

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

RIN 1218-AB25

Occupational Exposure to Asbestos; Corrections

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Corrections to final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is correcting and clarifying the preamble to, and correcting certain provisions of the final asbestos standards issued August 10, 1994 (59 FR 40964, 29 CFR 1910.1001, 1915.1001, and 1926.1101). **EFFECTIVE DATE:** June 29, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Liblong, Director of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 219-8151.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 1994 OSHA revised its final asbestos standards in general industry and construction and issued a new shipyard employment standard. Subsequently, technical and typographical errors were discovered in both the preamble and regulatory text. Additionally, members of the regulated public have asked OSHA to clarify, correct, or reconsider certain regulatory provisions.

To address these problems, OSHA has made a number of corrections to both the standard and the preamble. The corrections to the standards include (1) correction of typographical errors; (2) corrections that clarify the agency's intent but do not change the substantive requirements imposed by the standard; and (3) corrections intended to better effectuate the agency's intent when it issued the standard. All these corrections to the standard are deemed to be "minor" amendments within the meaning of 29 CFR 1911.5. Because the corrections are based on the existing rulemaking record and are not intended to affect the protection afforded by the standard in a significant way, OSHA finds good cause, pursuant to 29 CFR 1911.5 and the Administrative Procedure Act, for promulgating the corrections without notice and opportunity for public comment.

The discussion which follows is organized by subject matter, not by

paragraph number alone. As in the preamble to the revised standards, each of the standards, general industry, construction, and shipyards, contain overlapping, comparable, and in some cases identical provisions covering various subject headings. However, the general industry standard's paragraph designations differ. In this preamble OSHA is separately discussing, topic by topic, all clarifications which are in the nature of preamble changes, as well as corrections and technical amendments concerning that topic. This way, the reader can be apprised of all changes and clarifications on a particular topic at one time. OSHA is not including in these discussions those corrections to the text which are typographical in nature and which are self-explanatory.

1. Definitions

Paragraph (b) Construction and Shipyards Employment Standards.

OSHA is amending its definition of "disturbance" in order to clarify it to reflect the Agency's original intent. OSHA has found its unamended definition confusing to the regulated community. This will eliminate some terminology, such as use of the word "contact" to describe both Class III and IV operations. Thus, disturbance becomes the operational term to distinguish a Class III operation; while "contact" (without "disturbance") distinguishes Class IV. (See also the discussion clarifying Class IV operations in this document.) The first sentence of the definition now clearly specifies that a disturbance entails "activities that disrupt the matrix of ACM or PACM, crumble or pulverize ACM or PACM, or generates visible debris from ACM or PACM." OSHA also clarifies that work involving dust that is accompanied by debris in the presence of asbestos containing material, must be treated as an asbestos job. OSHA does not believe that this clarification substantively alters the requirements or the intended worker protection of its job classification scheme. Thus, mere "contact" with asbestos is clearly not a Class III activity. The inclusion of the phrase "disrupt the matrix" in the definition allows inclusion of other, undefined operations which might also result in release of fibers from the material in which they are embedded.

OSHA is correcting the General Industry Standard to include certain definitions inadvertently omitted from the August 10, 1994 publication of the final rule. These include definitions for the following terms: Certified Industrial Hygienist, homogeneous area, presumed asbestos containing material, surfacing material, surfacing ACM, thermal

system insulation and thermal system insulation ACM. The added definitions are consistent with those in the Construction and Shipyard Employment Standards.

Class IV Work: OSHA has made minor clarifications to the definition of Class IV as it applies in the construction and shipyard employment standards. They more fully realize OSHA's intent in creating this class of work, distinguish it from housekeeping under the general industry standard, and expressly limit its scope to accepted "construction" activities. The definition now reads:

"Class IV asbestos work means maintenance and custodial construction activities during which employees contact but do not disturb ACM or PACM and activities to clean up dust, waste and debris resulting from Class I, II and III activities." Because work under the construction standard must be related to and on the worksite of a construction job, the definition now specifies that Class IV work which is "clean-up" must result from Class I, II and III work. In addition, to distinguish Class IV from Class III work, the definition now states that maintenance activities are Class IV only if employees "contact, but do not disturb" ACM or PACM. It should be noted that housekeeping activities in the general industry standard in some cases might include clean-up of asbestos containing materials, however in the absence of a construction job or site, this clean-up is not a construction activity. OSHA notes however, that use of wet methods, HEPA vacuums and immediate clean-up are required for these activities in all cases. The Agency believes that these changes will allow employers and employees to more easily distinguish Class IV from Class III activities. The Agency is confident that these changes will not weaken employee protection. In fact, by clarifying which activities must be treated as Class IV, OSHA believes enforcement will be facilitated, and the level of compliance will rise.

2. Regulated Areas

Several questions have arisen among participants about the need for regulated areas when Class II or III work is performed for which a negative exposure assessment is produced. OSHA continues to believe that it is necessary to assure that by-standers are protected from unwittingly entering areas where the carcinogen asbestos is being disturbed. OSHA wishes to clarify, however, that when the employer can show that which work is performed by properly trained and informed workers in areas to which no other workers have access, OSHA does