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PLAINTIFF'S EXHIBIT
UC-856

ASBESTOS INFORMATION ASSOCIATION
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19 March 1976

Memorandum For: MEMBERS

Subject: OSHA Asbestos Standard - Retention of exposure monitoring records.

The enclosed notice in the Federal Register this date is a change to Occupational Safety and Health Standard, Asbestos, 29 CFR, 1910.1001 (i), Recordkeeping (1).

The current regulation, which became effective July 1, 1972 called for retention of personal or environmental records for "at least three years." The change requires that these kinds of records be kept for at least 20 years. Rationale for the change follows the remand of the U.S. Court of Appeals for the District of Columbia in the case of Industrial Union Department , AFL-CIO v. Hodgson 499F 2d 467 (C.A.D.C. 1974) directing the Secretary of Labor re-examine the asbestos standard with respect to the three year record keeping provision as to adequacy for employee protection in development of information concerning causal relationship of asbestos exposure and certain related diseases. This new requirement is effective as of this date, March 19, 1976. It is suggested holders of AIA/NA "Asbestos-Federal Regulations" make the appropriate changes.

R. H. Mereness
Executive Director

cc
JLM
REB
HBR
FHL
Paul McDaniel
EAP
Dr. Welsh

Enclosure
RHM:v

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NO. 55—FRIDAY, MARCH 19, 1976

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

Pursuant to sections 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1599; 29 U.S.C. 655, 657), Secretary of Labor's Order No. 12–71 (36 FR 8754), and 29 CFR Part 1911, § 1910.1001(i)(1) of Part 1910 of Title 29, Code of Federal Regulations, is hereby amended in the manner set forth below, in order to extend the retention period for asbestos exposure monitoring records from three years to twenty years.

On December 7, 1971 (36 FR 23207), OSHA issued an emergency temporary standard on asbestos in response to a petition by the Industrial Union Department of the AFL–CIO, pursuant to section 6(c) of the Act (84 Stat. 1596, 29 U.S.C. 655). This emergency temporary standard was designed primarily to immediately reduce and control occupational exposure to asbestos dust concentrations, and did not contain recordkeeping procedures. However, on January 12, 1972 (37 FR 466), OSHA published a proposed comprehensive standard for asbestos exposure which did include recordkeeping provisions. Paragraph (h)(1) of the proposal (37 FR 463) provided that exposure monitoring records, and records of medical examinations, be maintained for a period of twenty years. After public hearings the Secretary promulgated a new, permanent OSHA standard for asbestos on June 7, 1972 (37 FR 11318), in accordance with section 6(b) of the Act (84 Stat. 1593, 29 U.S.C. 655). This new regulation, which appeared as 29 CFR 1910.93a prior to recodification, contained a three-year requirement for retaining exposure monitoring records, 29 CFR 1910.93a(i)(1) (now 29 CFR 1910.1001(i)(1)).

On July 27, 1972, pursuant to section 6(f) of the Act, (84 Stat. 1597, 29 U.S.C. 655), a petition for judicial review of the asbestos standard was filed with the United States Court of Appeals for the District of Columbia. The principal petitioners, the Industrial Union Department, AFL–CIO, objected to several substantive portions of the standard, including those dealing with recordkeeping. The Court affirmed the Secretary's judgments and the standard's validity except for two provisions, one of which was the retention period for exposure monitoring records. "Industrial Union Department, AFL–CIO v. Hodgson," 499 F. 2d 467 (C.A.D.C. 1974). The Court directed the Secretary to re-examine the standard with respect to the three-year recordkeeping provision and to reconsider whether such time period adequately assured employee protection from asbestos-related diseases.

In discussing this issue, the Court noted that many of the problems facing the Secretary in developing an asbestos standard were directly attributable to the lack of information concerning asbestos-related diseases, and particularly to the lack of reliable data on past exposure levels. Noting the close functional relationship between medical records and exposure records, and the fact that the standard required that medical records be maintained for at least 20 years, the Court expressed surprise at the short three-year retention period for monitoring records. After reviewing the Secretary's obligation under the Act to require retention of records necessary for the development of information concerning the causes of disease and the importance of exposure data in establishing this causal relationship, the Court remanded the recordkeeping requirements to the Secretary "for such modification or clarification as may be necessary to ensure that the statutory objectives will be fulfilled" 499 F. 2d at 488.

Pursuant to the Court's direction, OSHA has completed its review, and has concluded that the opinion expressed by the Court is an accurate reflection of the record, and that the agency's initial judgment warrants correction.

OSHA believes that extension of the recordkeeping requirement for exposure monitoring from three years to twenty years as originally proposed would be in harmony with the twenty-year retention period now required for employee medical records, 29 CFR 1910.1001(j)(6)(i). As the court noted (499 F. 2d at 488), the two sets of records when read together would provide a more complete record of an employee's history of exposure, a factor vitally important with respect to asbestos-related diseases. The extended period for retention, with resultant data accumulation, will be critical to medical and scientific investigations studying such questions as dose-response relationships in diseases caused by occupational exposure to asbestos. This decision would also be responsive to the agency's declared concern that the past inadequacy of health and monitoring records have hindered research into the consequences of asbestos exposure at the workplace. 37 FR 11318, June 7, 1972.

The long latency periods associated with asbestos-related diseases, and the consequent need for a standard to take such latency periods into account, were recognized by both the OSHA Advisory Committee on Asbestos Dust (proceedings at pp. 103–105, February 17, 1972) and the NIOSH Criteria Document for a Recommended Standard on Asbestos (generally chapters I and II). In addition, testimony by two witnesses at the OSHA hearings also supported longer retention periods for exposure monitoring records (Tr. at 527, 538, March 17, 1972). A consensus of the evidence in the record indicates that exposure monitoring records should be held for at least 20 years in order to make such a requirement meaningful in view of what is generally recognized as the minimum latency period for many asbestos-related diseases. OSHA is of the view that the interests of worker health would be best served by requiring the retention of exposure monitoring records for a period which reflects an appreciation of this recognized latency factor.

Accordingly, pursuant to the Court's remand for further consideration of the retention period for monitoring records, we have concluded, based on the existing record and for the reasons stated above, that a 20-year retention period is supported by the evidence and necessary for the protection of employees. It is noted that in a new proposal on exposure to asbestos (40 FR 47652, October 9, 1975), which reflects the most recent scientific and medical developments in the field, a 40-year retention period (or the duration of employment plus twenty years) for both exposure measurement and medical records has been proposed.

For the reasons stated above, the exposure records provision of the asbestos standard will be corrected to require retention of exposure monitoring records for at least 20 years, effective March 19, 1976. OSHA believes that a delay in the effective date of this requirement is not warranted since this rule only requires that affected employers retain records which they have already compiled and therefore does not impose a new burden of action, and since the initial three-year retention period for such records has now lapsed and these records might be destroyed. Loss of such records would be irreparable. Continued access to such records by all concerned is essential in the public interest, and is an appropriate means of effectuating the goals of improved worker safety and health under the Act. Good cause is found, therefore, pursuant to section 4(d)(3) of the Administrative Procedure Act (5 U.S.C. 553 (d)(3)), for making this rule effective.

Accordingly, pursuant to the direction of the United States Court of Appeals ("Industrial Union Department, AFL–CIO v. Hodgson, supra"), and the above referenced authority, paragraph (i)(1) of 29 CFR 1910.1001 is hereby amended to read as follows:

§ 1910.1001 Asbestos.

• • • • •

(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 20 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.

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(Secs. 6, 8, Pub. L. 91–596, 84 Stat. 1593, 1599 (29 U.S.C. 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754); 29 CFR Part 1911).

Signed at Washington, D.C. this 12th day of March 1976.

MORTON CORN,
Assistant Secretary of Labor.

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A 19621

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