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SUPREME COURT OF TEXAS
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No. 18-0056

In the Supreme Court of Texas

THE GOODYEAR TIRE & RUBBER COMPANY
Petitioner,

v.

VICKI LYNN ROGERS, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF CARL ROGERS, NATALIE ROGERS, AND COURTNEY DUGAT,
Respondents.

On Petition for Review from the
Fifth Court of Appeals at Dallas
Court of Appeals No. 05-15-00001-CV

BRIEF OF AMICUS CURIAE THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST[1]

The Chamber is the world's largest business federation. It represents 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, from every region of the country. The Chamber represents the interests of its members in matters before the courts, Congress, and the Executive Branch. To that end, the Chamber regularly files amicus curiae briefs that raise issues of concern to the nation's business community.

The Chamber's membership includes many companies that do business in Texas and are employers and subscribers under the Texas Workers' Compensation Act ("TWCA") and similar statutes in other states. The Fifth Court of Appeals' opinion in this case disrupts the TWCA's exclusive remedy law and greatly reduces threshold requirements for establishing gross negligence.

[1] The Chamber has no direct financial interest in the outcome of this litigation. No counsel for a party wrote this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the amicus curiae, its members, or its counsel made a monetary contribution intended to fund its preparation or submission.

STATEMENT OF THE CASE

The Chamber incorporates by reference the Statement of the Case by Goodyear Tire & Rubber Company.

STATEMENT OF JURISDICTION

The Court has jurisdiction under Tex. Gov't Code § 22.001.

ISSUE PRESENTED

1. Under the Texas Workers' Compensation Act, exemplary damages are allowed only where a plaintiff can show an employer acted intentionally or with gross negligence. Did the Court of Appeals err when it held the threshold, objective element of gross negligence satisfied without a showing, by clear and convincing evidence, of objective knowledge that a plaintiff's injury was likely at the time the plaintiff's injury occurred?

STATEMENT OF FACTS

Goodyear is a Texas employer and subscriber under the Texas Workers' Compensation Act (the "TWCA"). *Goodyear v. Rogers*, 538 S.W.3d 637, 641 (Tex. App.—Dallas 2017, pet. filed). Respondents sued Goodyear for the death of its former employee, Carl Rogers, claiming that he contracted mesothelioma from asbestos exposures while operating tire machines at Goodyear's Tyler, Texas facility in the 1970s and 1980s. *Id.* at 640-41.

The TWCA's exclusive remedy provision bars negligence claims seeking compensatory damages against Goodyear; thus, Respondents sued Goodyear for exemplary damages under Texas Labor Code § 408.001. To seek exemplary damages, Respondents asserted that Goodyear was grossly negligent in allegedly not warning Mr. Rogers about asbestos or following OSHA standards for asbestos at the time. *Id.* at 641, 645-47.

The case resulted in a $15,000,000 exemplary damages verdict in favor of Respondents. *Id.* at 644. Goodyear appealed on the ground that Respondents had failed to meet their burden of proving Goodyear was grossly negligent under Texas law by clear and convincing evidence. *Id.* at 644-45; TEX. CIV. PRAC. & REM. CODE § 41.001(11). The court of appeals affirmed, holding Respondents had met their burden with the following evidence:

1. The present-day opinions of Respondents' causation experts that Mr. Rogers had as much as a one in roughly 45,000 chance of developing mesothelioma from exposure to asbestos at Goodyear's facility, based on studies published between 1998 and 2014;
2. A 2007 epidemiological study of employees at Goodyear's Tyler plant that reported three[2] out of about 3,000 workers were diagnosed with mesothelioma (two of whom previously worked in an asbestos insulation manufacturing plant);
3. Statements and standards in OSHA's 1972 asbestos regulation; and
4. Evidence purporting to show that "Goodyear knew that exposure to low levels of asbestos *could* cause people to develop mesothelioma."

Goodyear, 538 S.W.3d at 645-47; 5 RR 91-98.

[2] As this study pre-dated Mr. Rogers' diagnosis, he was not included in the study findings. *Goodyear*, 538 S.W.3d at 646.

SUMMARY OF THE ARGUMENT

The exclusive remedy provision of the TWCA is essential to the function of the Texas workers' compensation system, which is to provide relative certainty and efficiency for all parties. The sole exception to that exclusive remedy is reserved for exceptional circumstances where an employer should be punished for causing the death of an employee either intentionally or via grossly negligent conduct. This requires a substantially higher showing of culpability than mere negligence.

The decision of the court of appeals below undermines both Texas punitive damages law and the Texas workers' compensation system by reducing the evidentiary threshold for awarding punitive damages against employers in Texas. The court abandoned the fundamental threshold requirement of culpability under the essential objective element of a gross negligence claim – that a likelihood of serious injury to the employee must have been objectively known *at the time the injury occurred*. The decision creates erroneous precedent allowing hindsight and evidence supporting, at most, simple negligence to support a gross negligence claim for punitive damages against an employer. This decision improperly puts employer protections under the TWCA at risk by opening the door to unwarranted punitive damages claims, and should be reversed.

ARGUMENT

I. The Texas Workers' Compensation Scheme Depends on the Limitation of Exemplary Damages to Exceptional Cases of Intentional or Grossly Negligent Conduct.

The TWCA provides substantial advantages to both employers and employees in addressing workplace-related injuries. For employees, it provides a system of "relatively swift and certain compensation without proof of fault." *Reed Tool Co. v. Copelin*, 689 S.W.2d 404, 407 (Tex. 1985). In return, an employer is "immun[e] from negligence and potentially larger recovery in common law actions." *Id.*

Unlike every other state, private employer participation in Texas' workers' compensation scheme is completely optional. *Port Elevator-Brownsville v. Casados*, 358 S.W.3d 238, 241 (Tex. 2012); TEX. LAB. CODE § 406.002(a). In 2018, 72% of private employers subscribed to the system, the second highest rate of subscribing employers since 1993, employing roughly 8.4 million private sector employees. *See* Division of Workers' Compensation Biennial Report to the 86th Texas Legislature at p. 8-9.[3] Due to continued favorable results for both employers and employees under the system, the Texas Division of Workers' Compensation recommended no significant legislative changes in 2018. *Id.* at p. 42.

Embedded in the TWCA's continued success is its exclusive remedy provision. TEX. LAB. CODE § 408.001 (a). This longstanding provision mandates

[3] Available at: https://www.tdi.texas.gov/reports/dwc/documents/2018dwcbienlrpt.pdf.

that workers' compensation benefits are the employee's (or legal beneficiary's) exclusive remedy against the employer for the death or work-related injury of an employee. *Id.* As this Court has long recognized, "The exclusive remedy provision is an essential element of the worker's compensation scheme." *Reed Tool Co.*, 689 S.W.2d at 407. Specifically:

> Worker's compensation is based on the principle that the cost of medical services and benefits provided is part of the cost of doing business and thus is borne directly by the employer, and ultimately by the general public, as part of the cost of goods and services. *The continued effectiveness* of the worker's compensation scheme depends on the continued ability to spread the risk of such losses. *If employers are required to provide not only worker's compensation but also to defend and pay for accidental injuries*, their ability to spread the risk through reasonable insurance premiums is threatened, and the balance of advantage and detriment would be significantly disturbed.

Id. (emphasis added). It is in this context that the sole, limited exception to the TWCA's exclusive remedy provision arises: the imposition of exemplary damages against an employer who causes an employee's death intentionally or via grossly negligent conduct. TEX. LAB. CODE § 408.001 (b).

In Texas, exemplary damages are imposed only to "punish the defendant for *outrageous*, *malicious*, or otherwise *morally culpable* conduct." *Transp. Ins. Co. v. Moriel*, 879 S.W.2d 10, 16-17, 18 (Tex. 1994) (emphasis added). *See also* TEX. CIV. PRAC. & REM. CODE ANN. §§ 41.001(5) (defining exemplary damages as those "awarded as a penalty or by way of punishment"). They "are proper in only the most exceptional cases." *Moriel*, 879 S.W.2d at 18. Where an act is unintentional, it must

"reach the border-line of a quasi-criminal act of commission or malfeasance" to qualify for punitive damages. *Moriel*, 879 S.W.2d at 16 (quoting *S. Cotton Pres & Mfg. Co. v. Bradley*, 52 Tex. 587, 600-01 (1880)). Thus, "like criminal punishment, punitive damages require appropriate substantive and procedural safeguards to minimize the risk of unjust punishment." *Id.* at 16-17. Such safeguards are particularly important to preserving the TWCA's exclusive remedy provision and the effectiveness of the Texas workers' compensation system. *Reed Tool Co.*, 689 S.W.2d at 407. Otherwise, employers would not receive their end of the bargain, which could cause some to withdraw from the workers' compensation system – to the ultimate detriment of employers and employees alike.

II. The Court of Appeals' Decision Undermines Texas Punitive Damages Law and the Texas Workers' Compensation System.

A. The court of appeals' acceptance of hindsight evidence to affirm a gross negligence finding contradicts Texas law.

In *Transportation Insurance Company v. Moriel*, this Court enshrined unequivocally the objective and subjective elements of gross negligence that form the bedrock of Texas punitive damages law. *Moriel*, 879 S.W.2d at 23; TEX. CIV. PRAC. & REM. CODE ANN. §§ 41.001(11), 41.003. The threshold, objective element requires *clear and convincing proof* that, when "viewed *objectively* from the *standpoint of the [employer] at the time of its occurrence*," the employer's act or omission must "involve an *extreme* degree of risk, considering the probability and

magnitude of the potential harm to others." *Moriel*, 879 S.W.2d at 23 (emphasis added). *See also* TEX. CIV. PRAC. & REM. CODE ANN. §§ 41.001(11), 41.003.

The standard for proving the objective element of a gross negligence claim is "significantly higher than the objective 'reasonable person' test for negligence." *Moriel*, 879 S.W.2d at 22. The test is not whether serious injury was objectively *possible*, but instead, whether serious injury to the plaintiff was objectively *probable*. *Id.; see also, e.g., Universal Servs. Co., In. v. Ung.*, 904 S.W.2d 638, 642 (Tex. 1995) (objective element not satisfied in wrongful death case arising from pothole accident, even where adjacent pothole had been the cause of prior incident); *Wal-Mart Stores, Inc. v. Alexander*, 868 S.W.2d 322, 326 (Tex. 1993) (objective element not satisfied where, despite concerns about ramp that caused plaintiff's injury, there had been no serious incidents in preceding three months). That determination "requires an examination of the events and circumstances *from the viewpoint of the defendant at the time the event occurs*, without viewing the matter in hindsight." *Moriel*, 879 S.W.2d at 23. In other words, before any alleged actual, subjective awareness on the part of the defendant can be assessed, a plaintiff must prove that it was objectively known *at the time* of injury that the defendant's act or omission was *likely* to cause serious injury to the plaintiff. *Id.* at 22-23.

The court of appeals' decision below radically departs from this objective element test, and opens the door for employees to recover damages from employers

outside of the workers' compensation system based on evidence establishing, at most, simple negligence. The decision approved the punitive damages award without any evidence that it was objectively known at the time of Mr. Rogers' asbestos exposures at the facility that he was *likely* to contract a cancer from the exposures. *Goodyear*, 538 S.W.3d at 645-46. The decision relied instead on after-the-fact evidence of a 2007 epidemiological study and the present-day opinions of Respondents' causation experts based on studies not reported until 1998. *Id.*; 5 RR 91-97. This fundamentally undermines the objective element of Texas gross negligence law, which, as the Court has emphasized, "is necessary to clearly distinguish between conduct which is deserving of punishment and that which merely demands restitution." *Alexander*, 868 S.W.2d at 326.

B. The court of appeals' acceptance of regulatory noncompliance as evidence of gross negligence is error.

The 1972 OSHA asbestos regulation referenced in the decision similarly fails to provide clear and convincing evidence of a likelihood of serious injury at the time of Mr. Rogers' exposures. As an initial matter, "[t]he mere existence of [a] federal regulation does not establish the standard of care or gross negligence per se." *U-Haul Int'l, Inc. v. Waldrip*, 380 S.W.3d 118, 139 (Tex. 2012). An employer's noncompliance with OSHA does not, without more, satisfy a plaintiff's requirement to show the elements of gross negligence have been met. *See Continental Coffee Products Co. v. Cazarez*, 937 S.W.2d 444, 454 (Tex. 1996) ("in most types of cases,

the fact that an act is unlawful is not of itself ground for an award of exemplary or punitive damages. . . . an act will not be deemed malicious . . . merely because it is unlawful or wrongful." (internal quotations omitted)). The question is not whether an employer failed to comply with a legal duty; the question is whether an employer did so in the face of a risk that was known to be *extreme* at the time in question.

Instead, the OSHA regulation was a prophylactic government policy that was "free to use conservative assumptions in interpreting the data" and "risk[] error on the side of overprotection rather than underprotection." *Indus. Union Dep't v. API*, 448 U.S. 607, 656 (1980). The regulation sought to address questions "on the frontiers of scientific knowledge" where "insufficient data [was] available to make a fully informed factual determination." *Indus. Union Dep't v. Hodgson*, 499 F.2d 467, 474-75 (D.C. Cir. 1974). The regulation itself acknowledged a dispute "as to the determination of a specific level [of asbestos exposure] below which exposure is safe." Standard for Exposure to Asbestos Dust, 37 Fed. Reg. 11318, 11318 (June 7, 1972) (codified at 29 C.F.R. pt. 1910 (1972)) (**Tab A** hereto). It also recognized the "controversies" concerning (1) "the validity of the measuring techniques used and the reliability of the relations attempted to be established" in studies existing at that time; (2) "the relative toxicity of the various kinds of asbestos;" and (3) the "*varying hazards in different workplaces*." *Id.* (emphasis added).

The regulation therefore involved "choices that by their nature require[d] basic policy determinations rather than resolution of factual controversies." *Hodgson*, 499 F.2d at 474-75. OSHA chose, as a policy, to require all workplaces involving "any kind" of asbestos exposure to comply with its requirements both for "[r]easons of practical administration" and because it chose to resolve "the conflict in the medical evidence" in favor of maximizing workplace safeguards with respect to asbestos. 37 Fed. Reg. 11318. This choice "rest[ed] in the final analysis on an essentially legislative policy judgment, rather than a factual determination, concerning the relative risks of underprotection as compared to overprotection." *Hodgson*, 499 F.2d at 475.

Such a prophylactic government policy is not, and should not be, clear and convincing evidence of objective knowledge, at the time in question, that a person was likely to contract mesothelioma from a particular exposure level or in any particular circumstances (including Mr. Rogers'). If anything, the prophylactic nature of the regulation due to then-existing uncertainty actually shows the opposite.

C. The court of appeals' focus on subjective element evidence without a proper objective element finding is improper.

The court's erroneous decision concerning the objective element of Respondents' gross negligence claims cannot be justified by its subsequent discussion of the purported subjective element evidence in this case. Texas law requires proof of *both* elements, and proof of the threshold objective element must

come first. *Moriel*, 879 S.W.2d at 22-23. *See also, e.g.*, *Alexander*, 868 S.W.2d at 327 ("Having concluded that there is no evidence on this record of an extreme degree of risk, we need not and indeed cannot consider the second prong[:] whether there is any evidence that Wal-Mart was aware of such a risk."); *Dillard Dep't Stores, Inc. v. Silva*, 148 S.W.3d 370 (Tex. 2004) (declining further inquiry into defendant's actual, subjective awareness after finding plaintiff had not been exposed to an extreme risk of substantial harm). Without the predicate showing that a likelihood of serious injury from an employer's action was *objectively* known at the time of the injury, an employer logically cannot be shown to have *subjectively* known of that likelihood.

Indeed, if there is no evidence that any scientific study during the time of Mr. Rogers' exposures showed that a person in Mr. Rogers' circumstances was likely to contract mesothelioma from his work at the facility, Goodyear could not have known that such a likelihood existed. Further, Goodyear's internal plant communications, which the court held were sufficient for a jury to find that Goodyear had "actual knowledge that exposures to low levels of asbestos *could* result in mesothelioma," *Goodyear*, 538 S.W.3d at 647 (emphasis added), are beside the point. A purported awareness of a *possibility* that injury is *generally capable* of occurring is not an awareness of the extreme degree of risk that must be shown to prove a gross negligence claim – that is, that serious injury to the plaintiff was *likely* to occur.

In sum, the lower court's decision improperly reduces the evidentiary threshold for allowing awards of punitive damages against employers in Texas, and enables employees to circumvent the TWCA's exclusive remedy law with evidence supporting, at most, simple negligence. The decision substantially undermines both Texas punitive damages law and the Texas workers' compensation system, and it should not stand.

PRAYER FOR RELIEF

For the foregoing reasons, the Chamber supports Goodyear's request that the Court reverse and correct the lower courts' erroneous decision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the Brief of Amicus Curiae The Chamber of Commerce of the United States of America was electronically filed with the Clerk of the Court using the eFile.TxCourts.gov filing system which will send notification to the attorneys of record in this case, addressed as follows:

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of TEX. R. APP. P. 9.4 because it contains 2,577 words, excluding the parts of the brief exempted by TEX. R. APP. P. 9.4(i)(1).

/s/ Stephanie D. Clouston
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No. 18-0056

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APPENDIX TO BRIEF OF AMICUS CURIAE THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF PETITIONER

TAB

TAB A

[T.D. 72-153]

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

Free Withdrawal of Supplies and Equipment for Aircraft

In accordance with section 309(d), Tariff Act of 1930, as amended (19 U.S.C. 1309(d)), the Department of Commerce has found and under date of April 25, 1972, has advised the Treasury Department that Poland allows privileges to aircraft registered in the United States and engaged in foreign trade substantially reciprocal to those provided for in sections 309 and 317 of the Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317). The same privileges are therefore hereby extended to aircraft registered in Poland and engaged in foreign trade effective as of the date of such notification.

Accordingly, paragraph (f) of § 10.59, customs regulations, is amended by the insertion of Poland in appropriate alphabetical order and the number of this Treasury decision in the opposite column headed "Treasury Decision(s)" in the list of nations in that paragraph.

(Secs. 309, 317, 624, 46 Stat. 690, as amended, 696, as amended, 759; 19 U.S.C. 1309, 1317, 1624)

[SEAL] EDWIN F. RAINS,
Acting Commissioner of Customs.

Approved: May 25, 1972.

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[FR Doc.72-8578 Filed 6-6-72;8:50 am]

Title 29—LABOR

Chapter XVII—Occupational Safety and Health Administration, Department of Labor

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Standard for Exposure to Asbestos Dust

On December 7, 1971, an emergency temporary standard concerning exposure to asbestos fibers was published in the FEDERAL REGISTER (36 F.R. 23207). In accordance with section 6(c)(3) of the Williams-Steiger Occuptaional Safety and Health Act of 1970, a notice of proposed rulemaking regarding a permanent standard for exposure to asbestos fibers was published in the FEDERAL REGISTER on January 12, 1972 (37 F.R. 466). The notice invited interested persons to submit both orally and in writing, data, views, and arguments concerning the proposal.

On or about January 24, 1972, the Advisory Committee on Asbestos Dust was established and requested to make written recommendations with regard to the proposed standard on asbestos. On or about February 1, 1972, the Department of Health, Education, and Welfare transmitted to the Secretary of Labor a criteria document containing Recommendations for an Occupational Exposure Standard for Asbestos by the National Institute for Occupational Safety and Health (NIOSH). Public notice was given of the receipt of the recommendations and their availability for inspection and copying. On or about February 25, 1972, the Advisory Committee on Asbestos Dust submitted its written recommendations to the Assistant Secretary of Labor for Occupational Safety and Health.

Pursuant to the notice of rule making, a hearing was held on March 14 through 17, 1972, for the purpose of receiving oral data, views, and arguments concerning the proposed standard. On or about March 31, 1972, the presiding hearing examiner certified to the Assistant Secretary of Labor for Occupational Safety and Health the record of the proceeding. The record includes prehearing written comments, a transcript of the oral presentations made at the hearing, and numerous exhibits received during the course of the hearing or within the period allowed after the close of the hearing.

The proposed standard dealt with (1) permissible concentrations of asbestos fibers; (2) methods of compliance; (3) warning signs; (4) monitoring; (5) medical examinations; and (6) recordkeeping. Each of these major proposals elicited comments, arguments, objections, and counterproposals. They all have been examined and considered.

1. *Acceptable concentrations of asbestos dust.* The proposed standard would limit occupational exposure to 8-hour time-weighted average (TWA) airborne concentrations of asbestos dust not exceeding five fibers longer than five micrometers per milliliter. Concentrations above five fibers but not to exceed 10 fibers (ceiling concentration) would be permitted up to 15 minutes in an hour, but for not more than 5 hours in any one 8-hour day.

NIOSH in effect has recommended that the five-fiber TWA and 10-fiber peak concentrations be permitted only for 2 years; thereafter, TWA concentrations should be not more than 2 fibers per cubic centimeter ($cm.^3$) of air, and peak concentrations should not exceed 10 fibers/$cm.^3$, with no time restriction. Numerous objections and counterproposals have been made, with regard to both the limits of asbestos fiber concentrations and the time periods to comply with them. Some, for example, have recommended return to a 12-fiber standard of an earlier day; i.e., a level adopted under the Walsh-Healey Public Contracts Act in 1969. Others have recommended a two-fiber standard to become effective in 6 months, then a one-fiber standard for 2 years, and finally a zero-fiber standard after 3 years. These recommendations give a fair indication of the wide spread of the counterproposals.

No one has disputed that exposure to asbestos of high enough intensity and long enough duration is causally related to asbestosis and cancers. The dispute is as to the determination of a specific level below which exposure is safe. Various studies attempting to establish quantitative relations between specific levels of exposure to asbestos fibers and the appearance of adverse biological manifestations, such as asbestosis, lung cancers, and mesothelioma, have given rise to controversy as to the validity of the measuring techniques used and the reliability of the relations attempted to be established. Because of the long lapse of time between onset of exposure and biological manifestations, we have now evidence of the consequences of exposure, but we do not have, in general, accurate measures of the levels of exposure occurring 20 or 30 years ago, which have given rise to these consequences. There are also controversies concerning the relative toxicity of the various kinds of asbestos, and varying hazards in different workplaces.

It is fair to say that the controversy has centered in the area between a two-fiber TWA concentration and five-fiber TWA concentration, with variations on the time needed for compliance. Many employers support a five-fiber TWA. Most medical opinion is divided between a two-fiber standard and a five-fiber standard.

In view of the undisputed grave consequences from exposure to asbestos fibers, it is essential that the exposure be regulated now, on the basis of the best evidence available now, even though it may not be as good as scientifically desirable. An asbestos standard can be re-evaluated in the light of the results of ongoing studies, and future studies, but cannot wait for them. Lives of employees are at stake.

It is concluded that there should be one minimum standard of exposure to asbestos applicable to all workplaces exposed to any kind, or mixture of kinds, of asbestos. Reasons of practical administration preclude a variety of standards for different kinds of asbestos and of workplaces. Also, while the evidence tends to show that crocidolite, for instance, is more harmful than chrysotile, the evidence is not sufficient to establish separate standards for varieties of asbestos.

Because there must be one standard governing exposure to all varieties of asbestos, and in workplaces apparently more hazardous than others; because some present employees with regular exposure to asbestos have probably already accumulated great doses of asbestos fibers, due to higher levels of exposure in the past; because it appears that levels of exposure which may be safe with regard to asbestosis are not safe with regard to mesothelioma; because the statute requires the protection of every employee, even of one who may have regular exposure to asbestos during a working life which may reach, or even exceed, 40 years; and because of several other considerations which have been urged and are reflected in the record of the proceeding, the conflict in the medical evidence is resolved in favor of the health of employees. As of July 1, 1976, TWA concentrations of asbestos fibers longer than 5 micrometers will not be allowed to exceed two fibers/cc.. with a ceiling value of 10 fibers/cc. The current TWA concentrations of five fibers, and

ceiling concentrations of 10 fibers/cc, will be permitted until July 1, 1976, during what will be a transitional period deemed necessary to allow employers to make the needed changes for coming into compliance with the more stringent standard.

The record shows that the many work operations subject to the single asbestos standard (textile, manufacturing, industrial, and marine installation, etc.) will meet varying degrees of difficulty in complying with the standard. In some plants, extensive redesign and relocation of equipment may be needed. It appears, however, the delay in the effective date of the two-fiber standard will provide all employers a reasonable time to comply. At the same time, so long as the ceiling limit is complied with, no harm is reasonably expected to result from exposures during the transitional period.

2. *Methods of compliance.* It has been pointed out by many persons, that protection against asbestos fibers is best obtained by controlling the generation of fibers first, and secondly, by controlling the dispersion of released fibers into the ambient air of the workplaces. Therefore, the standard requires feasible technological controls and appropriate work practices as the primary means of compliance. Rotation of employees as a way of meeting the TWA concentration requirement is allowed only in stated exceptional circumstances, because, as a general rule, it would be difficult to implement. Personal protective equipment, such as respirators, cannot be relied upon because, among other reasons, they may be so uncomfortable as to be burdensome, except for short periods of time. Therefore, it is expetted that respirators and shift rotation will be used during the period necessary to install engineering controls and to train employees in sound work practices, but, after technological compliance has been achieved, their use must be limited to special work situations and emergencies. Where both are practicable, shift rotation is required.

3. *Labeling.* The proposed standard stopped short of requiring labeling asbestos and asbestos-containing products. The proposed standard would have required only warning signs at locations where asbestos hazards are present. However, labeling, rather than warning signs, has proved to be a point of controversy. Both NIOSH and the Advisory Committee on Asbestos Dust recommended labels for asbestos products and containers, and these recommendations became very controversial in the course of the proceeding. Many counterproproposals have been made as to the language of the warning as well as to the products to be subject to the labeling requirements. Employers, in general, strongly contend that (1) finished products which effectively entrap asbestos fibers, so that these would not be released in the normal use of the products, should not be required to be labeled; and (2) words such as "danger" and "cancer" are unwarrantedly alarming.

Both contentions have merit, and the standard has been changed accordingly.

4. *Monitoring.* The proposed standard would have required personal monitoring and environmental monitoring. Many issues have been raised concerning the availability and reliability of measuring instruments, frequency of monitoring, and conditions in which monitoring should be required. The adopted standard takes the objections into consideration. It requires periodic monitoring at intervals no longer than 6 months, thus allowing considerable time and discretion, and prescribes the use of the membrane filter method, which is an acceptable method for determination of asbestos fibers.

It has also been recommended that employees or their representatives should have an opportunity to observe the monitoring. The recommendation has been accepted.

5. *Medical examinations.* The proposed standard would only require an appropriate medical examination on a periodic basis. The generality of the proposal has attracted many objections and also many helpful comments. The recommendations of NIOSH and of the Advisory Committee on Asbestos Dust were much more specific with respect to both frequency and type of medical examinations to be required. The comments vary as to the class of employees to be examined and as to the frequency of the examinations.

The adopted standard requires medical examinations both at the beginning and the termination of employments exposed to concentrations of asbestos fibers, and also requires annual medical examinations of every employee exposed to airborne concentrations of asbestos. It has been pointed out that in certain industries, such as construction, an employee may work for several employers during the same year. Accordingly, the standard does not require either preemployment, or termination, or periodic examinaton of any employee who has been examined in accordance with the standard within the past year.

One question which has been raised goes to whether the employer or the employee should be allowed to choose the examining physician. The standard gives the option to the employer. Since some employers already have a medical examination program in operation, and, also, have medical departments with some expertise in the diagnosis of abestos-related diseases, it seems more reasonable to permit them to utilize the present programs and expertise, than to permit an employee to choose a private general practitioner.

6. *Records.* The standard, as proposed and as adopted, requires maintenance of records of monitoring and of medical examinations. Most of the controversy in this area has revolved around the question whether an employer should be allowed to have access to the results of the required medical examinations. The apprehension of those who have argued against employer access is based on the expectation that some employers will use the medical examinations as a means of screening employment applicants, and worse, as grounds for discharging current employees, who show signs of being affected by exposure to asbestos. Since the purpose of the medical examinations is to monitor the health of employees exposed to the hazards of abestos, employees cannot in reason be granted the privilege of refusing to disclose to their employers results of occupational exposure. It does not make sense to require employers to provide medical examinations if they cannot know and use the results of the examinations. For these reasons the standard provides that employers may have a restricted access to some medical information.

On the other hand, there is no intention to allow employers to abuse medical information obtained pursuant to the Act, to the detriment of employees. Therefore, the administration of the medical records requirement will be closely watched, and, in cases of abuse, appropriate action will be considered.

The issues discussed above are believed to be the major ones. Numerous other issues have been raised in the rulemaking proceedings. Some have been referred to incidentally. Many recommendations, for instance, about work practices, are so obviously meritorious that their adoption needs no exposition here. Other recommendations and many objections have not been adopted for a variety of reasons which should be manifest. Several, for instance, have recommended the use of respirators only pursuant to a variance, or in cases of emergency and occasional short-term exposures. The recommendation with respect to variances undoubtedly has many merits, but is considered administratively impractical.

Accordingly, after consideration of the whole record of the proceeding, and pursuant to sections 6 (b) and (c) and 8(c) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1596, 1599; 29 U.S.C. 655, 657), 29 CFR 1910.4, and to Secretary of Labor's Order No. 12-71 (36 F.R. 8754), Part 1910 of Title 29 of the Code of Federal Regulations is amended as set forth below.

(1) Section 1910.93 is amended by revising Table G-3 to read as follows:

§ 1910.93 Air contaminants.

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TABLE G-3—MINERAL DUSTS

Substance	Mppcf	Mg/M³
Silica:		
Crystalline:		
Quartz (respirable)	250 [f]	10mg/M³ = %SiO₂+2
Quartz (total dust)	%SiO₂+5	%SiO₂+2 30mg/M³
		%SiO₂+2
Cristobalite: Use ½ the value calculated from the count or mass formulae for quartz.		
Tridymite: Use ½ the value calculated from the formulae for quartz.		
Amorphous, including natural diatomaceous earth	20	80mg/M³
		%SiO₂
Silicates (less than 1% crystalline silica):		
Mica	20	
Soapstone	20	
Talc	20	
Portland cement	50	
Graphite (natural)	15	
Coat dust (respirable fraction less than 5% SiO₂)		2.4mg/M³ or 10mg/M³
For more than 5% SiO₂		%SiO₂+2
Inert or Nuisance Dust:		
Respirable fraction	15	5mg/M³
Total dust	50	15mg/M³

NOTE: Conversion factors—
mppcf×35.3=million particles per cubic meter
=particles per c.c.

[f] Millions of particles per cubic foot of air, based on impinger samples counted by light-field technics.

[g] The percentage of crystalline silica in the formula is the amount determined from air-borne samples, except in those instances in which other methods have been shown to be applicable.

[h] As determined by the membrane filter method at 430 X phase contrast magnification.

[i] Both concentration and percent quartz for the application of this limit are to be determined from the fraction passing a size-selector with the following characteristics:

Aerodynamic diameter (unit density sphere)	Percent passing selector
2	90
2.5	75
3.5	50
5.0	25
10	0

The measurements under this note refer to the use of an AEC instrument. If the respirable fraction of coal dust is determined with a MRE the figure corresponding to that of 2.4 Mg/M³ in the table for coal dust is 4.5 Mg/M³.

2. A new § 1910.93a is added to Part 1910, reading as follows:

§ 1910.93a Asbestos.

(a) *Definitions.* For the purpose of this section, (1) "Asbestos" includes chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite.

(2) "Asbestos fibers" means asbestos fibers longer than 5 micrometers.

(b) *Permissible exposure to airborne concentrations of asbestos fibers*—(1) *Standard effective July 7, 1972.* The 8-hour time-weighted average airborne concentrations of asbestos fibers to which any employee may be exposed shall not exceed five fibers, longer than 5 micrometers, per cubic centimeter of air, as determined by the method prescribed in paragraph (e) of this section.

(2) *Standard effective July 1, 1976.* The 8-hour time-weighted average airborne concentrations of asbestos fibers to which any employee may be exposed shall not exceed two fibers, longer than 5 micrometers, per cubic centimeter of air, as determined by the method prescribed in paragraph (e) of this section.

(3) *Ceiling concentration.* No employee shall be exposed at any time to airborne cencentrations of asbestos fibers in excess of 10 fibers, longer than 5 micrometers, per cubic centimeter of air, as determined by the method prescribed in paragraph (e) of this section.

(c) *Methods of compliance*—(1) *Engineering methods.* (i) *Engineering controls.* Engineering controls, such as, but not limited to, isolation, enclosure, exhaust ventilation, and dust collection, shall be used to meet the exposure limits prescribed in paragraph (b) of this section.

(ii) *Local exhaust ventilation.* (a) Local exhaust ventilation and dust collection systems shall be designed, constructed, installed, and maintained in accordance with the American National Standard Fundamentals Governing the Design and Operation of Local Exhaust Systems, ANSI Z9.2–1971, which is incorporated by reference herein.

(b) See § 1910.6 concerning the availability of ANSI Z9.2–1971, and the maintenance of a historic file in connection therewith. The address of the American National Standards Institute is given in § 1910.100.

(iii) *Particular tools.* All hand-operated and power-operated tools which may produce or release asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section, such as, but not limited to, saws, scorers, abrasive wheels, and drills, shall be provided with local exhaust ventilation systems in accordance with subdivision (ii) of this subparagraph.

(2) *Work practices*—(i) *Wet methods.* Insofar as practicable, asbestos shall be handled, mixed, applied, removed, cut, scored, or otherwise worked in a wet state sufficient to prevent the emission of airborne fibers in excess of the exposure limits prescribed in paragraph (b) of this section, unless the usefulness of the product would be diminished thereby.

(ii) *Particular products and operations.* No asbestos cement, mortar, coating, grout, plaster, or similar material containing asbestos shall be removed from bags, cartons, or other containers in which they are shipped, without being either wetted, or enclosed, or ventilated so as to prevent effectively the release of airborne asbestos fibers in excess of the limits prescribed in paragraph (b) of this section.

(iii) *Spraying, demolition, or removal.* Employees engaged in the spraying of asbestos, the removal, or demolition of pipes, structures, or equipment covered or insulated with asbestos, and in the removal or demolition of asbestos insulation or coverings shall be provided with respiratory equipment in accordance with paragraph (d)(2)(iii) of this section and with special clothing in accordance with paragraph (d)(3) of this section.

(d) *Personal protective equipment*—(1) Compliance with the exposure limits prescribed by paragraph (b) of this section may not be achieved by the use of respirators or shift rotation of employees, except:

(i) During the time period necessary to install the engineering controls and to institute the work practices required by paragraph (c) of this section;

(ii) In work situations in which the methods prescribed in paragraph (c) of this section are either technically not feasible or feasible to an extent insufficient to reduce the airborne concentrations of asbestos fibers below the limits prescribed by paragraph (b) of this section; or

(iii) In emergencies.

(iv) Where both respirators and personnel rotation are allowed by subdivisions (i), (ii), or (iii) of this subparagraph, and both are practicable, personnel rotation shall be preferred and used.

(2) Where a respirator is permitted by subparagraph (1) of this paragraph, it shall be selected from among those approved by the Bureau of Mines, Department of the Interior, or the National Institute for Occupational Safety and Health, Department of Health, Education, and Welfare, under the provisions of 30 CFR Part 11 (37 F.R. 6244, Mar. 25, 1972), and shall be used in accordance with subdivisions (i), (ii), (iii), and (iv) of this subparagraph.

(i) *Air purifying respirators.* A reusable or single use air purifying respirator, or a respirator described in subdivision (ii) or (iii) of this subparagraph, shall be used to reduce the concentrations of airborne asbestos fibers in the respirator below the exposure limits prescribed in paragraph (b) of this section, when the ceiling or the 8-hour time-weighted average airborne concentrations of asbestos fibers are reasonably expected to exceed no more than 10 times those limits.

(ii) *Powered air purifying respirators.* A full facepiece powered air purifying respirator, or a powered air purifying respirator, or a respirator described in subdivision (iii) of this subparagraph, shall be used to reduce the concentrations of airborne asbestos fibers in the respirator below the exposure limits prescribed in paragraph (b) of this section, when the ceiling or the 8-hour time-weighted average concentrations of asbestos fibers are reasonably expected to exceed 10 times, but not 100 times, those limits.

(iii) *Type "C" supplied-air respirators, continuous flow or pressure-demand class.* A type "C" continuous flow or pressure-demand, supplied-air respirator shall be used to reduce the concentrations of airborne asbestos fibers in the respirator below the exposure limits prescribed in paragraph (b) of this section, when the ceiling or the 8-hour time-weighted average airborne concentrations of asbestos fibers are reasonably expected to exceed 100 times those limits.

(iv) *Establishment of a respirator program.* (a) The employer shall establish a respirator program in accordance with

the requirements of the American National Standards Practices for Respiratory Protection, ANSI Z88.2–1969, which is incorporated by reference herein.

b. See § 1910.6 concerning the availability of ANSI Z88.2–1969 and the maintenance of an historic file in connection therewith. The address of the American National Standards Institute is given in § 1910.100.

(c) No employee shall be assigned to tasks requiring the use of respirators if, based upon his most recent examination, an examining physician determines that the employee will be unable to function normally wearing a respirator, or that the safety or health of the employee or other employees will be impaired by his use of a respirator. Such employee shall be rotated to another job or given the opportunity to transfer to a different position whose duties he is able to perform with the same employer, in the same geographical area and with the same seniority, status, and rate of pay he had just prior to such transfer, if such a different position is available.

(3) Special clothing: The employer shall provide, and require the use of, special clothing, such as coveralls or similar whole body clothing, head coverings, gloves, and foot coverings for any employee exposed to airborne concentrations of asbestos fibers, which exceed the ceiling level prescribed in paragraph (b) of this section.

(4) Change rooms: (i) At any fixed place of employment exposed to airborne concentrations of asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section, the employer shall provide change rooms for employees working regularly at the place.

(ii) Clothes lockers: The employer shall provide two separate lockers or containers for each employee, so separated or isolated as to prevent contamination of the employee's street clothes from his work clothes.

(iii) Laundering: (*a*) Laundering of asbestos contaminated clothing shall be done so as to prevent the release of airborne asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section.

(*b*) Any employer who gives asbestos-contaminated clothing to another person for laundering shall inform such person of the requirement in (*a*) of this subdivision to effectively prevent the release of airborne asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section.

(*c*) Contaminated clothing shall be transported in sealed impermeable bags, or other closed, impermeable containers, and labeled in accordance with paragraph (g) of this section.

(e) *Method of measurement.* All determinations of airborne concentrations of asbestos fibers shall be made by the membrane filter method at 400–450 × (magnification) (4 millimeter objective) with phase contrast illumination.

(f) *Monitoring*—(1) *Initial determinations.* Within 6 months of the publication of this section, every employer shall cause every place of employment where asbestos fibers are released to be monitored in such a way as to determine whether every employee's exposure to asbestos fibers is below the limits prescribed in paragraph (b) of this section. If the limits are exceeded, the employer shall immediately undertake a compliance program in accordance with paragraph (c) of this section.

(2) *Personal monitoring*—(i) Samples shall be collected from within the breathing zone of the employees, on membrane filters of 0.8 micrometer porosity mounted in an open-face filter holder. Samples shall be taken for the determination of the 8-hour time-weighted average airborne concentrations and of the ceiling concentrations of asbestos fibers.

(ii) Sampling frequency and patterns. After the initial determinations required by subparagraph (1) of this paragraph, samples shall be of such frequency and pattern as to represent with reasonable accuracy the levels of exposure of employees. In no case shall the sampling be done at intervals greater than 6 months for employees whose exposure to asbestos may reasonably be foreseen to exceed the limits prescribed by paragraph (b) of this section.

(3) *Environmental monitoring*—(i) samples shall be collected from areas of a work environment which are representative of the airborne concentrations of asbestos fibers which may reach the breathing zone of employees. Samples shall be collected on a membrane filter of 0.8 micrometer porosity mounted in an open-face filter holder. Samples shall be taken for the determination of the 8-hour time-weighted average airborne concentrations and of the ceiling concentrations of asbestos fibers.

(ii) *Sampling frequency and patterns.* After the initial determinations required by subparagraph (1) of this paragraph, samples shall be of such frequency and pattern as to represent with reasonable accuracy the levels of exposure of the employees. In no case shall sampling be at intervals greater than 6 months for employees whose exposures to asbestos may reasonably be foreseen to exceed the exposure limits prescribed in paragraph (b) of this section.

(4) *Employee observation of monitoring.* Affected employees, or their representatives, shall be given a reasonable opportunity to observe any monitoring required by this paragraph and shall have access to the records thereof.

(g) *Caution signs and labels.* (1) *Caution signs.* (i) *Posting.* Caution signs shall be provided and displayed at each location where airborne concentrations of asbestos fibers may be in excess of the exposure limits prescribed in paragraph (b) of this section. Signs shall be posted at such a distance from such a location so that an employee may read the signs and take necessary protective steps before entering the area marked by the signs. Signs shall be posted at all approaches to areas containing excessive concentrations of airborne asbestos fibers.

(ii) *Sign specifications.* The warning signs required by subdivision (i) of this subparagraph shall conform to the requirements of 20" x 14" vertical format signs specified in § 1910.145(d)(4), and to this subdivision. The signs shall display the following legend in the lower panel, with letter sizes and styles of a visibility at least equal to that specified in this subdivision.

Legend	*Notation*
Asbestos	1" Sans Serif, Gothic or Block.
Dust Hazard	¾" Sans Serif, Gothic or Block.
Avoid Breathing Dust	¼" Gothic.
Wear Assigned Protective Equipment.	¼" Gothic.
Do Not Remain In Area Unless Your Work Requires It.	¼" Gothic.
Breathing Asbestos Dust May Be Hazardous To Your Health.	14 point Gothic.

Spacing between lines shall be at least equal to the height of the upper of any two lines.

(2) *Caution labels*—(i) *Labeling.* Caution labels shall be affixed to all raw materials, mixtures, scrap, waste, debris, and other products containing asbestos fibers, or to their containers, except that no label is required where asbestos fibers have been modified by a bonding agent, coating, binder, or other material so that during any reasonably foreseeable use, handling, storage, disposal, processing, or transportation, no airborne concentrations of asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section will be released.

(ii) *Label specifications.* The caution labels required by subdivision (i) of this subparagraph shall be printed in letters of sufficient size and contrast as to be readily visible and legible. The label shall state:

CAUTION

Contains Asbestos Fibers

Avoid Creating Dust

Breathing Asbestos Dust May Cause Serious Bodily Harm

(h) *Housekeeping*—(1) *Cleaning.* All external surfaces in any place of employment shall be maintained free of accumulations of asbestos fibers if, with their dispersion, there would be an excessive concentration.

(2) *Waste disposal.* Asbestos waste, scrap, debris, bags, containers, equipment, and asbestos-contaminated clothing, consigned for disposal, which may produce in any reasonably foreseeable use, handling, storage, processing, disposal, or transportation airborne concentrations of asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section shall be collected and disposed of in sealed impermeable bags, or other closed, impermeable containers.

(i) *Recordkeeping*—(1) *Exposure records.* Every employer shall maintain records of any personal or environmental monitoring required by this section. Records shall be maintained for a period of at least 3 years and shall be made available upon request to the Assistant Secretary of Labor for Occupational Safety and Health, the Director of the National

Institute for Occupational Safety and Health, and to authorized representatives of either.

(2) *Employee access.* Every employee and former employee shall have reasonable access to any record required to be maintained by subparagraph (1) of this paragraph, which indicates the employee's own exposure to asbestos fibers.

(3) *Employee notification.* Any employee found to have been exposed at any time to airborne concentrations of asbestos fibers in excess of the limits prescribed in paragraph (b) of this section shall be notified in writing of the exposure as soon as practicable but not later than 5 days of the finding. The employee shall also be timely notified of the corrective action being taken.

(j) *Medical examinations*—(1) *General.* The employer shall provide or make available at his cost, medical examinations relative to exposure to asbestos required by this paragraph.

(2) *Preplacement.* The employer shall provide or make available to each of his employees, within 30 calendar days following his first employment in an occupation exposed to airborne concentrations of asbestos fibers, a comprehensive medical examination, which shall include, as a minimum, a chest roentgenogram (posterior-anterior 14 x 17 inches), a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at 1 second ($FEV_{1.0}$).

(3) *Annual examinations.* On or before January 31, 1973, and at least annually thereafter, every employer shall provide, or make available, comprehensive medical examinations to each of his employees engaged in occupations exposed to airborne concentrations of asbestos fibers. Such annual examination shall include, as a minimum, a chest roentgenogram (posterior-anterior 14 x 17 inches), a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at 1 second ($FEV_{1.0}$).

(4) *Termination of employment.* The employer shall provide, or make available, within 30 calendar days before or after the termination of employment of any employee engaged in an occupation exposed to airborne concentrations of asbestos fibers, a comprehensive medical examination which shall include, as a minimum, a chest roentgenogram (posterior-anterior 14 x 17 inches), a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at 1 second ($FEV_{1.0}$).

(5) *Recent examinations.* No medical examination is required of any employee, if adequate records show that the employee has been examined in accordance with this paragraph within the past 1-year period.

(6) *Medical records*—(i) *Maintenance.* Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be retained by employers for at least 20 years.

(ii) *Access.* The contents of the records of the medical examinations required by this paragraph shall be made available, for inspection and copying, to the Assistant Secretary of Labor for Occupational Safety and Health, the Director of NIOSH, to authorized physicians and medical consultants of either of them, and, upon the request of an employee or former employee, to his physician. Any physician who conducts a medical examination required by this paragraph shall furnish to the employer of the examined employee all the information specifically required by this paragraph, and any other medical information related to occupational exposure to asbestos fibers.

3. A new § 1910.19 is added to Subpart B of Part 1910, reading as follows:

§ 1910.19 Asbestos dust.

Section 1910.93a shall apply to the exposure of every employee to asbestos dust in every employment and place of employment covered by § 1910.12, § 1910.13, § 1910.14, § 1910.15, or § 1910.16, in lieu of any different standard on exposure to asbestos dust which would otherwise be applicable by virtue of any of those sections.

Effective date. Paragraph (b)(2) of § 1910.93a shall become effective July 1, 1976. All other provisions of §§ 1919.93a, 1910.93, and 1910.19 shall become effective July 7, 1972. The current emergency temporary standard remains in effect until July 7, 1972.

(Secs. 6, 8, 84 Stat. 1593, 1598; 29 U.S.C. 655, 657; 29 CFR 1910.4; Secretary of Labor's Order No. 12-71, 36 F.R. 8754)

Signed at Washington, D.C., this 2d day of June 1972.

G. C. GUENTHER,
Assistant Secretary of Labor.

[FR Doc.72-8574 Filed 6-6-72;8:48 am]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 9—Atomic Energy Commission

PART 9-1—GENERAL

Subpart 9-1.1—Procurement Regulations

MISCELLANEOUS AMENDMENTS

The changes made in AECPR Subpart 9-1.1, Procurement Regulations, have been made in order to establish the AECPR Temporary Regulations, which are a part of the AEC Procurement Regulations and the Federal Procurement Regulations System. The AECPR Temporary Regulations implement and supplement the FPR Temporary Regulations. They also contain policies and procedures initiated by the AEC which are to be effective for a period of 6 months or less. The AEC Procurement Instruction section has been revised accordingly. Minor editorial changes have also been made.

1. Section 9-1.101 *Scope of subpart,* is revised to read as follows:

§ 9-1.101 Scope of subpart.

This subpart describes the Atomic Energy Commission Procurement Regulations and the AECPR Temporary Regulations. It also describes exclusions from the AECPR as contained in the AEC Procurement Instructions.

2. Section 9-1.102 *Establishment of AEC Procurement Regulations,* is revised to read as follows:

§ 9-1.102 Establishment of the AEC Procurement Regulations and the AECPR Temporary Regulations.

§ 9-1.102-1 AEC Procurement Regulations.

(a) The AEC Procurement Regulations (AECPR) are hereby established.

(b) These regulations implement and supplement the Federal Procurement Regulations (FPR) and are a part of the Federal Procurement Regulations System.

(c) The effective date of FPR issuances throughout AEC will be the date indicated in the respective issuances unless otherwise provided in the AEC Procurement Regulations.

(d) The effective date of AECPR issuances throughout AEC will be the date indicated in the respective issuances.

§ 9-1.102-2 AECPR Temporary Regulations.

(a) The AECPR Temporary Regulations are hereby established.

(b) These regulations implement and supplement the Federal Procurement Regulations Temporary Regulations. They also contain policies and procedures initiated by the AEC which are expected to be effective for a period of 6 months or less.

(c) The effective date of the FPR Temporary Regulations issuances throughout AEC will be the date indicated in the respective issuances unless otherwise provided in the AECPR Temporary Regulations.

(d) The effective date of the AECPR Temporary Regulations issuances throughout AEC will be the date indicated in the respective issuances.

(e) The AECPR Temporary Regulations are a part of the AEC Procurement Regulations and the Federal Procurement Regulations System. All references to the AEC Procurement Regulations or AECPR in §§ 9-1.103 through 9-1.109 of this subpart shall be deemed to include the AECPR temporary regulations.

3. Section 9-1.103 *Authority,* is revised to read as follows:

§ 9-1.103 Authority.

The AEC Procurement Regulations are prescribed by the General Manager, Assistant General Manager for Administration, or the Director, Division of Contracts of the AEC, pursuant to the authority of the Atomic Energy Act of 1954, and the Federal Property and Administrative Services Act of 1949.