PLAINTIFF'S EXHIBIT
CHV-880

(11) Selikoff, I.J., Hammond, E.C., Seidman H., "Mortality Experience of Insulation Workers in the U.S. and Canada, 1943–1976." *Annals of the New York Academy of Science*, 330 (1979): 91–116.

(12) USDOL, OSHA, "Occupational Exposure to Asbestos; Emergency Temporary Standard." (November 4, 1983; 48 FR 51086).

(13) USDOL, OSHA, "Occupational Exposure to Asbestos; Proposed Rule and Notice of Hearing" (April 10, 1984; 49 FR 14116).

(14) USEPA, OPTS, OTS, Asbestos Substitutes and Related Materials, April 24, 1985.

XIII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA has determined that this proposed rule is a "Major Rule" and has developed an RIA. The RIA estimates that this proposed rule would cost about $1.98 billion over 15 years. However, the RIA also estimated that this proposed rule, if promulgated, would avoid approximately 1,930 cases of cancer. As shown in Unit V above, EPA believes that these costs are reasonable and that this proposed action is a cost-effective way of reducing the unreasonable risks related to asbestos.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

EPA has analyzed the economic impact of this proposed rule on small businesses. A summary of EPA's analysis appears in Unit III.

C. Paperwork Reduction Act

The reporting and recordkeeping provisions in this proposed rule will be submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs at OMB and marked Attention: Desk Officer for EPA. Any final rule will explain EPA's response to OMB and public comments on the proposed reporting and recordkeeping requirements.

List of Subjects in 40 CFR Part 763

Environmental protection, Hazardous substances, Recordkeeping and reporting requirements, Asbestos.

Dated: January 22, 1986.

Lee M. Thomas,

Administrator.

PART 763—[Amended]

Therefore, it is proposed that 40 CFR Part 763 be amended as follows:

1. The authority citation for Part 763 is revised to read as follows:

Authority: 15 U.S.C. 2605 and 2607(c).

2. By adding new Subpart H to read as follows:

Subpart H—Asbestos Mining and Import Restrictions

Sec.

763.140 Scope.
763.143 Definitions.
763.145 Mining and import restrictions.
763.147 Permits to mine or import asbestos.
763.148 Issuance of permits.
763.149 Appeals concerning permits.
763.150 Transfer of permits.
763.151 Banking of permits.
763.153 Recordkeeping.
763.154 Reporting.
763.156 Enforcement.
763.157 Inspections.
763.159 Confidentiality and public access to information.

Subpart H—Asbestos Mining and Import Restrictions

§ 763.140 Scope.

This Subpart prohibits the mining or importation of asbestos, including asbestos in certain asbestos products, unless authorized by a permit issued by EPA.

§ 763.143 Definitions.

The definitions in section 3 of TSCA, 15 U.S.C. 2602, apply to this Subpart. In addition, the following definitions apply:

(a) The terms "act," "article," "byproduct," "customs territory of the United States," "EPA," "importer," "manufacturer," "persons," and "United States" have the same meanings as in § 720.3 of this chapter.

(b) "Asbestos" means the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite, (cummingtonite-grunerite); tremolite; anthophyllite, and actinolite that are mined or milled.

(c) "Asbestos product" means any mixture or article containing asbestos.

(d) "Consumer" means a natural person who uses a product for personal rather than business purposes.

(e) "Import" means to bring into customs territory of the United States for any purpose except (1) for shipment through the customs territory of the United States for export without any domestic use or processing; or

(2) entering the customs territory of the United States as part of a product during normal personal or business activities involving use of the product.

(f) "Milled" means the separation of asbestos fibers from asbestos ore, the grading and sorting of asbestos fibers, or the fiberizing of asbestos ore.

(g) "Mine" means to produce asbestos other than as an unintended contaminant or impurity by extracting asbestos-containing ore so that the ore may be (1) distributed in commerce or (2) milled for distribution in commerce.

(h) "Miner" means a person who mines asbestos.

§ 763.145 Mining and import restrictions.

(a) Beginning the first day of the calendar year after this rule becomes effective, or if this rule becomes effective during the last 4 months of a calendar year, beginning the first day of the second calendar year after this rule becomes effective, no person other than a person authorized by a permit issued by EPA as provided in this part may:

(1) Mine asbestos in the United States or

(2) Import asbestos, including asbestos in an asbestos product listed in this section, except in small quantities solely for personal consumer use, into the customs territory of the United States.

(b) The following asbestos products may not be imported into the customs territory of the United States except in small quantities by a consumer solely for his or her personal use unless authorized by a permit issued by EPA as provided in this Subpart:

(1) Appliances.
(2) Pipeline wrap.
(3) Thread, yarn, lap, roving, cord, rope, or wick.
(4) Sheet gasketing, rubber encapsulated compressed.
(5) Disc brake pads (light-medium vehicles).
(6) Cloth, other than asbestos clothing.
(7) Brake blocks.
(8) Millboard.
(9) Packing.
(10) Mixed or repackaged asbestos fiber.
(11) Thermoplugs.
(12) Tape.
(13) Roof coatings.
(14) Clutch facings.
(15) Automotive gasket kit.
(16) Drum brake linings.
(17) Yarn.
(18) Automobiles and other motor vehicles.

§ 763.147 Permits to mine or import asbestos.

(a) Persons may mine in the United States or import into the customs

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territory of the United States only the quantity of asbestos for which they hold permits issued under this Subpart.

(b) The amount of asbestos contained in imported product listed in § 763.145 will count toward the total amount of asbestos a person may mine or import during a year.

(c) Persons must estimate typical asbestos content of imported asbestos products covered by this rule. Persons may use EPA's estimate of typical asbestos content if they are not certain of the typical asbestos content of a product.

§ 763.148 Issuance of permits.

(a)(1) EPA will issue permits for the mining or import of asbestos, including asbestos contained in the asbestos products listed in § 763.145.

(2) Applications for permits must be sent to the Office of Toxic Substances (TS–792), EPA, 401 M St., SW., Washington, D.C. 20460.

(b)(1) Persons must apply to EPA for permits by 30 days after the effective date of this rule.

(2) Persons must list in their application for permits the amount of asbestos, including asbestos contained in the asbestos products listed in § 763.145, that they imported or mined during 1981, 1982, and 1983.

(c) If an application is mailed to EPA, the application must be postmarked by 30 days after the effective date of this rule.

(d) EPA will allocate to persons who apply for permits a uniform percentage of the amount of asbestos those persons reported mining or importing during 1981, 1982, and 1983.

(e) Each permit will allow a person to mine or import the following percentages of the average amount of asbestos he or she mined or imported yearly during 1981, 1982, and 1983.

Year 1—30 percent.
Year 2—27 percent.
Year 3—24 percent.
Year 4—21 percent.
Year 5—18 percent.
Year 6—15 percent.
Year 7—12 percent.
Year 8—9 percent.
Year 9—6 percent.
Year 10—3 percent.

§ 763.149 Appeals concerning permits.

(a) A person may appeal EPA's initial disposition of his or her application for a permit.

(b) The person must appeal in writing to the Director of the Office of Toxic Substances (TS–792), EPA, 401 M St., SW., Washington, DC 20460, within 20 days after receipt of EPA's announcement of the disposition of his or her application. If the appeal is mailed, the letter must be postmarked within 20 days after receipt of EPA's announcement of disposition.

(c) A person must indicate in an appeal why he or she should receive a permit or be allowed to mine or import additional asbestos under the permit.

(d) The Director of the EPA Office of Toxic Substances will either grant or deny the appeal within 60 days after its receipt. The disposition of the appeal will be announced by letter to the person making the appeal.

§ 763.150 Transfer of permits.

(a) A person issued a permit by EPA to mine or import a quantity of asbestos may transfer that permit in whole or in part to another person.

(b) A person who transfers a permit to mine or import a quantity of asbestos and a person who receives such a transferred permit must report that transfer to the Office of Toxic Substances (TS–792), EPA, 401 M St., SW., Washington, DC 20460, within 10 days of the transfer.

(c) The parties involved in a transfer may report either jointly or separately.

(d) If a report is mailed to EPA, the report must be postmarked within 10 days of the transfer.

§ 763.151 Banking of permits.

(a) Persons issued permits by EPA to mine or import a quantity of asbestos during one particular year may reserve or "bank" all or part of the permitted amount and use it to mine or import asbestos during a later year during the 10-year phase-down period.

(b) The amount of asbestos that a person is permitted to mine or import will decline from year to year when it is reserved or "banked" at a rate of 10 percent per year.

(c) A person who "banks" a permit in whole or in part must report that "banking" to the Office of Toxic Substances (TS–792), EPA, 401 M St. SW., Washington, DC 20460, within 60 days of the end of the year for which the permit was issued.

(d) If a report is mailed to EPA, the report must be postmarked within 60 days of the end of the year for which the "banked" permit was issued.

§ 763.153 Recordkeeping.

(a) Any person who mines or imports asbestos or any asbestos product listed in § 763.145 must retain in one location documentation of information showing:

(1) The name of any person to whom he or she transferred permission to mine or import asbestos.

(2) The name of any person from whom he or she received permission to mine or import asbestos.

(3) The amount of asbestos mined or imported each year, including asbestos imported in any asbestos product listed in § 763.145.

(4) The typical asbestos content of any asbestos product listed in § 763.145.

(5) The number of individual asbestos products listed in § 763.145 imported each year.

(b) This information must be retained for 5 years from the end of the last year of the 10-year phase-down period covered by this rule.

§ 763.154 Reporting.

(a) Any person who imports asbestos, including asbestos in an asbestos product listed in § 763.145, must report to the Office of Toxic Substances (TS–792), EPA, 401 M. St. SW., Washington, DC 20460, within 2 days of the day of import indicating:

(1) The person's name.

(2) The amount of asbestos imported.

(3) The number of individual asbestos products listed in § 763.145 imported.

(4) A certification that the person was either issued a permit by EPA to import at least that amount of asbestos that year or obtained that permission from another person as provided in § 763.148.

(b) Within 60 days of the end of each year covered by this Subpart, each person who mines or imports asbestos including asbestos in an asbestos product listed in §763.145 must report to the Office of Toxic Substances (TS–792), EPA, 401 M. St., SW., Washington, DC 20460:

(1) The total amount of bulk asbestos that person mined or imported that year.

(2) The total amount of asbestos that person imported in asbestos products listed in §763.145 that year.

(3) The number of individual asbestos products listed in §763.145 that person imported that year.

(4) The amount of asbestos that person had permission to mine or import that year.

(c) If a report is mailed to EPA, the report must be postmarked within 60 days of the end of each year covered by this Subpart.

§ 763.156 Enforcement.

(a) Failure to comply with any provision of this Subpart is a violation of section 15 of the Act (15 U.S.C. 2614).

(b) Failure or refusal to establish and maintain records or to permit access to or copying of records, as required by the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(c) Failure or refusal to permit entry or inspection as required by section 11 of the Act (15 U.S.C. 2610) is a violation of section 15 of the Act (15 U.S.C. 2614).

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(d) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation.

(e) EPA may seek to enjoin the mining or import of asbestos or asbestos products in violation of this Subpart, or act to seize any asbestos or asbestos products in violation of this Subpart, or take other actions under the authority of section 7 or 17 of the Act (15 U.S.C. 2606 or 2616).

§ 763.157 Inspections.

EPA will conduct inspections under section 11 of the Act (15 U.S.C. 2610) to ensure compliance with this Subpart and to verify that information submitted to EPA under this Subpart is correct.

§ 763.159 Confidentiality and public access to information.

(a) A person may assert a claim of confidentiality for any information he or she submits to EPA under this Subpart.

(b) Any claim of confidentiality must accompany the information when it is submitted to EPA.

(c) EPA will disclose information subject to a claim of confidentiality asserted under this section only to the extent permitted by TSCA and Part 2 of this title.

(d) If a person does not assert a claim of confidentiality for information at the time it is submitted to EPA, EPA may make the information public without further notice to that person.

3. By adding new Subpart I to read as follows:

Subpart I—Prohibition of the Manufacture, Processing, and Distribution in Commerce of Certain Asbestos-Containing Products

Sec.
763.160 Scope.
763.163 Definitions.
763.165 Manufacture—prohibitions.
763.167 Processing—prohibitions.
763.169 Enforcement.

Subpart I—Prohibition of the Manufacture, Processing, and Distribution in Commerce of Certain Asbestos-Containing Products

§ 763.160 Scope.

This Subpart prohibits the manufacture, importation and processing, of the following categories of asbestos-containing products: asbestos-containing roofing felt, asbestos-containing flooring felt (including vinyl sheet flooring backed with flooring felt), vinyl-asbestos floor tile and asbestos-cement pipe and fittings and asbestos clothing.

§ 763.163 Definitions.

The definitions in section 3 of the Toxic Substances Control Act and the following definitions apply to this subpart.

(a) "Asbestos" means the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); tremolite; anthophyllite, and actinolite.

(b) "Asbestos-cement pipe and fittings" means an asbestos-containing product that contains cement and is intended to transmit water or sewage; for use as conduit pipe for the protection of electrical or telephone cable; or for use as air ducts.

(c) "Asbestos clothing" means an asbestos-containing product made of cloth and designed to be worn by individuals.

(d) "Asbestos-containing product" means any material which contains more than 1.0 percent asbestos by weight.

(e) "Flooring felt" means an asbestos-containing product made of paper felt and intended as an underlayment for floor coverings, or to be bonded to the underside of vinyl sheet flooring.

(f) "Roofing felt" means an asbestos-containing product made of paper felt and intended for use on building roofs as a covering or underlayment for other roof coverings.

(g) "Vinyl-asbestos floor tile" means an asbestos-containing product composed of vinyl resins, containing fillers, stabilizers and pigments and used as floor tile.

§ 763.165 Manufacture—prohibitions.

Beginning the first day of the calendar year after this rule becomes effective, or if this rule becomes effective during the last 4 months of a calendar year, beginning the first day of the second calendar year after this rule becomes effective, no person shall manufacture or import the following asbestos-containing products either for use in the United States or for export: asbestos-containing roofing felt, asbestos-containing flooring felt (including vinyl sheet flooring backed with flooring felt), vinyl-asbestos floor tile, asbestos-cement pipe and fittings, and asbestos clothing.

§ 763.167 Processing—prohibitions.

Beginning the first day of the calendar year after this rule becomes effective, or if this rule becomes effective during the last 4 months of a calendar year, beginning the first day of the second calendar year after this rule becomes effective, no person shall process the following products, either for use in the United States or for export: asbestos-containing roofing felt, asbestos-containing flooring felt (including vinyl sheet flooring backed with flooring felt), vinyl-asbestos floor tile, asbestos-cement pipe and fittings, and asbestos clothing.

§ 763.169 Enforcement.

(a) Failure to comply with any provision of this Subpart is a violation of section 15 of the Act (15 U.S.C. 2614).

(b) Failure or refusal to establish and maintain records or to permit access to or copying of records, as required by the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(c) Failure or refusal to permit entry or inspection as required by section 11 of the Act (15 U.S.C. 2610) is a violation of section 15 of the Act (15 U.S.C. 2614).

(d) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation.

(e) EPA may seek to enjoin the manufacture or import of asbestos products in violation of this Subpart, or act to seize any asbestos products in violation of this Subpart, or take other actions under the authority of section 7 or 17 of the Act (15 U.S.C. 2606 or 2616).

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