance Notice of Proposed Rulemaking appearing elsewhere in this issue of the Federal Register, a comprehensive regulatory program under the Toxic Substances Control Act to address asbestos exposure. Coordination between CPSC and EPA, where permitted by applicable law, will include the sharing of information, including confidential business information. Through this coordination, EPA and CPSC will endeavor to reduce reporting burdens on industry.

REGULATORY APPROACH

General Policy

The previous regulatory action described above taken by the Commission concerning asbestos in consumer products has been based on several principles. First, the Commission concluded that exposure to any asbestos fibers from consumer products presents a health risk because there has not been demonstrated to be a threshold or no-effect level below which exposure to respirable asbestos fibers would be considered safe. Further, exposure to asbestos from consumer products is generally in addition to environmental exposure from

number of other sources, and therefore must be viewed as part of a cumulative burden of asbestos exposure.

Second, the seriousness of the injury associated with asbestos exposure -- the potential increased risk of cancer -- was given considerable weight by the Commission in the balancing process required by statute to determine whether the consumer products presented an unreasonable risk. As it is required to do by statute, the Commission carefully considered the effect of regulatory action on the utility, cost, and availability of the product and concluded that in the absence of compelling evidence of unacceptable social or economic costs associated with removal of asbestos from the product, regulatory action was warranted.

The Commission recognizes that each situation must be judged on its own merits; that the necessary statutory findings, based on substantial evidence, must be made in each case; and that the requisite procedures designed to ensure due process must be observed in any regulatory action that CPSC subsequently takes relating to consumer products containing asbestos or concerning asbestos as a component in consumer products.

As a matter of policy, however, the Commission believes that all non-essential uses of asbestos in consumer products

from which asbestos fibers are released during reasonably foreseeable conditions of use, including misuse, should be eliminated. The Commission believes that an adequate qualitative determination of asbestos fiber emission is sufficient to justify action with respect to a non-essential use of asbestos. In determining whether a use of asbestos is essential, the Commission will consider a number of factors, including but not limited to: the function performed by the asbestos in the product, the benefit derived from the product or the use of asbestos in the product; and the cost and availability of substitutes for the asbestos.

The Commission proposes to utilize this regulatory approach in addressing the problem of asbestos exposure from consumer products and solicits comments from interested persons on whether this is an appropriate approach under the regulatory authority of the Commission.

Statutory Tools for the Regulation of Asbestos in Consumer Products

CPSC administers two statutes under which it is empowered to regulate asbestos in consumer products. Under the Consumer Product Safety Act (CPSA, 15 U.S.C. 2051, et seq.), CPSC has the general responsibility to protect the public from unreasonable risks of injury, illness or death associated with consumer products. Under the Federal Hazardous Substances Act (FHSA, 15 U.S.C. 1261, et seq.), CPSC may regulate hazards presented by the presence or use of toxic and other hazardous substances in the household.

Possible regulatory actions under the CPSA to address asbestos exposure include:

(1) consumer product safety standards consisting of requirements as to performance, composition, contents, design, construction, finish or packaging of the product;

(2) consumer product safety standards requiring that the product be marked with or accompanied by clear and adequate warnings or instructions, including requirements specifying the form of warnings or instructions;

(3) rules declaring the product a banned hazardous product;

(4) orders, following the opportunity for an evidentiary hearing, determining that a product presents a substantial product hazard; and requiring the manufacturer, distributor, or retailer to notify the public and specific purchasers of the product of the nature of the hazard and requiring the repair or replacement of the product or refund of the purchase price; or

(5) rules requiring manufacturers of the product to give notification to consumers of performance and technical data, including warnings or instructions for safe use, at the point of sale. Such performance and technical data could include the results of testing which, under certain circumstances, the Commission may require manufacturers to perform.

Notwithstanding the fact that one of the above proceedings is pending, the Commission may file a civil action in a United States district court against an "imminently hazardous" consumer product or the manufacturer, distributor or retailer of such product for seizure or injunctive relief.

The FHSA prescribes requirements for cautionary labeling of household products which are or contain "hazardous (including "toxic") substances", at those terms are defined in the Act or as they may be defined by the Commission by regulation. The Commission also may prescribe by regulation reasonable variations or additional label requirements for hazardous substances. If the Commission finds that notwithstanding cautionary labeling, the degree or nature of the hazard presented by the substance is such that the public health can be adequately protected only by excluding such substance from the channels of commerce, it may, by regulation, declare the substance a banned hazardous substance. Banned hazardous substances are subject to automatic repurchase under the Act. Where a serious threat to public health exists, the Commission, pending completion of a rulemaking proceeding to declare a substance a banned hazardous substance, may, by notice published in the Federal Register, declare a substance an "imminent hazard", and thus temporarily ban such substance from the channels of commerce.

The CPSA empowers the Commission to address unreasonable risks of injury associated with consumer products or components of such products. The inclusion of components was intended to enable the Commission "to regulate just a part of a consumer product if only such regulation were warranted." ASG Industries, Inc. v. Consumer Product Safety Commission, 593 F. 2d 1323 (D.C. Cir. 1979). This recognition that products may pose a risk of injury because of the presence of a particular component suggests that the Commission could address in a single regulatory action the use of asbestos as a component in a number of different consumer products that share similar or related uses of asbestos, provided the requisite statutory findings under the CPSA are made. (See section 9(c), 15 U.S.C. 2058(c).)

-12a-

Possible regulatory approaches to address asbestos in consumer products include regulation of asbestos as a component in any consumer product where exposure to asbestos fibers occurs; regulation of a group or category of consumer products which contain asbestos in a form that results in exposure to asbestos fibers; or regulation of individual products that contain asbestos on a case-by-case basis if exposure to asbestos fibers occurs. The latter approach has been utilized by the Commission in the past. From the standpoint of effective protection of the public health and efficient expenditure of limited resources, however, the Commission believes that a broader, more "generic" approach to regulation may be preferable. Where appropriate, the Commission will consider such an approach to the regulation of asbestos in consumer products. Where the requisite findings can be made only for a single product type, the Commission will pursue appropriate regulatory action as to that product.

ISSUES

As discussed above, the Commission proposes to utilize a general approach to regulation that emphasizes the elimination of all non-essential uses of asbestos in consumer products from which asbestos fibers are released during reasonably foreseeable conditions of use (including misuse). The Commission proposes to give substantial weight to the severity of the potential health effects of asbestos exposure, i.e., cancer, in making regulatory decisions, and does not propose to rely on quantitative measures of asbestos fiber exposure or quantitative assessments of risk. This proposed approach raises a number of issues on which the Commission solicits comment from interested persons. These issues include:

(1) The determination of what constitutes an essential use of asbestos in various consumer products. Are the Commission's proposed criteria appropriate? What additional criteria should be applied to this determination? How much weight should be given to cost, availability or effectiveness of substitutes in the determination?

(2) The determination of exposure to asbestos fibers during use of a product. Is the Commission's proposed approach appropriate? Should quantitative measures of asbestos fiber emission be attempted?

(3) The determination of the relative weight the Commission should assign in the regulatory decisionmaking process to the severity of the health risk, i.e. cancer, as opposed to the probability or likelihood of increased incidence of cancer from the use of consumer products containing asbestos. Is there an acceptable level of risk of cancer? Should the estimated increase risk be quantified?

(4) The extent to which the Commission should regulate asbestos as a component of all consumer products where exposure to fibers occurs, i.e. "generically", as opposed to regulation on a product-by-product basis.

(5) The scope of the problem. Is the Commission's list of consumer products containing asbestos (Appendix A) complete?

(6) The sharing of information, particularly between CPSC and EPA. How should the agencies treat data for which a firm claims confidentiality in view of possible statutory differences between the two agencies?

PUBLIC PARTICIPATION

During the course of this investigation, the Commission hopes to receive the views of public interest, consumer, industry and other interested groups on regulatory priorities and needs, the Commission's approach, and technical and economic issues. The Commission may conduct one or more public hearings or meetings in conjunction with its regulatory efforts, in addition to hearings and other proceedings required by statute. CPSC encourages active participation by all interested persons.

(Authority: Consumer Product Safety Act, 15 U.S.C.
2051 et. seq., Federal Hazardous Substances Act, 15 U.S.C.
1261, et. seq.)

Dated:

SADYE E. DUNN, Secretary
Consumer Product Safety Commission

-16-

APPENDIX A

Consumer Products Containing Asbestos^{*/}

Asbestos Paper Products

- Acoustical ceiling tile
- Lamp sockets
- Burner mats for gas stoves
- Roofing felts (outer layers)
- Pipe and boiler covering
- Vinyl sheet flooring backing
- Radiator top insulation
- Appliance heat shielding (paper)
 - Slow cookers
 - Hair dryers
- Paper sheets for heat insulation
- Millboard
 - TV and other electronic switch plates
 - Electric switch boxes
 - Metal reinforced gaskets (for air-cooled engines)
 - Electrical washers
 - Linings for ovens, kilns, safes, safety boxes, incinerators
 - Millboard sheet
 - Wall protection behind heat-generating products
 - Floor protection under wood and coal stoves
 - Soldering and welding blocks
- Iron rests
- Appliance heat shielding (millboard)
 - Toasters
 - Rotisserie broilers
- Fireproof wallboard
- Metal-clad fire doors and partitions
- Tent grommets
- Stove pipe rings

Source: Review of Asbestos Use in Consumer Products, A.T. Kearny Inc., Management Consultants (April, 1978), and other published sources. Final jurisdictional determinations for these products have not been made.

Cloth and Woven Products

Flexible air conductor for heating, cooling and ventilating equipment

Appliance wiring

Barbecue fire starters

Broilers

Curling irons

Electric blankets .

Hair dryers

Heating pads

Ranges

Slow cookers

Toasters

Irons

Deep Fat Fryers

Electric Fry Pans

Awnings

Candlewicks

Catalytic Heater Mantles

Cigarette Lighter wicks

Cord

Seals for high temperature gaskets

Valve stem packings

Insulation for glass handling tools

Reinforcing for braided wall steam hose

Theater curtains-

Felt

Reinforcements in plastics

Gaskets

Reinforcement in asbestos tapes

Secondary insulation in high temperature wire and cable

Asphalt impregnated roofing felts

Piano and organ felts

Heating pads (element insulation)

Ironing board pads and covers

Lamp and lantern mantles

Pipe and boiler covering

Pot holders and oven mitts

Flame resistant garments

Gloves

Hats

Helmets

Hoods

Mittens

Overgaiters

Sleeves

Suits

Umbrellas

Aprons

Arm Protectors

Flame-resistant Blankets

Boots

Caps

Smokers' Bibs

Stoves -Coal and wood burning

Tape for pipe insulation

Braid and rope for packing

Motion picture screens

Tent grommets

APP. A. -2-

Asbestos Cement Products

Water, sewer and septic drain field pipe

Air duct pipe

Sheet products

Roofing Clapboard

Siding

Shingles

Interior walls

Boiler and furnace baffles

Bulk sheeting

Welding Shields

Baking sheets

Blackboards

Laboratory table tops

Linings for vaults, safes, humidifiers and filing cabinets

Viscous Matrix Products

Adhesives (glues and epoxies)

Air duct cement for asbestos-cement air duct

Buffing and polishing compounds

Caulks and putties

Floor tile cement and mastic

Auto body filler

Flashing cement

Furnace cement

Glazing compound for ceramics

Pipe and boiler coverings

Roof and driveway coatings

Stains and varnishes

Automotive metal deadener

Automotive undercoating

Refrigerant cements

Automotive Muffler repair compounds

Products Subject to Inadvertent Asbestos Contamination

Driveway Gravel

Fertilizer and lawn care products

Potting Materials (vermiculite)

Talcs for noncosmetic or food use applications

App. A - 3 -

Miscellaneous Products

Acoustical and thermal insulation material, sprayed
Ammunition shell wadding
Automotive mufflers
Barbecue firebed materials in gas barbecue grills
Boat Hull Repair Kits
Flower pots
Friction Materials
 Clutch plates
 Brake linings
Potters' kilns (home hobby)
Pottery clay
Powder (asbestos)
Bulk fiber
Reinforcement in molded plastics and rubber
Automotive radiator sealant
Vinyl asbestos floor tiles
Abrasive wheels
Aerial distress flares
Molded plastics and phenolic laminates
Paint
Textured paint
Cement, drywall and plaster patching compounds
Artificial gas fireplace emberizing material
Phonograph records

App A -4-

Consumer Products Possibly
Containing Asbestos*/

[List to be supplied]

*/ Source: Consumer Inquiries

B

PRELIMINARY
DRAFT

CONSUMER PRODUCT SAFETY COMMISSION
CONSUMER PRODUCTS CONTAINING ASBESTOS
General Order for Submission of Information

AGENCY: Consumer Product Safety Commission.

ACTION: General order for submission of information.

SUMMARY: The Commission orders manufacturers (including importers) and private labelers of specified categories of consumer products to furnish the Commission with information concerning the use of asbestos in the products, the form in which asbestos is present in the products, the purpose served by the asbestos, the marketing and use patterns of the product, any substitutes for the asbestos, and information on any testing of the products for asbestos fiber emission. The Commission believes that such information will assist the Commission in determining whether regulatory action is warranted to protect consumers from any risk of injury associated with asbestos in consumer products.

DATES: Manufacturers (including importers) and private labelers are required to furnish the information specified in this order on or before [insert date ____ days following publication in the FEDERAL REGISTER] and are required to update the information (or report new uses of asbestos in consumer products) for a one year period following publication

of this order in the FEDERAL REGISTER. The order expires one year after publication in the FEDERAL REGISTER.

ADDRESS: Information required by this order should be sent to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: David Melnick, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207, (202)634-7770 (for questions concerning the applicability of this order to a particular product or legal questions); _____
(for technical questions).

SUPPLEMENTARY INFORMATION:

A. Purpose and Basis for the Order

The Commission is conducting an investigation in order to determine whether regulatory action is necessary to protect consumers from the risk of injury, specifically certain types of cancer, that may be associated with consumer products containing asbestos. This order would require manufacturers (including importers) and private labelers of certain categories of consumer products to provide specified information concerning the use of asbestos in their products. This order is issued under the authority of sections 5 and 27(b)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C., 2054, 2076(b)(1).

The Commission believes that information obtained as a result of this order will assist the Commission in determining whether regulatory action is warranted to protect consumers from any risk of injury associated with asbestos in consumer products.

B. Background

Asbestos is a group of fibrous minerals that are resistant to extreme heat. In many consumer products, asbestos is pressed into asbestos paper and provides an insulating barrier. Asbestos is also resistant to moisture, flexible and characterized by high tensile-strength, and is used in certain consumer products, notably building materials, to resist rotting and to provide strength and stability.

On the basis of present information, it appears that consumer products containing asbestos can pose a health hazard if the asbestos fibers are released into the ambient air. The small asbestos fibers, of a size capable of being inhaled into the lungs and lodging there are generally visible only through extreme magnification, such as by optical or electron microscope. A large body of scientific evidence suggests that all major types of asbestos are carcinogens. Both animal data and human epidemiological studies support this conclusion. Since the early 1960's, there has been increasing evidence of asbestos related diseases in populations not occupationally exposed to asbestos. Epidemiological studies have demonstrated increased incidences of asbestos related diseases, including

lung cancer and mesothelioma (a cancer of the linings of the pleura and peritoneum) among nonoccupationally exposed populations, including individuals with only brief or intermittent "bystander" exposures. Evidence indicates that the general population is being exposed to respirable, albeit "background" levels of asbestos, and that once inhaled, asbestos fibers can remain lodged in the lungs for life.

The Commission has issued rules banning certain patching compounds and emberizing materials containing respirable asbestos. (16 CFR 1304 and 1305, 42 FR 63354, December 15, 1977.)

The Commission has been concerned with the use of asbestos in hair dryers in light of information that indicated a significant proportion of 50 to 60 million hair dryers in consumers' hands or in the chain of distribution contained asbestos. As a result negotiations between the Commission's staff and firms which share approximately 90% of the consumer hair dryer market, the firms have agreed to cease production and distribution of hair dryers containing asbestos and to offer consumers some form of repair, replacement, or refund for the hair dryers containing asbestos.

Tests of dryers containing asbestos are being performed for CPSC by the National Institute of Occupational Safety and Health of the Department of Health, Education and Welfare (NIOSH) to aid in the determination of the nature of any

hazard that may be associated with hair dryers containing asbestos and to assist the Commission in seeking appropriate remedies. The final NIOSH report is expected in August, 1979.

C. Products Subject to the Order.

In order to determine the scope of the potential problem posed by consumer products containing asbestos, CPSC commissioned a study to determine what categories of consumer products contain asbestos. A list of products derived from this study was published as an Appendix to the Commission's Advance Notice of Proposed Rulemaking appearing in the FEDERAL REGISTER of _____, 1979 (44 FR _____).

The Commission is requiring manufacturers (including importers) and private labelers of the specific consumer products or categories of consumer products described below to provide information to the Commission under the order. On the basis of the study described above, the Commission has reason to believe that these products may contain asbestos and should be included within the scope of the order.

D. Trade Secrets or Confidential Information

If a manufacturer or private labeler believes that information furnished in response to the order is a trade secret or proprietary or confidential commercial or financial information under 5 U.S.C. 552(b)(4) of the Freedom of Information Act, or is exempt from disclosure under section 6(a)(2) of the CPSA, 15 U.S.C. 2055(a)(2), or 18 U.S.C. 1905, the manufacturer or private labeler must request confidential treatment at the time the information is submitted. Requests for confidential treatment will be handled in accordance with the Freedom of Information Act as amended (5 U.S.C. 552), the Commission's regulations under that act, 16 CFR Part 1015, and 15 U.S.C. 2055(a)(2).

The Commission may decide to disclose to the public certain information received in response the order, other than trade secrets or other confidential information referred to above, if the Commission determines that such release is fair in the circumstances and reasonably related to effectuating the purposes of the CPSA. In accordance with section 6(b)(1) of the CPSA, manufacturers and private labelers are invited to submit written comments concerning such possible public release at the time they submit the information. The Commission will consider the comments

before releasing any information that will permit the public to readily ascertain the identity of the manufacturer or private labeler.

E. Additional Information

The reporting requirement contained in this order has been approved by the U.S. General Accounting Office under the Federal Reports Act (reference) and expires on _____, 1979.

Failure to respond to the order, or the furnishing of false reports is a prohibited act under section 19(a)(3) of the CPSA, 15 U.S.C. 2068 (a)(3) and, may subject the manufacturer or private labeler to civil or criminal penalties under sections 20 and 21 of the CPSA, 15 U.S.C. 2069, 2070.

F. The Order

This general order is issued pursuant to section 27 (b)(1) and section 5 of the Consumer Product Safety Act (15 U.S.C. 2076(b)(1), 2054).

(1) The Commission hereby orders manufacturers (including importers) and private labelers of the products listed in paragraph (2) to furnish the Commission with information specified in paragraph (3).

(2) Scope of the Order. This order applies only to manufacturers of consumer products, as that term is defined in the CPSA. "Consumer product" is defined as any article

or component part, produced or distributed for sale to, or for personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise.

The Commission has determined that the following products are "consumer products" and may contain asbestos, and are therefore subject to the order:

[Products covered by the General Order to be determined]

Manufacturers and private labelers of any products listed above which are not customarily produced or distributed for sale to or use or consumption by, or enjoyment of a consumer, or which are specifically excluded from the definition of "consumer product" under section 3(a)(1) of the CPSA (15 U.S.C. 2052(a)(1)) are not required to furnish information under the order.

(3) Information to be furnished. The following information shall be furnished under the order:

(a) State the name of your firm and the address of your principal place of business. Specify whether you are a manufacturer, importer or private labeler of the product concerning which you are submitting information. A private labeler is a owner of a brand or trade mark on the label of a consumer product who is not the manufacturer of the product, where the brand or trademark of the manufacturer does not appear on the label.

(b) Are asbestos materials now being used in products your firm is manufacturing, importing or labeling?

(c) Have asbestos materials been used in products your firm has manufactured or, imported or labeled with the last _____ years?

(d) If the answer in response to the two previous questions is yes, provide the following information, in the order listed, for each identifiable type of product. To facilitate review of the information you are requested to provide the information in charts or by other means that will relate each item of information to a particular identifiable type of product.

(i) Give identification information (e.g. brand name, style, model number and/or production date code number) for each product.

(ii) Specify dates during which your firm manufactured imported or labeled the product.

(iii) Describe the location of the asbestos material in the product and the purpose served by the material.

(iv) If you are the manufacturer (or have access to the information), describe the kind of asbestos material used (type, grade, or other description), and identify the distributor and/or manufacturer of the material, if known.

(v) Describe the usual promotion, marketing and use patterns of each product identified.

(e) Identify any suitable possible substitute materials for the asbestos used in each product identified and provide, if known, information on the availability and cost, per comparable unit, of the possible substitute material.

(f) (i)(A) Has your firm or anyone on its behalf conducted any tests of any of the products identified above to determine whether the products emit asbestos fibers into the ambient air during reasonably foreseeable conditions of use (including misuse).

(B) If the answer to the previous question is yes, provide a description of such tests and furnish complete copies of the test results.

(ii) (A) Do you know of any other tests or studies that have been performed regarding the use of asbestos in the consumer product in question.

(B) If the answer to the previous question is yes, provide a description of such tests, and an explanation of where and how the reports may be obtained.

(iii) Provide the name, address and telephone number of a person in your firm with whom the Commission staff could discuss these tests or testing of asbestos in consumer products in general.

(g) Provide the name, title, address, and telephone number of the person filing the response to this order.

(4) Time and place for submission of information; obligation to keep information current; obligation to submit new information.

(a) The required information shall be submitted to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207 so as to be received on or before _____, 1979.

The response should be signed by a responsible executive officer of the firm. Failure or refusal to respond to this order or the furnishing of false reports is a prohibited act under section 19(a)(3) of the CPSA (15 U.S.C. 2068(a)(3)) and may subject the manufacturer or private labeler to

civil or criminal penalties under sections 20 and 21 of the CPSA (15 U.S.C. 2069, 2070).

Any changes in the information shall be submitted within ____ days of the change. The information submitted shall be kept current until the expiration of the order on _____.

AUTHORITY: 15 U.S.C. 2076(b)(1), 2054, 2068(a)(3), 2069, 2070.

Dated:

Sadye E. Dunn, Secretary
Consumer Product Safety Commission

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DRAFT

CONSUMER PRODUCT SAFETY COMMISSION

ENVIRONMENTAL PROTECTION AGENCY

Commercial and Industrial Use of Asbestos Fibers;
Consumer Products Containing Asbestos
Statement of Policy on Coordination of Regulatory Activities

AGENCIES: Consumer Product Safety Commission and Environmental Protection Agency

ACTION: Joint Statement on Coordination of Regulatory Activities

This issue of the Federal Register contains two Advance Notices of Proposed Rulemaking regarding exposure to asbestos. The Notices are being issued by the Consumer Product Safety Commission (CPSC) and the Environmental Protection Agency (EPA). Both agencies have taken previous regulatory action to control human exposure to asbestos. Even with these actions, both continue to be concerned that human exposure to asbestos from many sources may present an unreasonable health risk. The purpose of this joint statement is to explain the interrelationship of the proposed regulatory efforts by the two agencies and to assure the public that these investigations and possible resulting regulations will be coordinated, compatible and nonduplicative.

EPA has authority to regulate asbestos under a number of laws it administers. In the ANPRM appearing elsewhere in this issue, EPA is considering exercising regulatory

authority provided by the Toxic Substances Control Act (TSCA, 15 U.S.C. 2601). Under TSCA, EPA may regulate any chemical substance whose manufacture, processing, distribution in commerce, use and/or disposal presents an unreasonable risk of injury to human health or the environment.

CPSC administers two statutes under which it is empowered to regulate asbestos in consumer products. Under the Consumer Product Safety Act (CPSA, 15 U.S.C. 2051), CPSC has the general responsibility to protect the public from unreasonable risks of injury, illness, or death associated with consumer products, and may take action against specific products presenting a substantial product hazard. Under the Federal Hazardous Substance Act (15 S.C. 1261), CPSC may regulate hazards involved in the presence or use of toxic and other hazardous substances in the household.

The EPA Advance Notice of proposed Rulemaking describes the Agency's broad effort to systematically gather information on groups of asbestos products and to evaluate risk from these products based on the "life cycle" concept. In the life cycle analysis, the cumulative risk from exposure to asbestos is examined from primary processing through end use and disposal. The CPSC Advance Notice describes a narrower approach to the investigation of possible health risks that may be associated with the use of asbestos in a number of consumer products.

The agencies recognize that in order to expeditiously and effectively provide public health protection from certain asbestos-containing products, there may be a need for remedial actions individually tailored to specific products or uses as well as broader controls. For example, the agencies anticipate situations where CPSC's authority may enable it to reduce consumer exposure to asbestos containing products pending more general proceedings initiated under EPA's broader program.

Through close cooperation in our regulatory endeavors, EPA and CPSC hope to achieve the following three objectives. The first is to significantly reduce unreasonable human health risk from exposure to asbestos through complementary actions. The second is to reduce potential reporting burdens on industry by coordinating information gathering under our respective statutory authorities. Within the bounds of applicable law we plan to share available data to the maximum extent possible. Third, to avoid inconsistent or needlessly burdensome regulations, each agency's regulatory actions (e.g., rules, bans, recalls) that may result from these investigations will be developed in close consultation^{tion} with the other agency.

The initiatives described here are illustrative of the efforts of CPSC and EPA to further the goals of the Inter-agency Regulatory Liaison Group (IRLG). The IRLG was

established in 1977 to promote better coordination among the major health and safety regulatory agencies.

DATED:

For CPSC

Susan B. King, Chairman

For EPA

Douglas Costle, Administrator