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March 2008

HEALTH AND SAFETY INFORMATION

EPA and OSHA Could Improve Their Processes for Preparing Communication Products

GAO-08-265

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GAO Accountability · Integrity · Reliability

Highlights

Highlights of GAO-08-265, a report to congressional requesters

Why GAO Did This Study

Agencies address their missions not only through regulations but also by issuing communication products—such as guidance, fact sheets, and brochures—that can provide crucial information to regulated parties and the public. Since 2000, the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency's (EPA) Office of Prevention, Pesticides, and Toxic Substances (OPPTS) developed new versions of such products to address the potential hazards of exposure to asbestos in automotive brakes. GAO was asked to describe (1) how OSHA and OPPTS prepared their products on asbestos in automotive brakes, (2) the general processes that OSHA and OPPTS use to prepare their communication products, and (3) how these processes compare to those for rulemaking and how recent administration initiatives might affect them. GAO reviewed and analyzed available documents and interviewed officials at OSHA, OPPTS, and the Office of Management and Budget (OMB).

What GAO Recommends

GAO recommends that OSHA and OPPTS ensure that their key general processes for preparing communication products are documented, made publicly available, and include time frames or benchmarks, where appropriate. OSHA and EPA provided technical comments on a draft of this report. EPA also generally agreed with the recommendations. OMB did not comment.

To view the full product, including the scope and methodology, click on GAO-08-265. For more information, contact Mathew J. Scire at (202) 512-6806 or sciremj@gao.gov.

What GAO Found

OSHA and OPPTS followed different paths from 2000 through 2007 to update communication products on asbestos in automotive brakes and clutches. OSHA took longer than OPPTS to produce a final product, and OPPTS' process incorporated more steps to obtain input from external parties. Twice before final posting, OSHA officials had decided to not release drafts that had been prepared, because they needed more data to understand how pervasive asbestos in brake products were and wanted to avoid raising unnecessary alarm. For a time, staff from OSHA and OPPTS considered releasing a joint product. Overall, OSHA and OPPTS took years to complete all the process steps to produce their products on asbestos in automotive brakes and clutches—approximately 5-½ years for OSHA and approximately 3-½ years for OPPTS. In preparing their respective communication products, both OSHA and OPPTS generally followed applicable agency policies and procedures.

Both OSHA and OPPTS have standard processes that guide the initiation, development, review, and dissemination of their communication products. OSHA publicly posts all of its applicable instructions, while OPPTS publicly posts only some. Under both agencies' processes, communication products may be initiated by various sources, developed only after getting management approval, and undergo intraagency coordination and management-level clearance. But interagency (including OMB) or other external reviews are not always required. OSHA's policies for disseminating products focus on responsibilities for posting and maintaining final products on the agency's Web site. Beginning at the development phase, OPPTS policies call for the formulation of a communication plan intended to ensure that the dissemination of a particular product is tailored to reach the intended audience. The agencies' processes establish no specific time frames or benchmarks for how long the preparation of a product should take.

GAO identified at least five areas where the agencies' processes for preparing communication products and those for rules have significant differences. In contrast to the agencies' processes for communication products, rulemaking imposes requirements on agencies regarding (1) justification of the rule, (2) interagency reviews of drafts, (3) transparency of the processes used, (4) opportunities for public comment, and (5) the public's ability to monitor development and review. These differences are to be expected, given the binding effect of rules, and are each rooted in legal requirements that apply to rulemaking, but not to the preparation of communication products. In January 2007, the administration imposed new requirements for agencies' significant guidance documents, for example requiring agencies to provide OMB advance notice and an opportunity to consult on significant guidance before issuance. These changes move the treatment of significant guidance closer to the requirements for rules but do not cover any other types of communication products.

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Abbreviations

APA	Administrative Procedure Act
CACG	Compliance Assistance Coordinating Group
DOL	Department of Labor
DSTM	Directorate of Science, Technology and Medicine
EPA	Environmental Protection Agency
GPRA	Government Performance and Results Act
IQA	Information Quality Act
LEP	local emphasis program
OAS	Office of the Assistant Secretary
OIRA	Office of Information and Regulatory Affairs
OMB	Office of Management and Budget
OPPTS	Office of Prevention, Pesticides, and Toxic Substances
OSHA	Occupational Safety and Health Administration
PRP	Product Review Process
SHIB	Safety and Health Information Bulletin

GAO
Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

March 31, 2008

The Honorable Lynn Woolsey
Chairwoman
Subcommittee on Workforce Protections
Committee on Education and Labor
House of Representatives

The Honorable Nick Lampson
Chairman
Subcommittee on Energy and Environment
Committee on Science and Technology
House of Representatives

The Honorable David Wu
House of Representatives

Federal regulatory agencies address their missions not only by promulgating and enforcing regulations, but also by issuing a wide variety of related communication products, such as guidance documents, fact sheets, and brochures. Although not legally binding, as are regulations, these products can play an important role in providing information to regulated parties and the general public. For example, communication products may be used to alert target audiences about potential hazards, advise them on ways to prevent or mitigate exposure to the hazards, and provide guidance on complying with applicable federal regulations. The Office of Management and Budget (OMB) has noted that as the scope and complexity of regulatory programs have grown, agencies increasingly have relied on products such as guidance documents to inform the public and to provide direction to their staffs. As a result, both Congress and OMB have taken an increased interest in the issuance of these products.

You were interested in actions taken since 2000 by the Department of Labor's (DOL) Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) regarding potential health hazards posed by exposure to asbestos during automotive brake and clutch repairs to help illustrate the uses of communication products and the processes by which such products are prepared. Both agencies had published materials about asbestos in brakes and clutches prior to 2000. In 1986, OSHA published asbestos standards and EPA issued a safety brochure (known as the Gold Book) that provided information to

automobile professional and home mechanics on preventing exposure to brake and clutch dust that may contain asbestos fibers. In 1994, OSHA updated and made mandatory work practice standards (regulations) regarding occupational exposure to asbestos, including automotive brake repair in commercial shops. For example, the standards require that employers prohibit certain practices, such as the use of compressed air, to remove asbestos. Beginning in 2000, a series of events, news articles, and research studies refocused attention on the issue and prompted OSHA and EPA's Office of Prevention, Pesticides, and Toxic Substances (OPPTS) to announce plans to disseminate updated information to the public. As the asbestos-in-brakes issue reemerged, it also generated controversy. Some parties raised concerns that workers and the general public were not aware that asbestos was still present in both old and replacement brakes and clutches and continued to pose a health risk to persons performing repairs. Other parties cited data published since 1986 that they believed showed no increased risk of asbestos-related illnesses associated with brake work. Media reports also raised concerns about the length of time taken by both OSHA and OPPTS to release new communication products.

In response to this controversy, and to obtain insights about the intra- and interagency processes used for developing and reviewing the asbestos information and similar products, you asked us to address the following questions:

1. How did OSHA and OPPTS initiate, develop, review, and disseminate updated communication products on exposure to asbestos in automotive brakes, how long did the processes take, and did the agencies follow applicable policies and procedures?

2. What general policies and procedures do OSHA and OPPTS have for the initiation, development, review, and dissemination of communication products?[1]

3. How do the agencies' policies and procedures for communication products compare to those applicable to the initiation, development,

[1]There is no single term or definition used by the agencies to refer to these general informational products. EPA tends to use the term communication products, and OSHA tends to refer to them as compliance assistance products or compliance assistance materials. For consistency in this report, we generally use the term communication products, unless specifically referring to a particular agency, category of products, or both. We also use the term preparation when referring collectively to the phases of initiation, development, review, and dissemination of communication products.

review, and dissemination of rules, and what might be the effects of 2007 administration initiatives on guidance documents?

To address the first objective, we obtained and analyzed information on the preparation of the OSHA and OPPTS communication products on asbestos in automotive brakes. We asked agency officials to provide a chronology and description of events that led to the initiation, development, review, and eventual dissemination of the products. We also asked the officials to provide any available documentation that would corroborate the events and processes described in their respective chronologies. To address the second objective, we reviewed available documents on the agencies' applicable internal policies, procedures, and practices (collectively referred to as processes throughout this report) that govern the preparation of communication products.[2] We interviewed agency officials at DOL/OSHA and EPA/OPPTS about their respective agencies' processes for preparing communication products, as well as officials at OMB about interagency reviews of such products. We assessed the processes to determine how they addressed the generic phases of product preparation. To address the third objective, we again reviewed applicable documents and interviewed officials at the three agencies to obtain information about the differences between rulemaking and the processes used to prepare communication products. We also solicited the views of agency officials regarding effects they anticipated from implementation of amendments to the executive order on regulatory review and planning and an OMB bulletin on good guidance practices.

Our scope and methodology were limited to focusing on only the broad category of communication products—not all nonrule regulatory products—and on the applicable processes of OSHA and OPPTS, the two agencies responsible for preparing the communication products on asbestos in automotive brakes. To illustrate the application of the agencies' processes for preparing such products, we relied on detailed examinations of the asbestos communication products because we concluded that it would not be possible to identify a representative sample

[2]More technical and analytical products—such as risk assessments, scientific models and research, and economic benefit-cost analyses—were not within the scope of this review, but prior GAO reports have discussed some of the policies and procedures applicable to such products. See, for example, GAO, *Federal Research: Policies Guiding the Dissemination of Scientific Research from Selected Agencies Should Be Clarified and Better Communicated*, GAO-07-653 (Washington, D.C.: May 17, 2007), and *Chemical Risk Assessment: Selected Federal Agencies' Procedures, Assumptions, and Policies*, GAO-01-810 (Washington, D.C.: Aug. 6, 2001).

of issued products in order to do a comparative analysis that would be meaningful and generalizable to a larger population of products.[3] Because the agencies keep only limited documentation on the preparation of communication products, we also relied heavily on testimonial evidence. We conducted our review in Washington, D.C., from September 2006 through October 2007 in accordance with generally accepted government auditing standards. Detailed information on our scope and methodology appears in appendix I.

Results in Brief

From 2000 through 2007, OSHA and OPPTS followed different paths to prepare their respective communication products on preventing exposure to asbestos in automotive brakes and clutches. Among the primary differences, the agencies initiated work on their asbestos products in response to different triggers, OSHA took longer than OPPTS to produce a final product, and OPPTS' process incorporated more steps to obtain input from external parties. The primary trigger for OSHA's development of a Safety and Health Information Bulletin (SHIB) on asbestos in brakes was a media report about the potential hazard of asbestos exposure during brake and clutch repair work and lack of awareness on the part of workers and the general public. OPPTS initiated work on an asbestos brochure in response to both a request for correction of the 1986 Gold Book under the Information Quality Act (IQA)[4] and the results of an EPA asbestos strategy project. OSHA began work on its product in December 2000 and released a final product in July 2006. Twice before final posting, OSHA officials had decided to not issue the SHIBs that had been prepared, largely due to OSHA management concerns about the extent to which asbestos in brake products was a problem and to avoid unnecessary alarm. OPPTS initiated work on its asbestos brochure in 2003, solicited public comments on a draft in August 2006, and published a final brochure in March 2007. For a time, staff from OSHA and OPPTS considered releasing a joint product. OSHA's review process for the information bulletin was primarily internal;

[3]Although OSHA and OPPTS officials said that their asbestos products were not typical examples of communication products, the agencies nonetheless used applicable agency procedures to prepare those products.

[4]IQA (also referred to as the Data Quality Act) required OMB to issue guidelines to federal agencies to ensure the "quality, objectivity, utility, and integrity" of information disseminated to the public. IQA also directed OMB to include in its guidelines a requirement that federal agencies (1) develop their own quality guidelines and (2) establish an administrative mechanism for affected persons to seek correction of information that does not comply with OMB guidelines (referred to as requests for correction). 44 U.S.C. § 3516 note.

after OSHA completed its internal reviews and clearance of the information bulletin, it posted the SHIB to its Web site. According to OPPTS officials, OSHA officials did not notify them of OSHA's decision to release the SHIB prior to its posting. By contrast, before OPPTS disseminated its brochure, it provided drafts of its brochure to OSHA, OMB, and other agencies for interagency coordination and review and sought comments from the general public through the *Federal Register*. OPPTS also developed a communication plan to facilitate notifying appropriate parties about the brochure and ensure that dissemination would reach the intended audience. Overall, OSHA and OPPTS took years to complete all of the steps of their processes from initiation through dissemination of products on asbestos in automotive brakes—approximately 5-½ years for OSHA and approximately 3-½ years for OPPTS. In doing so, both OSHA and OPPTS generally followed applicable agency policies and procedures for preparing communication products, as described below.

Both OSHA and OPPTS have standard processes that guide the preparation of their communication products. The agencies have documented many, but not all, of these processes. OSHA-specific directives govern preparation of that agency's products, but a mix of EPA-wide and OPPTS-specific processes apply to OPPTS products. OSHA publicly posts all of its directives, while EPA and OPPTS make publicly available only some applicable internal procedural guidance documents. Per the general OSHA and OPPTS processes, several sources might initiate the need to develop a new product or to revise an existing one. During the development phase, both agencies require management approval to proceed with proposed products, make determinations about the appropriate product type and applicable processes, and draft the product. The review phase at both agencies requires coordination within the agency and management-level review and approval. Current OSHA processes call for review and clearance of all products by upper management, including the Assistant Secretary of OSHA. OSHA is implementing a centralized database to track the development and review of all proposed compliance assistance materials. The required levels of review under OPPTS processes vary according to factors such as the complexity and sensitivity of the product's subject. In both agencies' processes, interagency (including OMB) or other external reviews are not always required. OSHA officials pointed out that their process is largely internal, but if OSHA consults external stakeholders, the agency usually involves such stakeholders after a draft has been prepared. OPPTS' processes prompt outreach to external parties throughout the process. OSHA's dissemination instructions focus on responsibilities for posting and maintaining the final products, which

are available, by product type, on the agency's Web site. Per agency guidance, OPPTS typically develops a communication plan intended to ensure that its announcement and release of a particular product is tailored to reach the intended audience. However, EPA officials noted that it would be difficult to compile a listing of all their disseminated communication products because of the great variety and number of products they produce and because they increasingly post information to their Web site using a variety of formats and links to convey the information. The agencies' processes set no specific timeframes or benchmarks for how long the preparation of a product, from initiation through dissemination, should take.

We identified at least five areas where the agencies' processes for preparing communication products and those for rules have significant differences: (1) justification for the action, (2) interagency reviews of drafts, (3) transparency of the processes, (4) opportunities for public comment, and (5) the public's ability to monitor development and review. These differences are to be expected, given the legal effect and consequences of rules, and are each rooted in legal requirements under statutes and executive orders that apply to rulemaking. For communication products in general, there are no statutory requirements, and the specific processes used by the two agencies we reviewed also do not require that agency staff provide justification, submit draft products for OMB review, document and publicly disclose the process, solicit public comments, or disseminate information that would allow the public to track the status of communication products before issuance. However, Bush Administration initiatives from January 2007 imposed requirements on significant guidance documents that are similar to those for rules—such as OMB review of draft significant guidance and providing mechanisms for public comment—but the changes do not cover any other types of communication products, nor do they extend the transparency requirements applicable to OMB's reviews of draft rules to its reviews of guidance.[5]

[5]OMB Bulletin on "Agency Good Guidance Practices," 72 *Fed. Reg.* 3432 (Jan. 25, 2007). A significant guidance document is defined in this bulletin, in part, as a guidance document disseminated to regulated entities or the general public that may reasonably be anticipated to lead to an annual effect of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

Because agencies' communication products can convey critical information to the public, the transparency, accountability, and timeliness of the processes by which agencies prepare these products are important. Therefore, we are recommending that the Assistant Secretary of OSHA and the Administrator of EPA ensure that their key general policies and procedures for preparing communication products are documented and publicized and that, where appropriate, they incorporate time frames or benchmarks in their processes to prompt the timely dissemination of information that the agencies have determined is needed by regulated parties or the public in general. In addition, our review indicated that OSHA could benefit from employing some of the practices used by EPA/OPPTS, and EPA/OPPTS could benefit from some of OSHA's practices, to enhance their processes. While we recognize that both agencies have taken some steps in each of the following areas, we are nevertheless recommending that the Administrator of EPA consider adopting certain practices for OPPTS (and other EPA offices as appropriate), such as making key general policies and procedures publicly available and augmenting mechanisms for maintaining an inventory of the products that the agency disseminates. We are recommending that the Assistant Secretary of OSHA augment specific procedures in OSHA's directives, when appropriate, to prompt greater outreach to external parties and to develop communications strategies for dissemination of final products. In comments on a draft of this report, EPA generally agreed with the recommendations, concurring that a formal, well-understood process for coordination and review of communication materials is important to ensure quality information products. EPA also commented that a fair amount of flexibility and discretion is necessary for the development of communication materials and identified steps that the agency has taken that address elements of our recommendations. EPA and OSHA also provided technical comments and suggestions that we incorporated as appropriate. OMB did not provide comments.

Background

Asbestos is the name given to a number of naturally occurring fibrous silicate minerals mined for their useful properties, such as thermal insulation, chemical and thermal stability, and high tensile strength. Asbestos has been used intentionally in the manufacture of products ranging from insulation and roofing materials to floor tiles and automotive brakes, and it may occur as a contaminant in a variety of mineral products, including vermiculite, talc, and gravel. However, asbestos fibers embedded in lung tissue over time may cause serious lung diseases, including pleural abnormalities, reduced lung function, asbestosis, lung cancer, and

mesothelioma. Diseases caused by inhalation of asbestos fibers may not appear until years after exposure has occurred.

Multiple federal agencies, including OSHA and EPA, have roles and responsibilities for regulating or otherwise addressing hazards associated with exposure to asbestos. In July 1989, EPA issued a final rule banning most asbestos-containing products.[6] In October 1991, the United States Court of Appeals for the Fifth Circuit vacated and remanded EPA's rule as it applied to existing asbestos-containing products, but left intact that portion banning products that were not being manufactured, produced, or imported when the rule was published on July 12, 1989, which includes all new uses of asbestos as defined in the ban.[7] Specifically with regard to asbestos in automotive brakes and clutches, OSHA's asbestos standard requires the use of controls and safe work practices to protect employees of automotive repair facilities.[8] State and local governments with employees who perform brake and clutch work in states without OSHA-approved state plans must follow the identical regulations found under the EPA Asbestos Worker Protection Rule.[9] EPA also provides information for home mechanics outside the automotive repair industry.

Asbestos is a hazard for which agencies use both rules and informational communication products to protect the health of workers and the general public. Rules and nonrule communication products affect the public differently and serve different purposes. The Administrative Procedure Act (APA)[10] defines a rule, in part, as "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency."[11] The APA established the most long-standing and broadly applicable federal requirements for informal rulemaking, also known as notice and comment

[6]54 *Fed. Reg.* 29,460 (July 12, 1989).

[7]*Corrosion Proof Fittings v. EPA*, 947 F. 2d 1201, 1229 (5th Cir. 1991).

[8]See 29 C.F.R. § 1910.1001, specifically paragraph (f)(3) and Appendix F.

[9]40 C.F.R. § 763, Subpart G.

[10]Pub. L. No. 404, 60 Stat. 237 (1946), codified in 1966 in scattered sections of title 5, United States Code.

[11]5 U.S.C. § 551(4).

rulemaking.[12] Among other things, the APA generally requires that agencies publish a notice of proposed rulemaking in the *Federal Register*.[13] After giving interested persons an opportunity to comment on the proposed rule by providing "written data, views, or arguments," and after considering the public comments, the agency may then publish the final rule.[14] OSHA rulemaking is conducted pursuant to separate—although analogous—provisions found in the Occupational Safety and Health Act of 1970, as amended.[15] Rules affect regulated entities by creating binding legal obligations and are subject to judicial review by the courts if, for example, a party believes that an agency did not follow required rulemaking procedures.

In contrast, communication products, such as guidance documents and other informational products for the public, are generally advisory in nature and informational in content. In fact, under the APA, there is a statutory exception for having to go through notice and comment rulemaking for general statements of policy and interpretive rules.[16] Agencies sometimes include disclaimers in guidance and other communication products to specifically note that the documents have no binding effect on regulated parties or the agencies themselves. OSHA and EPA officials noted that their offices produce large numbers of a variety of different communication products that may include, but are not limited to, brochures and pamphlets, compliance guides, educational and training materials, guidance, and regulatory fact sheets. These products have different characteristics and purposes. For example, in most cases OSHA develops SHIBs to address a new hazard or refocus the public's attention on a recurring hazard in light of a recent incident, while informational fact sheets are limited to discussing OSHA standards and technical information, and "quick cards" are a simplified form of fact sheets that are targeted to a specific worker audience. Figure 1 illustrates some of the different types of products disseminated by OSHA and EPA.

[12]5 U.S.C. § 553.

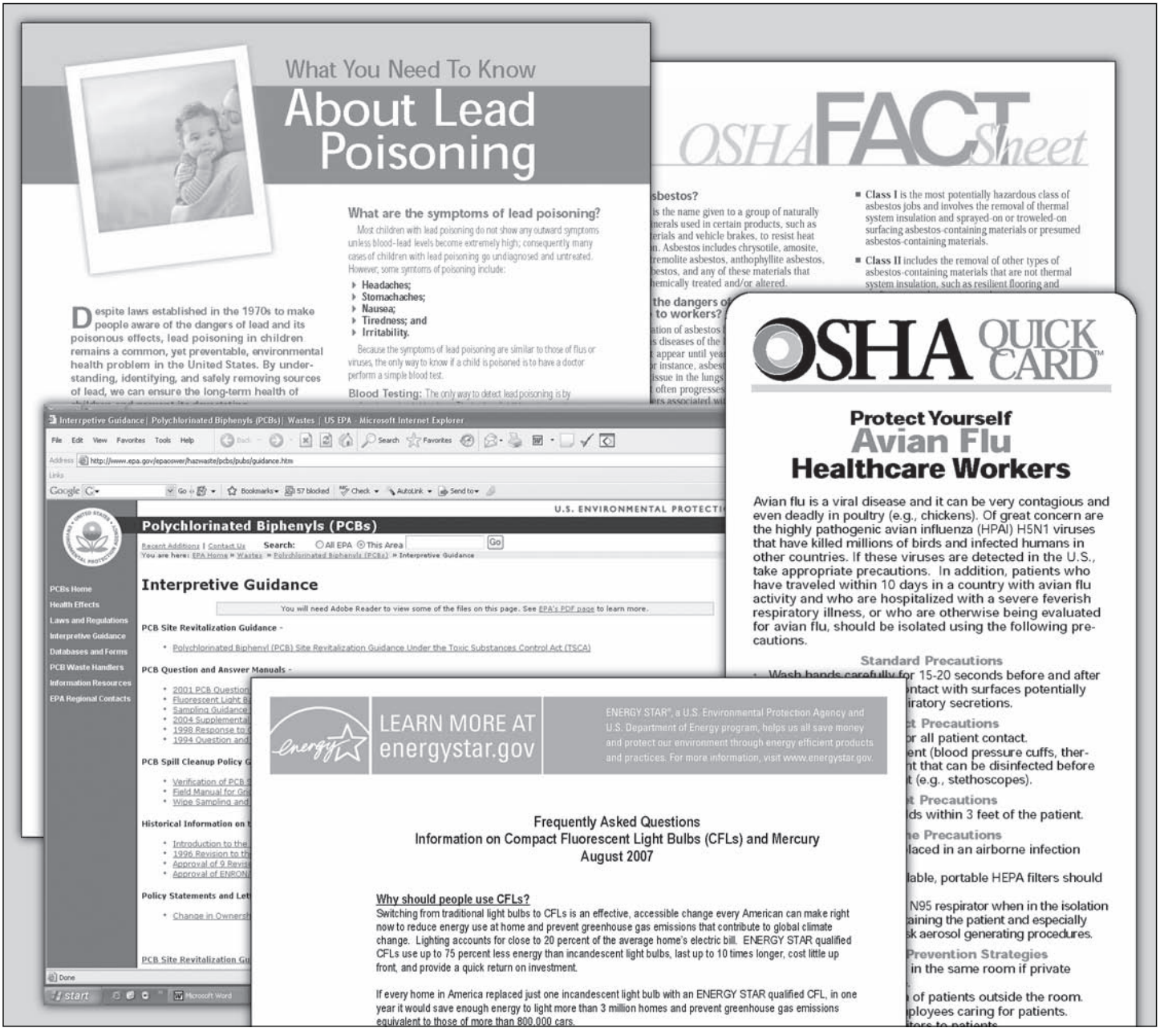
[13]The APA includes exceptions to notice and comment procedures for categories of rules such as those dealing with military or foreign affairs and also agency management and personnel. 5 U.S.C. §§ 553(a) and (b).

[14]5 U.S.C. § 553(c).

[15]29 U.S.C. § 655.

[16]5 U.S.C. § 553(b)(A).

Figure 1: Examples of OSHA and EPA Communication Products



Source: GAO presentation of EPA and OSHA products.

Despite the general distinctions between rules and communication products, determining whether an agency action is a rule is sometimes difficult and has been the subject of much litigation.[17] Legal scholars and federal courts have at times struggled to determine whether an agency action is a rule that should be subject to the APA's notice and comment requirements or is simply guidance or a policy statement, and therefore exempt from these requirements.[18] Even though not legally binding, communication materials and guidance documents can have a significant impact, both because of agencies' reliance on large volumes of such products and the fact that the products can prompt changes in the behavior of regulated parties and the general public.[19] Concerns about the effects of agency guidance documents and how to ensure that agencies do not cross the line into rulemaking when drafting guidance are part of what prompted OMB to issue a bulletin on good guidance practices in January 2007.

We have published prior work on both agencies' actions to address hazards associated with asbestos and the rulemaking process in general. Several reports and testimonies that we released in 2007 contained findings and recommendations about opportunities to improve federal agencies' communication of information about potential asbestos hazards.[20] These products showed the need to be timely in getting out information to the public. For example, had additional or more complete

[17]See Jeffrey S. Lubbers, *A Guide to Federal Agency Rulemaking, Fourth Edition* (Chicago, American Bar Association: 2006), 51-58.

[18]See *General Elec. Co. v. EPA*, 290 F.3d 377, 385 (D.C. Cir. 2002) (striking down polychlorinated biphenyls (PCB) risk assessment guidance as a legislative rule requiring notice and comment); *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1023-24 (D.C. Cir. 2000) (overturning emissions monitoring guidance as a legislative rule requiring notice and comment); and *Chamber of Commerce v. United States Dep't of Labor*, 174 F.3d 206, 212-213 (D.C. Cir. 1999) (declaring an OSHA directive a legislative rule requiring notice and comment).

[19]See Nina A. Mendelson, "Regulatory Beneficiaries and Informal Agency Policymaking," 92 *Cornell L. Rev.* 397 (March 2007).

[20]See, for example, GAO, *Hazardous Materials: EPA May Need to Reassess Sites Receiving Asbestos-Contaminated Ore from Libby, Montana, and Should Improve Its Public Notification Process*, GAO-08-71 (Washington, D.C.: Oct. 12, 2007); *World Trade Center: EPA's Most Recent Test and Clean Program Raises Concerns That Need to Be Addressed to Better Prepare for Indoor Contamination Following Disasters*, GAO-07-1091 (Washington, D.C.: Sept. 5, 2007); and *Hurricane Katrina: EPA's Current and Future Environmental Protection Efforts Could Be Enhanced by Addressing Issues and Challenges Faced on the Gulf Coast*, GAO-07-651 (Washington, D.C.: June 25, 2007).

information been provided, people might have made different decisions or taken different actions to protect themselves. In addition, Congress has often asked us to review aspects of federal rulemaking procedures and practices.[21] However, with rare exceptions, such as a report on agencies' small entity compliance guides, we have not previously been asked to review agencies' general processes regarding communication products.[22] Our prior reports and testimonies contained a variety of recommendations to improve various aspects of rulemaking procedures and practices.

OSHA and OPPTS Used Different Processes during Multiyear Efforts to Complete Communication Products on Asbestos

OSHA and OPPTS followed different paths from 2000 through 2007 to prepare their SHIB and brochure, respectively, on asbestos in automobile brakes and clutches. Among the primary differences, the two agencies initiated work on their asbestos products in response to different triggers, OSHA took longer than OPPTS to produce a final product, and OPPTS' process incorporated more steps to obtain input from external parties. Each agency initiated the development of their product in response to external events that agency officials decided needed to be addressed through the publication of communication products. In total, OSHA and OPPTS took years to complete all the steps of their processes from initiation through dissemination of their products on asbestos in automotive brakes—approximately 5-½ years for OSHA and approximately 3-½ years for OPPTS. In doing so, both OSHA and OPPTS generally followed applicable agency policies and procedures for preparing communication products, as described below. The following is a description of the steps that OSHA and OPPTS took to initiate, develop, review, and disseminate the communication products on asbestos in automobile brake and clutch repairs.

OSHA and OPPTS Initiated Development of Products on Asbestos in Response to Different Triggers

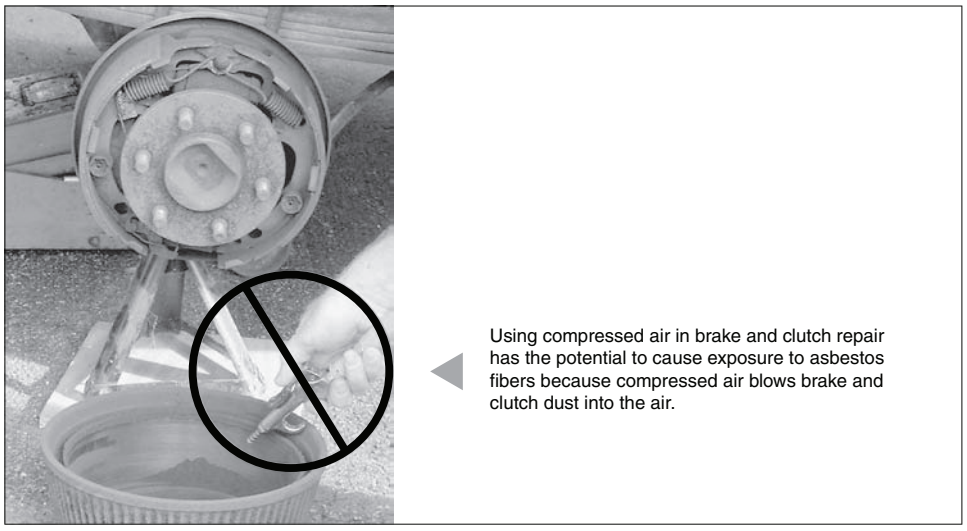
From 2000 through 2007, OSHA and OPPTS responded to the potential hazards associated with exposure to asbestos in brake and clutch repairs

[21]See GAO, *Federal Rulemaking: Past Reviews and Emerging Trends Suggest Issues That Merit Congressional Attention*, GAO-06-228T (Washington, D.C.: Nov. 1, 2005); *Rulemaking: OMB's Role in Reviews of Agencies' Draft Rules and the Transparency of Those Reviews*, GAO-03-929 (Washington, D.C.: Sept. 22, 2003); and *Federal Rulemaking: Procedural and Analytical Requirements at OSHA and Other Agencies*, GAO-01-852T (Washington, D.C.: June 14, 2001).

[22]GAO, *Regulatory Reform: Compliance Guide Requirement Has Had Little Effect on Agency Practices*, GAO-02-172 (Washington, D.C.: Dec. 28, 2001).

by developing and publishing their own communication products. (Fig. 2 illustrates one of the potential hazards.)

Figure 2: Example of Potential Exposure to Asbestos in Automotive Brakes



Source: EPA.

However, each agency initiated its product in response to different triggering events. In December 2000, an OSHA regional office became aware of a media report that discussed the potential exposure to asbestos during brake and clutch repairs and its effect on automobile mechanics. According to the article, there were indications that mechanics were being exposed to asbestos levels potentially much higher than the level recommended in the standards. The article also raised concerns that many people were unaware that the EPA ban on asbestos products had been partially overturned and that asbestos-related products—including automobile brakes—were still being sold and used. Therefore, mechanics and automobile shop owners might not have been taking preventive measures to avoid exposure to asbestos fibers. OSHA regional officials suggested that the agency could either issue a hazard alert to automotive associations via the internet as a means of disseminating information to the public, or implement a local emphasis program (LEP) to address this

issue.[23] After being notified by its regional office, the OSHA National Office decided that the agency's response would be to develop a hazard information bulletin. According to agency officials, LEPs are developed by the regional or area office and reviewed by the Directorate of Enforcement Programs, however, the regional office did not develop an LEP to address the issues of exposure to asbestos in automotive brakes. Officials decided that among the OSHA communication products available, the health information bulletin would alert the public in the most efficient manner. However, according to OSHA officials, the asbestos SHIB was unique because, in most cases, a SHIB is developed to address a new hazard or refocus the public's attention on a recurring hazard in light of a recent incident. This was not the case for the asbestos bulletin because there had not been any recent incidents associated with asbestos in automobile brakes.

OPPTS began to develop its communication product in 2003 in response to two events. The first was an EPA-initiated asbestos strategy project that recommended in its 2003 report that the agency revise its materials on asbestos. This project focused on how oversight, outreach, and education could help identify priorities and promote innovative approaches and best practices to address and manage costs and risks associated with asbestos. The other triggering event was a request for correction under the IQA that asked EPA to withdraw its 1986 Gold Book. Among other things, the IQA allows "affected persons" to seek and obtain correction of information maintained and disseminated by agencies. In essence, the requester asserted that the Gold Book contained statements that were based on inadequate and inappropriate scientific information, and that the book itself was badly outdated given the scientific studies published since 1986. Once the agency received the request for correction, updating the Gold Book became a higher priority. OPPTS officials acknowledged that, although the information provided by the Gold Book was still accurate, the format and presentation of the information could be perceived as very technical and not "user-friendly." Therefore, officials decided to develop a product that would provide the necessary information and meet the needs of professional automobile mechanics and home mechanics, in a simple and user-friendly format. They agreed that the best approach would be a brochure. However, according to OPPTS officials the brochure was also a

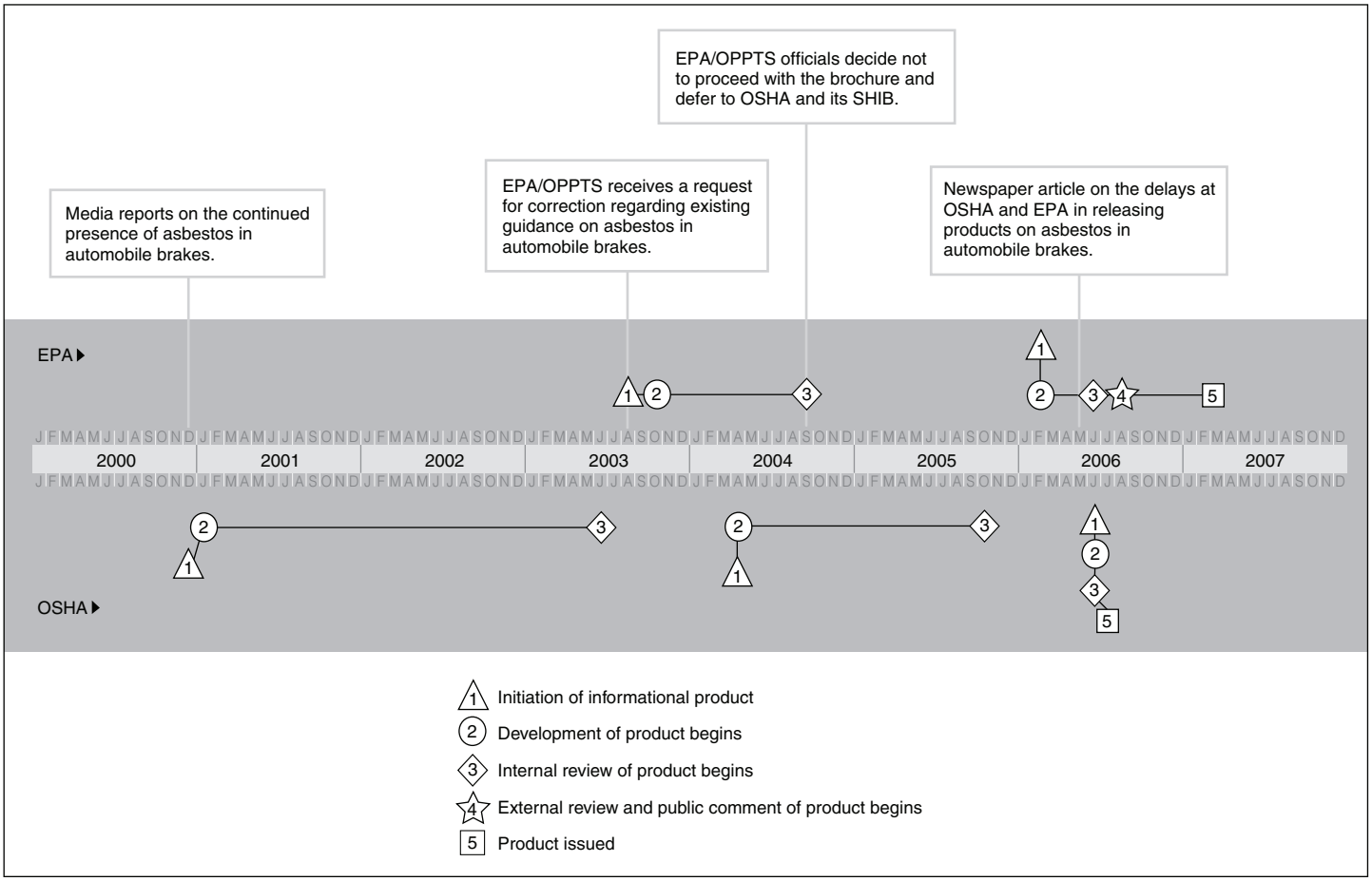
[23]An LEP is intended to address hazards or industries that pose a particular risk to workers in an office's jurisdiction. The LEP may include outreach intended to make employers in the area aware of the program as well as the hazard(s) the program is designed to reduce or eliminate.

unique communication product. In most cases, OPPTS develops a communication product in response to a need that is identified by the agency itself or is brought to the attention of agency officials. According to agency officials, the brochure for the existing Gold Book was under revision to provide more relevant context and illustrations and to conform with communications practices developed in the years since its last publication in 1986 (including practices of plain English language and Web site addresses for additional information). Revision of the asbestos brochure did not address a new need and did not provide new information that was not available elsewhere on EPA's Web site.

OSHA and OPPTS Took Years to Develop and Release Updated Communication Products on Asbestos in Brakes

As illustrated in figure 3, the preparation of the OSHA and OPPTS communication products on asbestos in automobile brakes occurred over several years, but OSHA's SHIB was in development longer than OPPTS' brochure. From initiation to public dissemination of a final SHIB, OSHA's process took approximately 5-½ years. OPPTS' process took approximately 3-½ years. OSHA and OPPTS officials stated that one reason for the delay in developing and disseminating the asbestos communication products was that other priorities, such as responding to Hurricane Katrina in the fall of 2005, overtook the development of these communication products. However, officials from both agencies pointed out that previously released information about the dangers of exposure to asbestos, applicable protective standards, and protective measures remained available during the products' development.

Figure 3: Timeline on Preparation of OSHA and EPA/OPPTS Products on Asbestos in Brakes



Source: GAO analysis of EPA and OSHA information.

OSHA began developing its SHIB in 2001, and posted the final version of the SHIB to the agency's Web site in the summer of 2006. During these 5-½ years, OSHA officials drafted the SHIB and reviewed it, but did not clear it on two separate occasions (see fig 5). In 2003, agency officials decided not to publish the SHIB because they were unsure of the extent to which asbestos in brake products was a problem. They were concerned about raising an unnecessary alarm about the possible exposure to asbestos in automobile brakes because they found information about the problem was limited and inconclusive. In 2004, OSHA received a draft of OPPTS' brochure addressing the same issue. At that time, OSHA was still conducting research to determine the extent to which asbestos-containing

products were still available in the market. For example, OSHA staff reviewed data from the U.S. Geological Survey that indicated that there were still friction products with asbestos available in the market but it was difficult to determine the exact amount of automobile brake and clutch products that contained asbestos. However, officials determined that none of the sources were able to provide information on the extent to which asbestos-containing brakes and clutches were still available in the market. In 2005, OSHA again decided against issuing a revised SHIB because it repeated existing standards, and agency officials were still uncertain as to the extent to which automobile brakes and clutches containing asbestos were still available in the market.[24] OSHA officials said that the development of the SHIB was given lower priority when the agency staff became involved with the response to Hurricane Katrina, including the production of compliance assistance materials related to this event. In 2006, OSHA officials received the OPPTS' draft brochure prior to its publication in the *Federal Register* and also became aware of another media report that raised concerns about the delays and the lack of activity at OSHA on the SHIB. OSHA officials consulted with an automobile manufacturer to determine if asbestos-containing brakes and clutches were still being used in the manufacture of new automobiles and the extent to which these parts were still available in the market. While the information was still inconclusive, at the end of July 2006, OSHA officials decided to issue the SHIB—that included a cross-reference to the EPA asbestos Web site—and posted it to the agency's Web site. (See app. III for a copy of the final asbestos SHIB.)

In 2003, OPPTS officials began to develop their brochure in response to the request for correction and its internal review of asbestos information products. OPPTS officials reviewed existing data to determine the prevalence of asbestos-containing automobile brakes and clutches in the market. OPPTS staff also consulted officials at the U.S. Geological Survey as well as with industry officials to determine if asbestos-containing products were still available in the market. According to their contacts, there were still products with asbestos available in the market but it was difficult to determine the amount of products. OPPTS officials decided that given the uncertainty about the prevalence, there was a need to inform the public about the potential hazard. By April 2004, after developing a draft of the brochure, OPPTS was ready to submit its draft for comments from other federal agencies. In July, OPPTS staff learned

[24]29 C.F.R. § 1910.1001, Appendix F.

about the SHIB that OSHA had begun to draft in 2001 that addressed the same hazard. At various points during the rest of the development of the brochure, staff at OSHA and OPPTS worked together to ensure that the OPPTS brochure incorporated language from the OSHA SHIB and cross-referenced the OSHA SHIB and Web site. By the fall of 2004, OPPTS officials decided to defer to OSHA. They halted further development of the brochure. According to OSHA officials, in early 2005, EPA officials indicated to OSHA that they were no longer interested in pursuing a joint communications product on exposure to asbestos in automotive brakes. In 2006, OSHA officials confirmed their decision not to publish the information bulletin, and OPPTS officials moved forward with the development of their brochure, because they were responding to a request for correction, and finalized the draft by the summer. In August 2006, OPPTS published its draft brochure, and in March 2007 OPPTS published the final brochure. (See app. IV for a copy of the final brochure.)

OPPTS also consulted and coordinated with officials at OMB. Because OPPTS was responding to a request for correction, OMB, in its oversight role under IQA, monitored the agency's response to the request. However, there was no formal requirement for interagency coordination between OMB and OPPTS in developing communication products. According to OSHA officials, OMB's inquiries into the SHIB development were due to EPA reporting to OMB that it was not developing its own response to the request for correction because OSHA was developing a SHIB that addressed the same hazard. However, there was no requirement for OMB to monitor or review the development of the SHIB.

While OSHA and OPPTS developed new products that addressed the same health hazard and varied in the amount of time needed for development and review, agency officials stated that neither product contained any information that was not already available to the public. OSHA's information bulletin was based on the existing workplace asbestos standards, and EPA's brochure was an update to the Gold Book (a 16-page booklet). According to agency officials, these were products that were intended not only to inform the public about the potential health hazard, but also to provide other sources of information within each agency in a more user-friendly format. However, the EPA brochure differs from the previous Gold Book in several ways. The Gold Book not only drew attention to what it considered to be very serious health consequences that resulted from exposure to asbestos during brake and clutch repair, but also stated that it was very difficult to make the repair of asbestos-containing parts safe. The new brochure lists the health consequences of exposure to asbestos, but also outlines best practices that when followed,

can reduce the potential for exposure to asbestos so that repair work on asbestos brakes can be conducted in a safe manner. While the brochure does not elaborate on the reasons for the discussion on best practices, OPPTS officials stated that the shorter brochure (a trifold pamphlet) was intended to be more user-friendly and not a compilation of all of the available information on the potential health consequences associated with asbestos exposure in a single publication. (Within the brochure, officials provided the link to the agency's Web page that has more information on the health consequences associated with asbestos exposure.) Some of the respondents to OPPTS' request for public comments questioned these differences in content. For example, one organization said that the draft failed to provide sufficient information concerning the risks of asbestos and appropriate risk practices and recommended that the final brochure address in more detail the issue of latency in the effects of asbestos disease, and that language of the EPA document should mirror the language of the OSHA SHIB, for example by stating that "Mechanics should assume that all brakes have asbestos-type shoes." Another respondent, while generally supportive of the changes made in the new brochure, stated that warnings of health effects associated with exposure to asbestos listed in the new document should be expanded and should include information about the danger of exposing family members by wearing work clothes home. OPPTS officials stated that the intent of the brochure was to update the Gold Book and convey the work practice information in a more user-friendly format, and that other information related to asbestos could be found on the agency's Web site.

OSHA and OPPTS Included External Parties to Different Degrees in the Review of the Asbestos Products

Under both OSHA and OPPTS processes, reviewing a communication product always includes internal review but also may include external review.[25] This external review may come from other federal agencies, industry groups, or the general public. In developing its brochure, OPPTS sought comments from external parties and the general public. In comparison, OSHA's process had more limited participation from external parties. As part if its process, OPPTS consulted with other federal agencies in the development of the brochure.[26] In addition, in order to determine the

[25]The general OSHA and OPPTS processes are described in more detail later in this report.

[26]OPPTS officials shared the draft of the brochure with staff within OSHA, the National Institute for Occupational Safety and Health, the Mining Safety and Health Administration, the Consumer Product Safety Commission, and the Centers for Disease Control and Prevention.

extent to which asbestos was still present in automobile brakes and clutches, OSHA and OPPTS staff consulted officials at the U.S. Geological Survey. OSHA also consulted with an automobile manufacturer and OPPTS consulted with some automobile parts manufacturers and retailers to determine if asbestos-containing products were still prevalent. According to their contacts, there were still products with asbestos available in the market but it was difficult to determine their prevalence. Once OPPTS officials decided to develop their own brochure, they submitted the draft to OMB for review and coordination of the interagency review. Once the interagency review was completed, OPPTS published a notice of availability in the *Federal Register* and asked for public comments to the brochure. After agency officials revised the draft brochure in response to comments, they resubmitted the brochure to OMB for final review.

OSHA officials did not generally include external parties in the development of OSHA's information bulletin, and its collaboration with OPPTS staff was a result of outreach by OPPTS officials. For example, when officials were trying to determine the extent to which asbestos-laden brakes and clutches were still available, OSHA officials consulted the U.S. Geological Survey as well as an automobile manufacturer to determine if asbestos-containing brakes and clutches were still being used in the manufacture of new automobiles and the extent to which these parts were still available in the market. However, there was no evidence of attempts to obtain data from other parties, such as automobile parts distributors or retailers. OSHA also did not seek public comments on its draft bulletin.

OSHA and OPPTS Posted Asbestos Communication Products on Their Web Sites

When OPPTS officials develop a communication product, they also develop a communication plan to ensure that the agency's announcement and publication of the product reaches the intended audience. In developing the brochure, OPPTS also developed a communication plan that included a projected issuance date, identified the audiences and other stakeholders, and the method(s) for dissemination. According to the communication plan for the asbestos brochure, OPPTS officials notified OSHA officials about the dissemination of the brochure prior to its publication in the *Federal Register* and posting onto the EPA Web site. OPPTS officials also notified the media by announcing the brochure in its weekly media advisory that also provided the Web link to the agency's asbestos information page (www.epa.gov/asbestos).[27] After submitting the

[27]Last accessed by GAO on March 25, 2008.

brochure for final review by OMB, OPPTS officials published the brochure in the *Federal Register* and on the agency's Web site. After posting the brochure, EPA removed the Gold Book from its Web site.

OSHA guidance, unlike that for OPPTS, does not require the agency to develop in advance a communications strategy to ensure that communication products reach their intended audience. Once OSHA officials developed and reviewed their information bulletin, they posted it to their Web site (www.osha.gov/dts/shib/shib072606.html)[28] and announced its issuance in their biweekly e-news memo, *Quick Takes*, an OSHA publication that is available to interested parties. This publication has a circulation of more than 50,000 subscribers. In addition, the release of the SHIB was listed on the opening page of the agency's public Web site under the feature, *What's New*. However, according to OPPTS officials, OSHA officials did not notify them of OSHA's decision to release the SHIB prior to its posting on the OSHA Web site.

Multiple Policies, Procedures, and Practices May Apply to the Preparation of Communication Products

Both OSHA and OPPTS have standard policies, procedures, and practices that guide the initiation, development, review, and dissemination of their communication products, but agency officials noted that not all of the processes are documented. OSHA and OPPTS officials identified for us the main processes that their agencies use. In particular, the officials provided detailed descriptions of the processes applicable to preparing OSHA SHIBs and OPPTS communication materials—those that applied to the preparation of the agencies' products on asbestos in automotive brakes and clutches. Because of the great variety of products that the agencies produce, there may be other processes applicable to a given communication product, but the processes identified are those that should most often apply to communication products. We reviewed these processes to determine how they addressed four generic phases: (1) initiation, (2) development, (3) review, and (4) dissemination of communication products. In the following sections, we identify the key OSHA and EPA/OPPTS processes and summarize the process steps the agencies said they typically follow to prepare OSHA SHIBs and OPPTS communication materials, such as brochures.

[28]Last accessed by GAO on March 25, 2008.

OSHA-Specific Instructions Guide the Agency's Preparation of Compliance Assistance Products

OSHA primarily follows agency-specific instructions, rather than any DOL-wide procedures, when preparing compliance assistance products, although DOL's Office of the Solicitor is included in the review and clearance process. Agency officials identified several specific OSHA instructions as most helpful in understanding their review and clearance process and aspects of OSHA's compliance assistance material production. These include the OSHA directives on clearance of policy issuances, nonpolicy issuances, and SHIBs.[29] In September 2007, OSHA issued an instruction on preparing Safety and Health Compliance Assistance Products that may now provide the most relevant process guidance for preparing such products.[30] Compliance assistance products or materials covered by this instruction include, but are not limited to, SHIBs, quick cards, fact sheets, posters, and pamphlets. OSHA has made all of its directives publicly available on the agency's Web site. However, agency officials said that not all details about their processes and standard practices appear in the written directives. Figure 4 illustrates the process that OSHA officials said they follow to prepare SHIBs.

[29]The OSHA instructions on policy issuances are found in Directive Number ADM 03-00-002 [ADM 8-0.2] (Dec. 11, 2000), for nonpolicy issuances in Directive Number ADM-03-00-004 [ADM 8-0.4] (Dec. 11, 2000), and for SHIBs in Directive Number CPL 02-00-065 [CPL 2.65A] (Aug. 27, 2003).

[30]Directive Number IPC 01-00-006 (Sept. 25, 2007).

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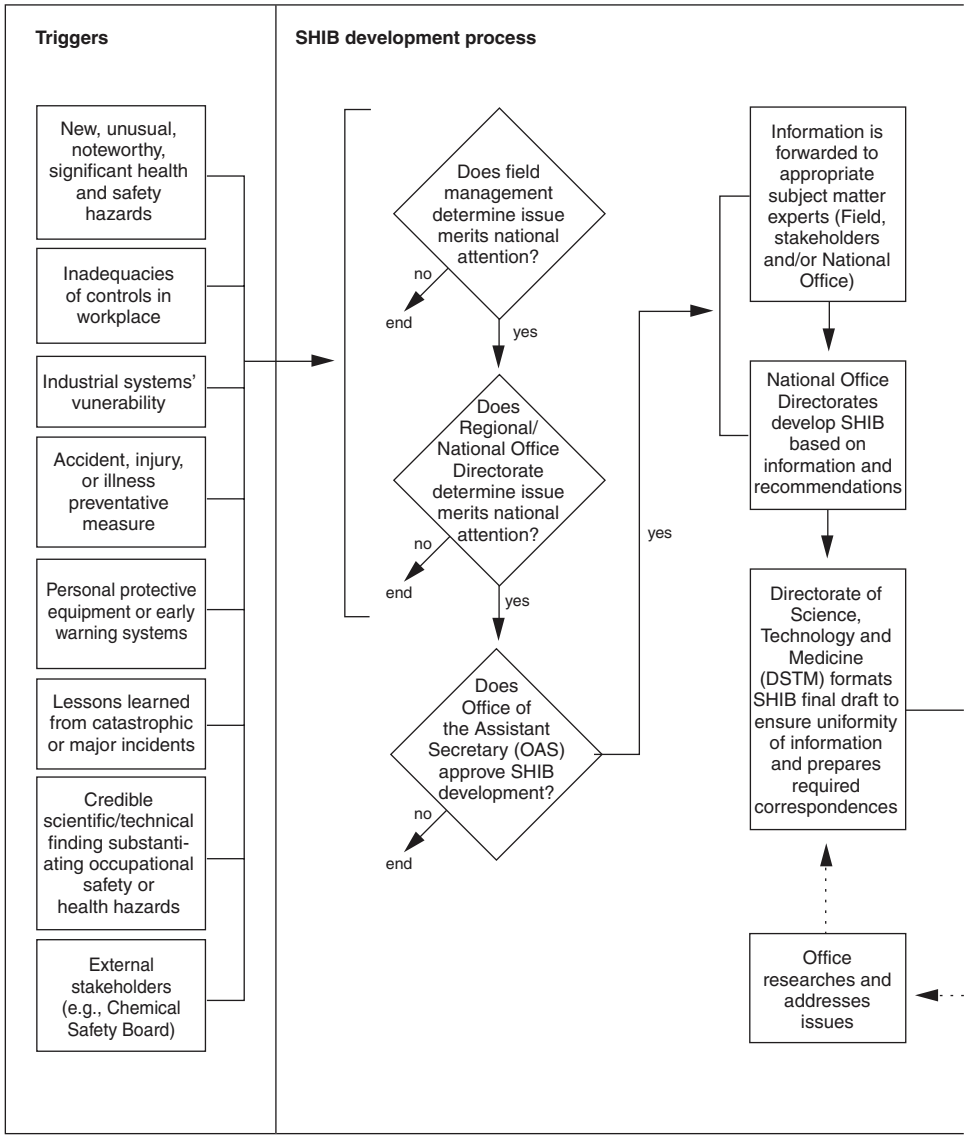
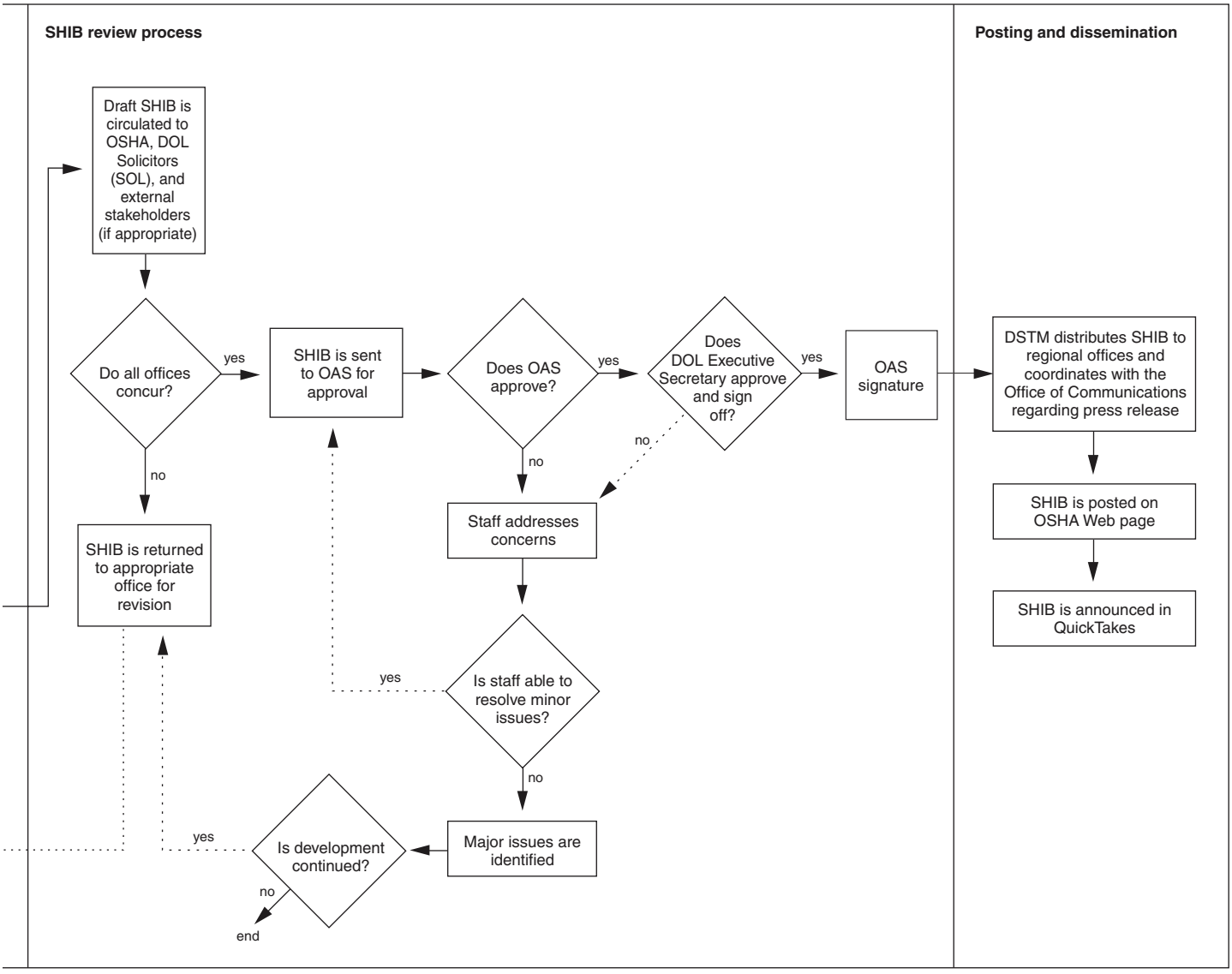
Figure 4: OSHA Process for Preparing Safety and Health Information Bulletins





Source: GAO presentation of OSHA information.

OSHA officials noted that the flowchart, although based on the SHIB directive, shows additional intricacies and review loops that can occur in the actual development and review of a SHIB (unwritten elements of the process). In general, the officials noted that everything goes through the clearance process, and there is little room for discretion, although they

could deviate in an emergency situation if the Assistant Secretary of OSHA approves it.

Although the flowchart and the following narrative summary focus on the process for SHIBs, we also include in the discussion below information to illustrate how other key OSHA directives are similar or different from the SHIB process, with a particular emphasis on OSHA's new directive for preparing compliance assistance products.

Initiation

OSHA officials noted that a variety of triggers can initiate a decision to update or create a product, including, for example, evidence of inadequacies of controls in the workplace or lessons learned from catastrophic or major incidents. OSHA's directive on SHIBs specifically identifies seven circumstances when it might be appropriate to use a SHIB and eight types of safety and health issues that might be covered by a SHIB (although OSHA does not limit SHIBs to only these issues). For example, the SHIB directive states that it might be appropriate to disseminate information to or through OSHA field offices as a SHIB when OSHA becomes aware of new, unusual, noteworthy, previously unrecognized, or little known but significant occupational safety and health hazards. Officials said that most ideas for SHIBs come from the field, and most come out of OSHA's inspections. Among the types of safety and health issues that a SHIB might address are common misunderstandings or misnomers involving worker safety and health issues (such as the misunderstanding that asbestos was banned).

Development

The development phase includes two main steps, management approval to proceed with the development of a product and the actual drafting of the product. Selecting the appropriate type of product is an important element in the initial approvals, because this helps to determine which agency policies and procedures should apply. OSHA officials said that, in general, the specific procedures and clearances that would be required are driven mostly by whether a product is a policy or nonpolicy issuance.[31] The OSHA instruction on nonpolicy issuances includes a process flow checklist to

[31]Policy issuances are official statements of OSHA published in the *Code of Federal Regulations*, *Federal Register*, the OSHA Directives System, or a combination of these. Such statements include OSHA rules, regulations, and compliance assistance policies and procedures, and also statements of policy and procedure relating to areas such as partnerships, outreach, and educational programs. Nonpolicy issuances include such supplementary guidance materials as OSHA's Letters of Interpretation, agency announcements, or informational releases, such as publications intended for the general public, news releases, routine correspondence, or other nonpolicy statements.

determine whether a proposed issuance is appropriate for release as a nonpolicy issuance.

One distinguishing feature of OSHA's instructions is that for SHIBs in particular and compliance assistance products in general, the Assistant Secretary of OSHA must approve the proposed product before development of a draft can proceed.[32] There are also earlier steps during which field, regional, and national office officials determine whether an issue merits national attention. These approvals serve as an important internal control. For example, according to agency officials, OSHA developed its instruction on compliance assistance products to (1) implement a process that ensures that the development of guidance is appropriately coordinated between the national office and field operations before resources are spent to develop the products and (2) establish a process by which guidance projects are approved by OSHA management before the expenditure of resources.

Centralized top-management approval is a prominent feature of OSHA's new instruction on compliance assistance products. Under that instruction, the initiating OSHA region, directorate, or office must obtain approval from the Assistant Secretary of OSHA before development of any such products. To do so, OSHA will filter the proposals through OSHA's Compliance Assistance Coordinating Group (CACG). Proposals are to be entered into a database and, unless expedited review has been requested, CACG will coordinate requests for presentation to the Assistant Secretary on a quarterly basis. (OSHA's directive indicates that the agency will use the "Compliance Assistance Products under Development" database to track not only the initiation and approval of proposed products, but also their development and clearance.) CACG will submit all requests to the Assistant Secretary and note the ones that the group recommends for development. OSHA's instructions also prompt the initiator of the request to indicate the potential economic significance of the compliance assistance product.

If an approved idea merits a national product, OSHA will begin development of a SHIB by going through the appropriate subject matter office to prepare a draft. OSHA's Directorate of Science, Technology, and

[32]OSHA officials pointed out that this step, and a similar step added under the review process to refer the SHIB to the DOL Executive Secretariat before final signature, were not part of the SHIB procedures at the time that OSHA updated the SHIB on asbestos in automobile brake and clutch repair work.

Medicine (DSTM) is responsible for developing and issuing most SHIBs, but other directorates may forward ideas for, or contribute to, a SHIB. During the development phase, national and field office staff may consult with each other. However, according to agency officials, OSHA typically does not survey or consult with outside parties for additional information when developing a SHIB. OSHA's instructions require that draft SHIBs and other compliance assistance products include a disclaimer, noting, for example, that the product is not a standard or regulation and creates no new legal obligations.

Review

The review phase requires internal agency reviews and approvals and might also include interagency reviews, external reviews, or both. During the formal internal review process, a draft SHIB will go through the Directors of OSHA's offices. Agency officials told us that, ultimately, Directors are responsible for approving the product and are instructed to "look at the totality of the document when signing it." For draft SHIBs, internal reviews are to include coordination with the Office of Communications, the Office of the Solicitor, and other OSHA Directorates (such as the Directorate of Enforcement Programs and the Directorate of Standards and Guidance). Other internal stakeholders who may review a draft SHIB include officials in OSHA regional offices.

In some cases, the SHIB process may include seeking a review of the draft SHIB by entities or individuals outside of OSHA, such as recognized experts, state or federal agencies, and professional organizations. The SHIB directive suggests that the Director of DSTM refer to current OSHA Alliances to ensure inclusion of appropriate stakeholders (for example, trade associations connected with a topic). However, OSHA officials pointed out that their process for SHIBs and other guidance documents is largely internal, unless there is some reason to go outside OSHA. Officials told us that some products, such as guidance on pandemic flu, go through interagency and OMB review. If OSHA consults external stakeholders, agency officials said that these stakeholders are usually involved after a draft has been prepared. However, in some circumstances, such as if a fatality helped to trigger development of a SHIB, OSHA could involve external stakeholders up front.

Since issuing the SHIB on asbestos in brakes, OSHA revised its review process that draft SHIBs be referred to the DOL Executive Secretariat, on a case-by-case basis, for concurrence before the Assistant Secretary of OSHA signs and disseminates the completed product. For SHIBs prepared by DSTM, part of the review package includes a table that contains all comments made during the review process and their disposition. The

officials noted that there can be an iterative "loop" to this process, not reflected in the written SHIB directive. Specifically, if major issues surface during reviews, but the agency still wishes to proceed with a SHIB, officials would revise the document to address the concerns, and the draft would have to go through appropriate review steps again.

Under the September 2007 OSHA instructions on compliance assistance products, the review and clearance processes are very similar to those outlined in the SHIB directive. However, unlike the SHIB directive, the instructions on compliance assistance products include some specific time frames for reviews. For example, offices generally are required to allow at least 20 working days for review of compliance assistance products. After incorporating appropriate changes, OSHA management determines whether a second review is needed.[33] The instructions also note, however, that when a product is submitted for approval by the Assistant Secretary, clearances or concurrences from reviewers may not be more than 120 days old; otherwise, another review is needed.

Dissemination

The directives on SHIBs and compliance assistance products encourage staff to coordinate with the Office of Communications regarding design and issuance of the product, including appropriate public notification. The directives identified by OSHA officials include provisions specifying responsibilities for posting, distributing, and maintaining the final products. The final products are posted on OSHA's Web site, by product type.

OSHA officials told us that OSHA does have processes to allow public comments on SHIBs or to provide public notification before the SHIBs are posted in final form, however, there is no requirement for either of these actions except in the case of significant guidance as defined by OMB. OSHA officials said that when approval is received per the review process, they simply post the signed SHIB. Sometimes there is a press release, but not always. The officials said there have been a few exceptions—not involving SHIBs—where the agency asked for comments on the Web before drafting guidance documents.

[33]If the compliance assistance product contains influential information under the agency's IQA guidelines or is a significant guidance document under the good guidance practices memorandum (discussed in more detail in following sections), the final product also must be forwarded to OSHA's Directorate of Standards and Guidance after all reviews are complete.

OSHA's directives establish no specific time frames or benchmarks for how long the entire process for producing a final product should take from initiation through development, review and dissemination, although the compliance assistance directive identifies time frames for a few review steps. There is not likely to be one single standard that would be appropriate for all products and in all circumstances, but the absence of time frames or benchmarks leaves OSHA's processes with no mechanisms to prompt the timely release of communication products. In fact, some aspects of OSHA's processes, such as the possibility of repeating development and review steps (as shown in the asbestos SHIB example) may contribute to delays. Timeliness is only one of a range of performance indicators that agencies should use to measure whether they are achieving their goals—others include the quantity, quality, cost, and outcome of agencies' program activities—and this range is important because managers must balance competing goals.[34] Nevertheless, it is an indicator that merits attention, especially once an agency has determined that there is a need to communicate information about how people can protect themselves from health and safety hazards. The very nature of such communication products indicates that timeliness is a necessary element for their effectiveness.

OPPTS Uses a Mix of EPA-Wide and Its Own Processes to Prepare Communication Products

OPPTS officials identified both OPPTS-specific and a number of EPA-wide internal processes that they use to prepare communication products. In general, agency officials told us that they do not follow the same procedures or conduct the same level of review for all products, although there may be a standard procedure and level of review for some categories of products. The detailed steps of the internal procedures may vary according to multiple factors, such as the specific type of product; the offices involved in the process; the significance of the document and the type of information it contains—for example, whether the information to be provided is new or an update; and the complexity and sensitivity of the subject. Agency officials noted that not all of their processes are documented in written guidance.

[34]See the Government Performance and Results Act (GPRA) of 1993, Pub. L. No. 103-62 (Aug. 3, 1993) and the accompanying report of the Committee on Governmental Affairs, United States Senate. GPRA was enacted to help resolve long-standing management problems that undermined the federal government's efficiency and effectiveness and provide greater accountability for results.

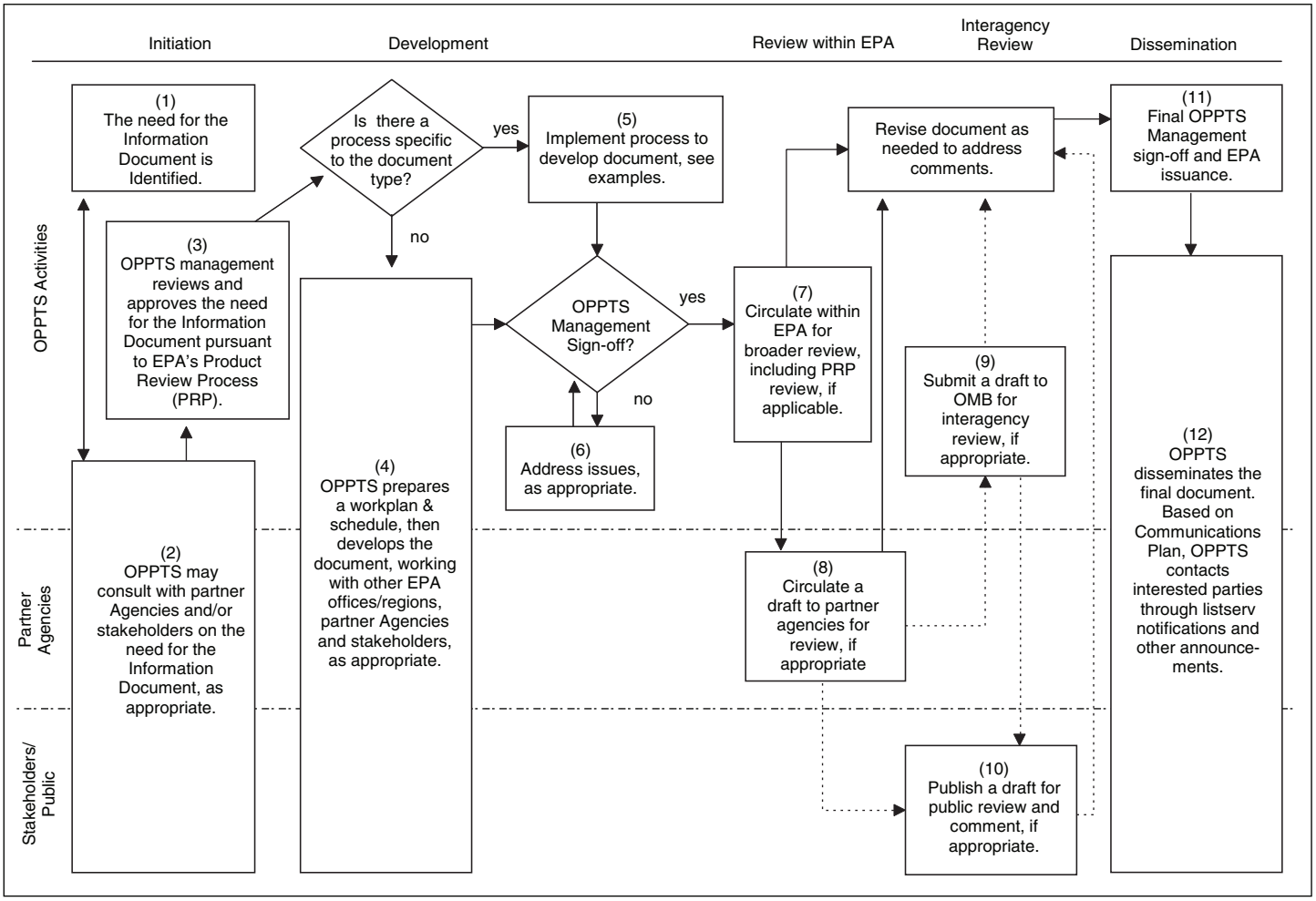
EPA and OPPTS have different processes that apply to different types of nonrule products. At EPA, nonrule products include, among others, communication materials, scientific documents, analyses, reports, guidance, and compliance assistance materials. Among the main EPA-wide procedures or guidelines that may affect the procedural steps followed to prepare communication products are (1) *EPA's Action Development Process: Guidance for EPA Staff on Developing Quality Actions*, (2) *Policy and Implementation Guide for Communications Product Development and Approval* (guidelines from EPA's Office of Public Affairs, also referred to as the agency's Product Review Process), (3) the agency's procedures for notices to be published in the *Federal Register*, and (4) EPA's information quality guidelines. The Product Review Process and the information quality guidelines are publicly available on EPA's Web site, but the other guidelines are not.[35] Other policies, procedures, and guidelines also might apply depending on the type of document that is being created. In addition, each EPA office and region, including OPPTS, has its own internal procedures and guidelines for the development and dissemination of the various products.

OPPTS therefore follows applicable EPA-wide processes, as well as its own processes, when preparing its products. In particular, OPPTS officials identified a general five-phase process for preparing communication products based on the EPA Product Review Process: (1) initiation, (2) development, (3) review within EPA, (4) interagency/external review, and (5) dissemination. According to the officials, regardless of whether written procedures are developed for a particular category of products, the process that OPPTS follows is built around these core phases. Figure 5 illustrates the OPPTS process for preparing communication products. OPPTS officials characterized this process as one that they typically follow to prepare products, such as the brochure on preventing asbestos exposure among brake and clutch repair workers.[36] However, it is not necessary for each communication product to follow each of these steps.

[35]An OPPTS official said that the agency publicly posts its policies and procedures that are pertinent to public participation, but, in circumstances where the policies and procedures are internal and do not include public participation, the agency opts not to make them available on its Web site.

[36]OPPTS officials noted, however, that, unlike the OSHA process for compliance assistance products described above, OPPTS' process for communication products is not used for the preparation of guidance documents. Different processes, such as the *Action Development Process*, apply to EPA guidance.

Figure 5: EPA/OPPTS Process for Preparing Communication Products



Source: GAO presentation of OPPTS information.

Initiation

During the initiation phase, OPPTS officials generally will identify the need for the product, identify the type of product to consider developing (for example, Web page, fact sheet, brochure, or Q&A document), consult with stakeholders (if officials determine there is a need for consultation), and obtain approval for the concept from the appropriate officials. Agency officials told us that the need to develop a new communication product, or to revise or update an existing product, might arise from several sources, including a legal mandate, identification by their staff responding to inquiries or implementing a program, or OPPTS management. In some

cases, OPPTS may consult with another agency or affected stakeholders to identify the need for creating or revising a communication product. In the case of a product developed as a result of a regulatory program, the stakeholders may be representatives of the regulated community or other interested members of the public. Pursuant to EPA's Product Review Process for Communications Materials, an important step in initiation is that OPPTS management agrees that the product needs to be developed or revised, and EPA's Office of Public Affairs also reviews and approves the concept.

Development

Once a concept for a product is approved, the program officials consult with stakeholders (as appropriate), develop a time frame for product completion and a plan for disseminating the product (a communications plan), and determine whether a specific process applies to the development of a particular product. Once a development process is either identified or developed, the process must be approved by OPPTS management prior to developing the product. OPPTS officials told us that development time frames may vary for different product types depending on the specific needs identified and circumstances related to that product, and also depending on whether a process has been developed or needs to be developed. Unless specifically mandated by statute, or driven by other legal deadlines or an identified critical need, the time frame for developing the product is flexible and subject to change based on competing demands for the staff's attention and other resources. The agency's processes set no specific time frames for how long development of a product should take. In addition, OPPTS may decide to engage partner agencies, stakeholders, or both at different points during the development of the product, based primarily on the circumstances specific to the particular product. According to OPPTS officials, because the nature of communication products and the circumstances surrounding their development vary significantly, the process provides sufficient flexibility to ensure the development of a quality product. (*EPA's Action Development Process*, the detailed guidance that the agency as a whole follows when developing its most significant actions—such as regulations, policy statements, risk assessments, and guidance documents—is similarly flexible. The required process steps for development vary according to the agency's determinations about the priority of the action, from those that require the attention of the EPA Administrator to those that are delegated to one of EPA's offices.)

Review

All OPPTS communication products must undergo internal review pursuant to the agency's Product Review Process. Specifically, agency processes require that a communication product be approved by OPPTS

management both at initiation and again at the final draft stage. Any issues or comments that might arise during the OPPTS management review must be addressed before the product undergoes broader EPA review. OPPTS also circulates draft communication products to those EPA offices that work on similar issues (including regional offices, depending on the issue) and central offices, such as EPA's Office of General Counsel and Office of Public Affairs.

Although not required, depending on the nature of the particular communication product, OPPTS may seek reviews by other agencies (such as those interested in programs or topics related to the product) and OMB before finalizing the product. In some cases, this may involve more than one agency. OPPTS has on occasion provided advance copies of certain high-profile products to OMB for an informal review. This usually has been in response to a request from OMB but also on occasion when OPPTS wanted OMB's input.[37]

OPPTS might also seek comments from nonfederal parties. In general, communication products developed by OPPTS do not all undergo a formal notice and comment stage. OPPTS considers whether such a step is necessary as part of the planning process based on the nature and circumstances surrounding the particular product. Even when not required to do so, OPPTS may still seek public comments on the product in circumstances involving new types of communication products, stakeholder interest, external commitments for comment opportunities, potentially controversial issues, or for other reasons. OPPTS officials told us that when the agency uses notice and comment for a particular product, it opens a public docket. Public comments are submitted to that docket, and the public can access the product, other relevant information (if any), and any comments received.

Dissemination

Once the product has undergone internal review, interagency/external review (if necessary), and final OPPTS management approval and signature, OPPTS disseminates the product to the general public. To obtain management approval for public release, OPPTS staff will prepare a final version of the product, along with any related materials, using EPA's Product Review Process for all communications products. OPPTS typically develops a Communication Plan to ensure that its announcement

[37]OPPTS officials noted that OMB and OPPTS also have an informal agreement whereby OPPTS will offer OMB an opportunity to review its Pesticide Registration Notices.

and release of a particular product is tailored to reach the intended audience. EPA's written guide on communication products includes guidance to agency staff about communications planning. In cases where the product is related to a well-established program area, OPPTS might maintain a list of interested parties who wish to be notified whenever OPPTS releases anything related to that established program area. EPA's Product Review Process includes a mechanism for OPPTS to coordinate the development and review of the Communication Plan for the particular product with communication specialists across the agency. OPPTS also consults with EPA's Office of Public Affairs on all releases.

EPA officials told us that it would be difficult to compile a list of all disseminated communication products because of the great variety and number of products they produce.[38] However, the agency maintains several lists of some of the available products for the public; for example, officials noted that the National Service Center for Environmental Publications is a central repository for EPA documents available for distribution, but this is not all-inclusive. An EPA official also pointed out that almost all communication products—whether from OPPTS or other EPA program offices—ultimately are reviewed by EPA's Office of Public Affairs, which maintains an inventory of all public communication products that it has reviewed. As OPPTS officials said, it may also be less meaningful to attempt to catalog communication materials as the agency increasingly posts information to its Web site for quicker dissemination and wider accessibility and uses a variety of simpler, more focused formats to convey that information. They said that the differences between EPA's 1986 Gold Book and the agency's 2007 asbestos brochure illustrate this change. While the agency's goal for the Gold Book was to compile all of the available information into a single publication, OPPTS now provides links to source documents, rather than repeating all the details. OPPTS officials noted that using a link or reference ensures that the public has up-to-date information and minimizes the need to correct or revise the brochure when the source information changes. Nevertheless, the ability to track and monitor the communication products that the agency is disseminating is important for internal control purposes—specifically to ensure that relevant, reliable,

[38]For example, when we asked the agency to compile a list of a subset of communication products issued since October 2002, EPA program offices estimated that this could take from 3 to 6 months. We limited our request to 4 of 20 product categories previously identified by EPA—general guidance, guidance on how to comply with a regulation, educational and training materials, and brochures and pamphlets.

and timely information is available for management decision making and for external reporting purposes.

As was the case with OSHA's procedures, the EPA/OPPTS procedures establish no specific time frames or benchmarks for how long the entire process of producing communication products should take. Although OPPTS prepares schedules for individual products during the development phase, agency officials indicated that the time frames for the agency's products are flexible and subject to change based upon competing demands for the staff's attention and other resources, unless specifically mandated by statute, or driven by other legal deadlines or an identified critical need. While we recognize, as previously stated, that there is not likely to be a single standard appropriate for all products and in all circumstances, without some suggested time frames or benchmarks—such as limits on the length of intra- or interagency reviews—the EPA/OPPTS processes may not prompt the timely release of communication products.

More Transparency and Documentation Requirements Apply to Rulemaking Than to the Preparation of Communication Products

There are significant differences in the requirements that apply to rulemaking compared to the preparation of communication products, because rulemaking must comply with legal requirements that are not applicable to the preparation of communication products. Overall, there is less need for transparency and documentation regarding the preparation of communication products, which are not legally binding, compared to rules, which are. This is reflected in the requirements that apply to each. In January 2007, the administration amended the executive order on OMB's oversight of draft rules and issued an OMB bulletin on good guidance practices. Among other provisions, these initiatives expanded coverage of some requirements for OMB review of significant draft rules to also include significant guidance documents and also required agencies to disclose more information about significant guidance. These changes bring the treatment of significant guidance closer to that for rules. However, the initiatives do not cover any other types of communication products, nor will they extend the transparency and documentation requirements applicable to OMB's reviews of draft rules to its reviews of significant guidance.

Processes for Preparing Rules and Communication Products Have Significant Differences

Although OSHA and OPPTS follow the same basic procedural steps—initiation, development, review, and dissemination—for producing communication products and rules, we identified at least five general areas in which the procedures governing rules and communication products can differ significantly. These differences are to be expected,

given the legal effect and consequences of rules. The differences in each of these areas are rooted in legal requirements that apply to rulemaking. For communication products in general, there are no statutory requirements, and the specific processes used by the two agencies we reviewed also do not impose requirements in the five areas outlined below.[39]

Providing a justification – Under the APA, agencies are required to reference the legal authority under which a rule is proposed in a Federal Register notice and either the terms and substance of the proposed rule or a description of the subjects and issues involved.[40] Under other statutes and executive orders—such as the Paperwork Reduction Act,[41] Regulatory Flexibility Act,[42] Unfunded Mandates Reform Act,[43] Congressional Review Act,[44] and Executive Order 12866 on regulatory planning and review[45]—agencies may also be required to complete and publish analyses supporting the rule and the options selected by the agency. In some cases, statutes impose additional requirements on specific kinds of rules, such as requirements for public hearings. There are no such general statutory requirements for agencies to provide justification for their communication products, although, as discussed above, OSHA and OPPTS procedures typically involve a step where agency officials determine that there is a need for a proposed communication product.[46]

Interagency reviews – Under Executive Order 12866, OMB's Office of Information and Regulatory Affairs (OIRA) reviews significant draft rules (for example, rules expected to have an annual effect of $100 million or

[39]In the FDA Modernization Act of 1997, Congress clarified that FDA's guidance documents were advisory rather than legally binding, but required public participation in some instances. 21 U.S.C. § 371(h)(1).

[40]5 U.S.C. § 553(b).

[41]44 U.S.C. §§ 3501-3520.

[42]5 U.S.C. §§ 601-612.

[43]Pub. L. No. 104-4, 109 Stat. 48 (1995), codified as amended in scattered sections of title 2, United States Code.

[44]5 U.S.C. §§ 801-808.

[45]Exec. Order No. 12866, 58 *Fed. Reg.* 51,735 (Sept. 30, 1993), as amended by Exec. Order No. 13422, 72 *Fed. Reg.* 2763 (Jan. 23, 2007).

[46]Per OMB's January 2007 bulletin on good guidance practices, there is now a specific requirement that significant guidance documents include the citation to the statutory provision or regulation that the guidance applies to or interprets.

more on the economy or that raise other coordination, budgetary, or policy issues) before they are published as proposed or final rules.[47] The executive order generally requires OIRA to complete its reviews of significant rules within 90 days after an agency formally submits a draft regulation. In contrast, officials from OMB, OSHA, and EPA all noted that there generally are no formal procedures and requirements governing interagency and OMB reviews of communication products—with the exception of a recently implemented requirement for OMB reviews of significant guidance documents (discussed below). Agency officials confirmed that such reviews do take place informally for some communication products (although they are not necessarily required).

Transparency of the process – In prior work, we identified transparency as a regulatory best practice, noted that transparency requirements help to make agencies' processes more open (and promote participation), and quoted an Administrator of OIRA who pointed out that openness can help transform the public debate about regulation to one of substance rather than process.[48] However, the transparency of the processes used to prepare communication products is much more limited than for rulemaking. During rulemaking, agencies typically maintain a rulemaking record, in the form of a public docket.[49] Moreover, Executive Order 12866 requires OIRA and the agencies to document and disclose certain information about OIRA's reviews of draft rules, including the substantive changes made to rules during OIRA's review and at OIRA's suggestion or recommendation, as well as any documents exchanged between the agencies and OIRA. OIRA is also required to disclosure its substantive communications (including telephone calls, meetings, and incoming correspondence) with outside parties (persons not employed by the executive branch) regarding rules under review. However, as discussed in our 2003 report on this process, such requirements do not necessarily ensure transparency.[50] OMB and agencies may engage in informal reviews

[47]See GAO-03-929 for a detailed description of this process.

[48]See, for example, GAO, *Regulatory Reform: Prior Reviews of Federal Regulatory Process Initiatives Reveal Opportunities for Improvements*, GAO-05-939T (Washington, D.C.: July 27, 2005).

[49]In his guide to federal agency rulemaking, Jeffrey Lubbers identified three important functions of the rulemaking record: (1) aiding public participation in the rulemaking; (2) providing the basis for the agency's decision whether to adopt a rule and, if so, what provisions the rule should include; and (3) assisting judicial review of the final rulemaking decision. Lubbers, *A Guide to Federal Rulemaking*, p. 320.

[50]GAO-03-929.

that are not subject to any of the documentation and disclosure requirements that apply when a draft rule is undergoing formal review.[51] Agencies' preparation of communication products is not subject to the same requirements as rulemaking for documentation and disclosure of the processes and steps taken. Further, information related solely to the internal practices of an agency is exempt from public disclosure under the Freedom of Information Act.[52] Therefore, while OSHA and OPPTS officials confirmed that they document the internal review processes followed to prepare communication products, such documentation is not subject to public disclosure. Also, as we noted earlier, the basic processes that the agencies use are not always documented in writing or made publicly available.

Public comment – In rulemaking, agencies are required to give interested persons an opportunity to comment on proposed rules by providing "written data, views, or arguments," and also to consider the public comments before issuing a final rule. There generally are no such requirements for the agencies to provide the public an opportunity to comment on draft communication products.[53] However, OSHA and OPPTS officials noted that they still may choose to seek public comments on certain products. For example, OPPTS officials said that they may provide external stakeholders an opportunity to comment on a communication product in circumstances involving new products, stakeholder interest, external commitments for comment opportunities, potentially controversial issues, or for other reasons. OSHA officials told us that they sometimes provide opportunities for public comment on communication products, although they have not done so for SHIBs.

Monitoring development and review – The public is better able to track the status of the development and review of significant rulemaking. In response to provisions of Executive Order 12866, as amended, agencies make general information on rulemaking in process publicly available

[51]We recommended that OMB take actions to improve the transparency of reviews of draft rules whenever they occur, not just during formal reviews, but OMB disagreed with the recommendations.

[52]5 U.S.C. § 552(b)(2).

[53]OPPTS officials identified an exception, under section 406 of the Toxic Substances Control Act, which directs EPA and other agencies to publish—and "from time to time" revise or update—an information pamphlet about residential lead-based paint hazards. According to the statute, both the initial issuance and any revisions of the pamphlet must occur after notice and an opportunity for public comment. 15 U.S.C. § 2686.

through mechanisms such as the *Unified Agenda of Federal Regulatory and Deregulatory Actions*, the *Regulatory Plan*, and OMB's database on the status of draft rules submitted for review under the executive order.[54] No similar mechanisms are available for publicly tracking communication products. OSHA and OPPTS have, or are creating, databases on the status of their communication products, but these are for internal management purposes, and are not available to the public. Per OSHA's September 2007 directive on compliance assistance products, the agency will compile information on all proposed concepts in a centralized database, including information tracking the initiation, development, and reviews of those products. An OPPTS official told us that her agency uses several different databases to track the development and review of various products.[55] She also noted that EPA has a publications catalog that is a master inventory of all numbered publications, but this is not all-inclusive.

Administration Initiatives Imposed New Requirements for Significant Guidance Documents

In January 2007, the President issued Executive Order 13422 to amend Executive Order 12866, and OMB released a related *Final Bulletin for Agency Good Guidance Practices*. The principal change made by the executive order amendments was to establish a process regarding interagency coordination and review of significant guidance documents prior to their issuance. The OMB bulletin established policies and procedures for the development, issuance, and use of significant guidance documents by agencies.[56] In April 2007, the Administrator of OIRA issued a memorandum providing more specific instructions on the implementation of the OMB bulletin and Executive Order 13422.

According to the OMB Director, the primary focus of Executive Order 13422 and the OMB bulletin is on improving the way the federal government does business with respect to guidance documents by

[54]Information on agencies' current and past regulatory agendas and plans and OMB's regulatory reviews is available electronically through www.RegInfo.gov. The annual regulatory plans identify agencies' regulatory priorities and contain additional details about the most significant regulatory actions agencies expect to take in the coming year.

[55]These include the SCOUT system that the agency uses to track communication products that it is about to release to the public and the PROTRACK system that tracks the review process for communication products.

[56]The bulletin defines a "guidance document" as an agency statement of general applicability and future effect, other than a regulatory action (as defined in Executive Order 12866, as amended), that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue.

increasing their quality, transparency, accountability, and coordination. OMB noted that well-designed guidance documents can serve many important or even critical functions in regulatory programs and, among other things, can channel the discretion of agency employees, increase efficiency, and enhance fairness. OMB cited various reasons for issuing the bulletin, noting, for example, that as the impact of guidance documents on the public has grown, so too has the need for good guidance practices. OMB also stated that guidance documents may not receive the benefit of careful consideration accorded under the procedures for development and review of rules, and OMB raised the concern that because it is procedurally easier to issue guidance documents, there may be an incentive for regulators to issue guidance documents in lieu of rules. OMB also cited potential benefits from enhancing the quality and transparency of agency guidance practices—including, when practical, using opportunities for public input to increase the quality of products and provide for greater public confidence in and acceptance of agency judgments.

Among other things, the executive order, bulletin, and implementation memorandum require agencies to (1) develop clearance procedures for significant guidance documents; (2) provide OMB advance notice and an opportunity for consultation on significant guidance; (3) create and maintain a current list of all significant guidance on their Web sites and establish a means for the public to submit comments electronically on significant guidance, as well as requests for issuance, reconsideration, modification, or rescission of significant guidance documents; and (4) provide public notice and seek public comments on any economically significant guidance.[57] These changes move the treatment of significant guidance closer to the requirements for rules. However, the changes only apply to significant guidance documents, not to any other types of communication products.

The OMB bulletin outlines basic standards expected for significant guidance, including both approval procedures and standard elements of each significant guidance document. OSHA officials said that although their directive on compliance assistance products was not developed

[57]The bulletin defines an economically significant guidance document as a "significant guidance document that may reasonably be anticipated to lead to an annual effect on the economy of $100 million or more or adversely affect in a material way the economy or a sector of the economy, except that economically significant guidance documents do not include guidance documents on Federal expenditures and receipts."

specifically to implement OMB's bulletin and the revised executive order, its procedures appropriately reflect those requirements. EPA also revised its processes to reflect the new requirements for guidance documents. As required by the bulletin, both OSHA and EPA have listed the significant guidance documents subject to Executive Order 12866, as amended, and OMB's bulletin on their Web sites.

Under Executive Order 12866, as amended, and OIRA's implementation memorandum, the requirements regarding notification to OIRA of a significant guidance document are similar, but not identical, to those applicable to OIRA's reviews of significant rules. Agencies are required to provide advance notification to OIRA of a significant guidance document—as a general rule, no less than 10 days prior to intended dissemination. If the Administrator of OIRA determines that additional consultation is warranted, OIRA will review the guidance and coordinate review among appropriate executive branch departments and agencies. The Executive Order does not specify a time period for review of significant guidance documents, but according to the implementing memorandum, OIRA will complete its consultation on the guidance document within 30 days or, at that time, will advise the agency when consultation will be complete. However, the executive order amendments, OMB bulletin, and OIRA memorandum did not extend the transparency and documentation requirements applicable to OIRA's review of draft rules (such as disclosing changes made at OIRA's suggestion or documenting contacts with external parties) to its reviews of draft guidance.

Conclusions

OSHA and OPPTS initiated work on their asbestos communication products for different reasons, but in both cases the agencies' processes took years to complete. OSHA initiated work in 2000 in response to news reports that workers were not aware that asbestos had not been banned from automotive products and might still pose a potential hazard. OPPTS initiated work in 2003 in response to a request that the agency correct information in its Gold Book. From initiation to dissemination of final products, OSHA took approximately 5-½ years to publish its asbestos SHIB, while OPPTS took approximately 3-½ years to publish its final asbestos brochure. OSHA's iterative review process contributed to delays in producing its SHIB, as OSHA officials cited the need to address uncertainties regarding the prevalence of asbestos in brake products. OPPTS officials also cited a number of explanations for the time required to produce their final brochure, including their external coordination and review activities and competing demands on resources. Officials from both

agencies pointed out that, during the time that they worked on their asbestos products, information about the potential hazard and protective measures that could be taken remained available on the agencies' Web sites. Ultimately, both OSHA and OPPTS determined that new asbestos communication products were needed, and the products were publicly released.

Communication products are an important tool that OSHA and OPPTS (as well as other agencies) use to support and augment their regulatory activities. Communication products provide crucial information to regulated parties and the general public. Therefore, it is important that communication products be issued in a timely manner. Timeliness is but one of a range of performance indicators that agencies may use to measure whether they are achieving their goals, as managers balance competing priorities. But timeliness seems especially relevant once an agency has determined that there is a need to communicate information about how people can protect themselves from health and safety hazards to which they might be exposed. Having such information might lead people to make different decisions or take different actions to protect themselves than they would in the absence of such information. As the various OSHA and OPPTS processes for preparing communication products are currently designed, they contain few, if any, performance time frames or benchmarks to help ensure that the processes can produce final products in a timely fashion. Although there can be no single standard for how long the entire process should take, OSHA's and OPPTS' processes could benefit from general time frames or benchmarks to provide some impetus for moving products the agencies identified as needed through to dissemination. It should also be remembered that one of the reasons why agencies use alternatives to rulemaking—such as guidance or general communication products—is because these alternatives have the advantage of being less time consuming than rulemaking.

It is also important that the processes the agencies use to prepare communication products be documented, transparent, and understood. Differences between the processes for preparing communication products and rules are to be expected, given the legal effect and consequences of rules. Preparation of communication products should not require the same level of justification, documentation, disclosure, and public comment as rulemaking. However, communication products are also important and can affect the actions of regulated parties and the public, so enhancing the general transparency and accountability of agencies' processes could be beneficial. Knowing the many steps that agencies take when preparing

communication products could not only help external parties contribute, when appropriate, to the preparation of the agencies' products, but could also help those parties to understand why the process is sometimes lengthy.

There are opportunities for both OSHA and OPPTS to enhance the transparency and accountability of the processes they use to prepare communication products. Those processes are not always easy to identify and understand, in part because of the great variety of the agencies' products and processes, but also because not all key elements of the processes the agencies may follow are documented. For example, with the exception of required OMB reviews of significant guidance documents, OMB, OSHA, and OPPTS officials noted that they have no formal written procedures governing interagency and/or OMB reviews of communication products. Nevertheless, agency officials confirmed that such reviews do occur (although they are not necessarily required). As another example, OSHA's process includes a potential review "loop" that OSHA officials said would not be apparent from reading their directive on SHIBs but can result in staff having to revise the product and repeat the review process.

The transparency and accountability of the agencies' processes can also be limited if they are not publicly disclosed. For both OSHA and OPPTS, this would include disclosing the unwritten elements of their key processes mentioned above, once documented. In addition, EPA/OPPTS could do more to publicize existing written guidelines about key processes for preparing communication products. In contrast to OSHA, which has posted its key written process instructions, this is not always the case for EPA/OPPTS. In particular, *EPA's Action Development Process* is not publicly available but applies to the agency's most significant actions, including rules. Although the agency's process guidelines focus primarily on internal policies and procedures, the final products generated by the agency may be of interest to and affect a variety of external parties, from Congress and other federal agencies to regulated parties and the general public. Greater disclosure about OSHA's and OPPTS' processes could be limited to providing more information about their general processes and would not require the agencies to reveal the actual details of internal policy deliberations for individual communication products.

We also observed that EPA/OPPTS identified difficulties in identifying communication products that have been disseminated, even when we limited our request to a subset of product types. OPPTS officials told us that their agency increasingly relies on disseminating information through a variety of formats and links on its Web site. They believe this is a more

effective approach to disseminating information to the public, but it may also make it more difficult for the agency to catalog what has been disseminated. We think that it is important, as a matter of basic internal controls, for an agency to maintain an inventory of the products it produces. We recognize that EPA and OPPTS already have a number of separate databases to track various types of communication products, but we remain concerned that some of the products and information disseminated might not be captured by existing databases. Adopting a mechanism such as the centralized database that OSHA is implementing might enhance OPPTS' ability to track, identify, and manage the inventory of its disseminated products.

OSHA also could enhance its existing processes for preparing communication products. For example, the OPPTS processes, both in general and as illustrated during preparation of the asbestos brochure, prompt more and earlier consultation with external parties than seems to be the case with OSHA's SHIB process. Although OSHA may seek external reviews in some cases, agency officials said that their processes for preparing SHIBs and other guidance documents are largely internal. We recognize that this, in part, reflects the different purposes and context for OSHA communication products, and that outreach to external parties comes at a cost to the agency in terms of both time and resources. However, consultation, outreach, and coordination also can provide important benefits, as OMB cited when explaining the need for agency good guidance practices. Just as the OMB guidance was intended to increase the quality and transparency of agency guidance practices—including, when practical, using opportunities for public input to increase the quality of products and provide for greater public confidence in and acceptance of agency judgments—so too may the preparation of other communication products benefit from appropriate outreach efforts.

Similarly, OSHA might wish to enhance its existing process instructions regarding dissemination of communication products by considering elements of the EPA/OPPTS process. While OSHA's directives prompt agency officials to post final products to the agency's Web site and encourage OSHA staff to consult with the agency's Office of Communications about whether an announcement should be made, the directives provide more guidance on distribution of the final products within OSHA than on distribution to regulated workplaces and the public. The EPA/OPPTS processes prompt early and ongoing attention to effective notification about and dissemination of communication products, through tools such as a communications plan, and also provide more guidance to agency staff about communications planning.

Recommendations for Executive Action

While we recognize that OSHA and EPA/OPPTS have taken some steps in each of the following areas, more could be done to improve the transparency, accountability, and timeliness of their processes for the initiation, development, review, and dissemination of communication products. Therefore, we are making the following six recommendations:

1. The Assistant Secretary for OSHA and the Administrator of EPA should ensure that their key general policies and procedures for preparing communication products include, as appropriate, time frames or benchmarks to help ensure that products that the agencies have determined are needed are developed, reviewed, and disseminated in a timely manner.

2. The Assistant Secretary for OSHA and the Administrator of EPA should take steps to ensure that their key general policies and procedures for preparing communication products are fully documented. To the extent feasible, this should include identifying the applicable policies and procedures governing OMB/interagency coordination and reviews of such products, as well as any other key processes that the agencies believe are important to understanding how they prepare their products.

3. The Assistant Secretary for OSHA and the Administrator of EPA should ensure that their agencies make public the key general policies and procedures for preparing communication products, including any updated in response to the previous objective.

4. The Administrator of EPA should consider adopting for OPPTS—and other EPA offices, as appropriate—a centralized database or databases to more completely account for the inventory of communication materials disseminated by the agency.

5. The Assistant Secretary for OSHA should augment existing OSHA directives on the preparation of SHIBs and other communication products to prompt OSHA staff to identify opportunities to solicit input from external parties, as practical, during the preparation of communication products.

6. The Assistant Secretary for OSHA should augment existing OSHA directives on the preparation of SHIBs and other communication products to provide more guidance to OSHA staff on developing a communications strategy during the product development process (for example, to identify who the agency needs to inform of the product,

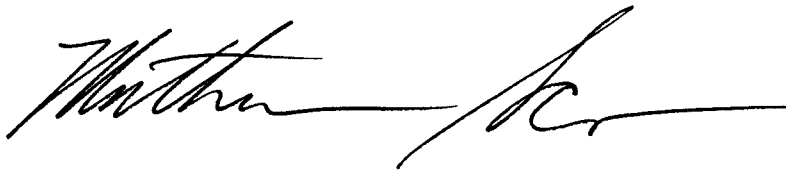
how notification and dissemination will be done, and who will be responsible for specific notification and dissemination tasks).

Agency Comments and Our Evaluation

We provided a draft of this report to the Secretary of Labor, the Administrator of EPA, and the Director of OMB for their review and comment. In comments on the report, EPA generally agreed with the recommendations and concurred that a formal, well-understood process for coordination and review of communication materials is important to ensure quality information products (see app. V). With regard to the first recommendation, EPA also commented that a fair amount of flexibility and discretion is necessary for the development of communication materials. We agree and had already stated in our conclusions that there can be no single standard for how long the process should take and in our recommendation that agencies should incorporate time frames and benchmarks "as appropriate." EPA also noted that the time frame associated with its development of the brakes brochure was an anomaly and may not be a useful standard to compare to other cases. However, we based our recommendations on our review of EPA's (and OSHA's) general policies and procedures, not on our review of the specific products on asbestos in brakes. With regard to the second, third, and fourth recommendations, EPA identified steps that it already has taken, such as more fully documenting the agency's process guidance, making guidance available to the public on the agency's Web site, and having a centralized approach and database on the development of communication materials. We recognized in our conclusions and recommendations that EPA (and OSHA) were already taking steps that addressed some elements of our recommendations. However, as discussed in our conclusions, we believe that more could be done to enhance the transparency and accountability of the agencies' processes. EPA and OSHA also provided technical comments and suggestions that we incorporated as appropriate. OMB did not provide comments.

As we agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 30 days from the date of this letter. We will then send copies of this report to the Secretary of Labor, the Administrator of EPA, the Director of OMB, and appropriate congressional committees. We will also provide copies to others upon request. In addition, the report will be available at no charge on the GAO Web site at http://www.gao.gov.

If you or your staff members have any questions about this report, please contact me at (202) 512-6806 or sciremj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix VI.



Mathew J. Scire
Director
Strategic Issues

Appendix I: Objectives, Scope, and Methodology

Our objectives for this report were to

- describe the processes that the Department of Labor's (DOL) Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency's (EPA) Office of Prevention, Pesticides, and Toxic Substances (OPPTS) used to initiate, develop, review, and disseminate updated communication products on exposure to asbestos in automotive brakes and clutches, identify how long the processes took, and assess the extent to which the agencies followed applicable policies and procedures;
- describe the general policies and procedures that OSHA and OPPTS have for the initiation, development, review, and dissemination of communication products; and
- compare the agencies' policies and procedures for communication products with those applicable to the initiation, development, review, and dissemination of rules, and describe what might be the effects of 2007 administration initiatives regarding guidance documents.

To address the first objective, we obtained and analyzed information on the preparation of the OSHA and OPPTS products on asbestos in automotive brakes and clutches. We asked agency officials to provide a chronology and description of events that led to the initiation, development, review/clearance, and eventual dissemination of the products. We also asked the officials to provide any documentation, to the extent available, that would corroborate the events and processes as described in their respective chronologies. We compared the policies and procedures to identify the steps for (1) initiating the development of the asbestos communication products, (2) developing, or drafting, the asbestos communication products, (3) reviewing—internally, externally, or both—the asbestos communication products, and (4) disseminating the asbestos communication products. For some of the steps, the processes are informal, and therefore, difficult to document. Therefore, because the information was based, in large part, on testimonial evidence, we prepared statements of facts on our review at each agency and provided these statements to the agencies for vetting and confirmation of the information. The agency officials verified the information, and provided comments and technical corrections that we incorporated, as appropriate.

To address the second objective, we reviewed the agencies' applicable internal policies, procedures, and guidance documents governing the

preparation of communication products.[1] We reviewed relevant and available primary documents, such as the agencies' Information Quality guidelines, EPA-specific guidance on the development and review of communication products, and OSHA directives governing the development and review of guidance documents, in particular, Safety and Health Information Bulletins (SHIB). Further, we interviewed agency officials at DOL/OSHA and EPA/OPPTS who are involved in the development and review of their respective agencies' communication products, as well as officials at the Office of Management and Budget (OMB) to obtain information on interagency reviews of communication products. We compared the policies and procedures to identify the steps for (1) initiating, (2) developing or drafting, (3) reviewing (internally and externally), and (4) disseminating a communication product. For some of the steps, the processes are informal and not documented. Therefore, because some of the key information to address our findings was based on testimonial evidence, we prepared statements of facts on our review at each agency and provided these statements to the agencies for vetting and confirmation of the information. The agency officials verified the information, and provided comments and technical corrections that we incorporated, as appropriate.

To address the third objective, we again reviewed applicable documents and interviewed officials at the three agencies to identify information on the similarities and differences between rulemaking and the processes used to develop and review communication products. We also solicited the views of agency officials regarding effects they anticipated from implementation of the amended executive order on regulatory review and planning and the OMB good guidance bulletin—both of which were promulgated in final form during the course of our review.

Our review was limited to applicable processes of OSHA and OPPTS, the two agencies responsible for preparing communication products on asbestos in automotive brakes, although some of the applicable processes were DOL- or EPA-wide. Our scope and methodology for the first two

[1]We found that there is no single term or definition used by the agencies to refer to general regulatory communication products. EPA tends to use the term communication products, and OSHA tends to refer to them as compliance assistance products or compliance assistance material. For consistency in this report, we generally use the term communication products, unless specifically referring to a particular agency, category of products, or both. Also, for purposes of consistency, we generally use the term processes to encompass the policies, procedures, and practices used by each agency to initiate, develop, review, and disseminate communication products.

objectives focused on the broad category of communication products at these two agencies, but did not encompass all nonrule regulatory or technical products that they produced. To illustrate the application of the agencies' processes for preparing such products, we performed a detailed examination of their asbestos communication products. While we initially had expected to compare the processes used in developing the two asbestos products with the processes used to prepare a sample of like products, we concluded that it would not be possible to identify a representative sample of issued products in order to do a comparative analysis that would be meaningful and generalizable to a larger population of products. Agency officials told us the timeline and process undertaken for one product could be quite different from the timelines for other products of that type.[2] Although our observations on the implementation of these processes are limited to OSHA and OPPTS and not generalizable to other parts of DOL and EPA, our review did encompass examination of DOL- and EPA-wide policies and procedures for communication products.

We conducted our review in Washington, D.C., from September 2006 through October 2007 in accordance with generally accepted government auditing standards.

[2]Further, EPA/OPPTS officials indicated that it would take up to 6 months to identify or develop a population of products classified by type from which a sample could be drawn.

Appendix II: Preparation of OSHA and OPPTS Communication Products on Asbestos in Automotive Brakes

The descriptions of the events in this appendix on the preparation of the OSHA and OPPTS communication products on asbestos in automotive brakes were provided by officials at OSHA and OPPTS. For some of these events, the agency officials were able to provide documentary evidence for corroboration. However, because agencies are not required to document their processes, much of this chronology is based on testimonial evidence obtained from agency officials during the course of our review.

Year	Month	Event
2000	December	The OSHA Seattle Regional Office reported on a media report revealing that a large number of employees and employers in the automotive industry mistakenly believed that the 1989 ban on asbestos in automotive products was still in effect. While the regional office suggested two options for informing the public—a local emphasis program (LEP) or an e-mail alert to industry groups—the OSHA national office decide to develop a Hazard Information Bulletin on asbestos in automotive products. National office decided that the LEP, e-mail alert, or both would inform only a select segment of the populations, and they wanted to inform the general public about this hazard.
2001	January	OSHA's national office decided to develop the bulletin.
2003	May	The Global Environment and Technology Foundation issued its *Asbestos Strategy Report* commissioned by EPA to develop approaches for asbestos oversight, outreach, and education approaches. Among the foundation's recommendations was the update of certain existing asbestos guidance—specifically on asbestos in buildings.
	June	Internal discussion took place within OSHA on the advisability of publishing the bulletin. OSHA officials decided that there were still unanswered questions about the prevalence of asbestos-containing automotive brakes and clutches that needed to be addressed before disseminating the bulletin.
	August	EPA received a challenge under the Information Quality Act to its *Guidance for Preventing Asbestos Disease Among Auto Mechanics*, commonly referred to as the Gold Book.
	October	As a result of the recommendations from the Global Environmental and Technology Foundation and the request for correction, EPA officials developed a "top 6 high priority" list of documents to update. The first document listed was the EPA Gold Book.
2004	April	OPPTS officials developed initial drafts of a brochure and shared this information at the staff level with other agencies, including OSHA.
	May	OSHA's Salt Lake City Technical Center received OPPTS' draft brochure for review. On a parallel track, OSHA officials recirculated the draft SHIB for further agency review.
	June	Review of OPPTS' document alerted OSHA officials to the lack of information/evidence concerning the extent of use of asbestos in brakes in the United States. OSHA and OPPTS officials agreed that this needed to be addressed and supported the issuance of a joint product.
	July	OPPTS and OSHA staff began collaboration to develop a joint product after OPPTS officials became aware that OSHA was also considering development of new materials regarding asbestos in brakes. OSHA suggested a number of technical corrections to OPPTS' version of the brochure with the understanding that those corrections needed to be made before OSHA could cosponsor the brochure.
	September	OPPTS placed a hold on the development of the asbestos brochure when the agency learned that OSHA was developing a bulletin that would address the same concerns.
2005	February	OPPTS informed OSHA that they no longer wanted to be part of a joint OSHA/OPPTS information bulletin.

Year	Month	Event
	April	Based on concerns about the use and prevalence of asbestos in brake friction products, OSHA contacted the U.S. Geological Survey to determine the exact amount of asbestos imported for use in the United States.[a]
	May/June	OSHA obtained a study that supported the dissemination of the information bulletin on asbestos exposure in brake and clutch repairs.[b] OSHA also obtained a study that cast doubt on the ability of asbestos brake dust to cause cancer.[c] This study was referred to OSHA's Salt Lake City Technical Center for its assessment on whether the bulletin should be published.
	July	OMB contacted OSHA inquiring about the status of the information bulletin on asbestos exposure in automotive brake and clutch repairs. OSHA's understanding was that OMB was following up on discussions with OPPTS on the need to revise the Gold Book on asbestos exposure in brake and clutch repair, since OPPTS was responding to a request for correction and OMB monitors agencies' responses to these requests. OMB officials were concerned since OPPTS officials had indicated that they would not be revising the Gold Book because OSHA was publishing an information bulletin.
	July	OSHA staff participated in a conference call with OMB staff. OMB was interested in the status of the information bulletin and its relationship to OPPTS' Gold Book revision. OSHA staff explained to OMB the background on the original OPPTS/OSHA informal agreement to issue a joint document and OPPTS' subsequent decision not to proceed. OPPTS officials had indicated that although their Gold Book was the subject of a request for correction, they would rather wait for OSHA to issue its bulletin that would include a statement about potential exposure to home mechanics. OSHA officials explained that the bulletin was primarily a reiteration of the OSHA asbestos standards and that there were still issues under review. The agency had not yet decided whether to issue the bulletin.
	October	OSHA officials decided there was no need to issue the bulletin since the document, in essence, reiterated the mandatory requirements found in Appendix F of the asbestos standards. Subsequent to this decision, OSHA's Salt Lake City Technical Center recommended to the agency that the bulletin should be issued. According to agency officials, the decision not to issue the SHIB was not reexamined in response to this recommendation because of the higher-priority demands related to the agency's response to Hurricane Katrina.
2006	February	OPPTS officials learned that OSHA officials decided not to proceed with the dissemination of the information bulletin. However, because OPPTS was committed to issuing an update of the Gold Book in response to the request for correction, it proceeded with the development and review of its brochure.
	May	A newspaper article raised concerns about the length of time and the lack of activity by OSHA and EPA in disseminating their communication products on asbestos exposure in automotive brake and clutch repairs.
	June	Once reviewed and approved within OPPTS, the draft brochure was also reviewed by management in other EPA offices and by other agencies with primary roles in the area of asbestos—OSHA, the National Institute for Occupational Safety and Health, and the Agency for Toxic Substances and Disease Registry. Additionally, although not formally required, OMB participated in a review of the draft brochure. OMB coordinated the interagency review and provided OPPTS officials with comments on their draft brochure from other federal agencies.
	June	OSHA officials reconsidered their prior decision not to publish the SHIB and began to recirculate their draft bulletin for review and final preparations for dissemination.
	July	OSHA's Assistant Secretary approved the dissemination of the asbestos SHIB on the agency's Web site.
	August	OMB officials informed OPPTS that it had completed its review of the revised draft brochure and that all the agencies were satisfied with the revisions. OPPTS proceeded to publish the draft brochure in the *Federal Register* for public comment.

Year	Month	Event
	August through September	After posting the bulletin on its Web site, a former OSHA Assistant Secretary contacted the agency and suggested that the agency might want to reconsider publication of the SHIB based on whether brake dust is a "substantial source for exposure" to asbestos. The agency reviewed the existing data and found that there was a need to warn workers in the brake and clutch repair industry about the potential risk to exposure, albeit at much lower levels. Agency staff drafted a revision to the SHIB to reflect this finding and to acknowledge the fact that there is a scientific debate on the relationship between brake dust and mesothelioma. However, OSHA officials decided against revision of the SHIB.
2007	February	OPPTS submitted its final draft of the brochure to OMB (because the brochure was a response to a 2003 request for correction).
	March	OPPTS published the final brochure.
	April	OPPTS released the final brochure in the *Federal Register*, and posted the document on the agency's Web site.

Source: GAO.

[a]The U.S. Geological Survey responded that of the 7,000 metric tons of asbestos imported into the United States in 2002, 18 percent was used for the manufacture of friction products that include automobile brakes and clutches.

[b]Kelly J. Butnor, Thomas A. Sport, and Victor Roggli, "Exposure to Brake Dust and Malignant Mesothelioma: A Study of 10 Cases with Mineral Fiber Analyses," *Annals of Occupational Hygiene*, vol. 47, no. 4, (2003).

[c]Dennis J. Pasternach et al., "Environmental and Occupational Health Hazards Associated With the Presence of Asbestos in Brake Linings and Pads (1900 to Present): A State-of-the-Art Review," *Journal of Toxicology and Environmental Health, Part B: Critical Reviews*, vol. 7, no. 1 (2004).

Appendix III: Asbestos-Automotive Brake and Clutch Repair Work

U.S. Department of Labor
Occupational Safety and Health Admistration
Directorate of Science, Technology & Medicine
Office of Science Technology Assessment

Asbestos-Automotive Brake and Clutch Repair Work

Safety and Health Information Bulletin

SHIB 07-26-06

Purpose

OSHA is issuing this Safety and Health Information Bulletin to inform employees and employers in the automotive brake repair industry of the precautions that must be taken when working with automotive brakes and clutches containing asbestos. In the case of do-it-yourselfers*, OSHA does not have jurisdiction, and OSHA does not require theses practices to be followed. To reduce the potential exposure to asbestos, EPA strongly recommends that all automotive brake and clutch repair work be done by professional auto mechanics. Although the use of asbestos in friction products is declining annually, it remains a substantial source of potential exposure. In addition, there is still potential exposure to asbestos contained in automotive brakes and clutches on older vehicles in need of service. Exposure to asbestos, if not properly controlled can cause mesothelioma, lung cancer, and asbestosis. Symptoms may not appear for years, even decades, after contact with asbestos fibers.[1]

Background

Many brakes and clutches used in new and recent model automobiles do not contain asbestos. However, it has not been totally eliminated. Some reports have indicated that many mechanics and employees in the automotive repair shops as well as do-it-yourselfers are unaware that asbestos may be present in both old and replacement brakes and clutches.

This Safety and Health Information Bulletin is **not** a standard or regulation, and it creates no new legal obligations. The Bulletin is advisory in nature, informational in content, and is intended to assist employers in providing a safe and healthful workplace. Pursuant to the *Occupational Safety and Health Act,* employers must comply with hazard-specific safety and health standards promulgated by OSHA or by a state with an OSHA-approved state plan. In addition, pursuant to Section 5(a)(1), the General Duty Clause of the Act, employers must provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm. Employers can be cited for violating the General Duty Clause if there is a recognized hazard and they do not take reasonable steps to prevent or abate the hazard. However, failure to implement any recommendations in this Safety and Health Information Bulletin is not, in itself, a violation of the General Duty Clause. Citations can only be based on standards, regulations, and the General Duty Clause.

OSHA's asbestos standard requires the use of controls and safe work practices when employees work with brake shoes and clutches that contain asbestos. These requirements are detailed in 29 CFR 1910.1001 and specifically 1910.1001(f)(3) and Appendix F of the standard - *Work Practices and Engineering Controls for Automotive Brake and Clutch Inspection, Disassembly, Repair and Assembly* (http://www.osha.gov/sltc/asbestos/index.html.). The requirements also are discussed in the Federal Register at 59 FR 40964, 40985-87 (August 10, 1994) and 60 FR 33983 (June 29,

[1] Asbestos in Brakes Exposure and Risk of Disease, *Richard A. Lemen, PhD, MSPH, American Journal of Industrial Medicine 45: 229-237 (2004)*

* Non-employees outside the automotive repair industry who typically repair or replace their own brakes at home. These individuals are not subject to the OSHA requirements in this Safety and Health Information Bulletin.

For more information about EPA's asbestos program, do-it-yourselfers may visit EPA's website at www.epa.gov/asbestos or you may call the asbestos ombudsman's hotline/clearing house at 1-800-368-5888.

1995), as well as in OSHA Directive CPL 2-2.63 (revised).

OSHA Work Practices and Engineering Controls / OSHA Methods

All automotive brake and clutch repair facilities in the United States must comply with the OSHA asbestos standard. The proper use of engineering controls and work practices by properly trained employees working on automotive brakes and clutches will reduce their asbestos exposure below the permissible exposure level of 0.1 fiber per cubic centimeter of air, expressed as an 8-hour time-weighted average. Respiratory protection is not required during brake and clutch jobs where the control methods described below are used.

The two preferred OSHA methods to control asbestos dust during brake and clutch repair and service are: (1) a negative pressure enclosure/ HEPA (high-efficiency particulate air) vacuum system, and (2) the low pressure/wet cleaning method. The employer may use other methods (in conjunction with written procedures), to reduce exposure to levels equivalent to the negative pressure enclosure/HEPA vacuum system. For facilities that inspect, disassemble, reassemble and/ or repair five or fewer brake or clutch jobs per week, the wet method (described in paragraph D of Appendix F) can be used. The spray can/ solvent system method can be used as an alternative preferred method since it meets the equivalency criterion of the negative pressure enclosure/HEPA vacuum system method. Proper training is essential to ensure that employees use the methods in an effective manner.

Negative pressure enclosure/HEPA vacuum system method

The **negative pressure enclosure/HEPA vacuum system method** includes the following steps:

1. Enclose the brake or clutch assembly to prevent release of asbestos fibers into the employee's breathing zone during brake or clutch inspection, disassembly, repair, and reassembly operations. Use a transparent enclosure with impermeable sleeves.

2. Seal the enclosure tightly and thoroughly, inspect for leaks before beginning work.

3. The enclosure must be transparent so that the employee can clearly see the operation during brake or clutch inspection, disassembly, repair, and reassembly. The enclosure must also have impermeable sleeves to allow the employee to handle the brake and clutch assembly without penetrating the enclosure. The integrity of the sleeves and ports must be inspected before work begins.

4. Use a HEPA-filtered vacuum to keep the enclosure under negative pressure throughout the operation. Compressed air may be used to remove asbestos fibers or particles from the enclosure.

5. Use the HEPA-filtered vacuum first to loosen asbestos residue from the brake and clutch parts, then evacuate the loosened material from the enclosure into a vacuum filter.

6. When the vacuum filter is full, spray it with a fine mist of water before removing it. Immediately place it in a labeled, impermeable container and dispose of it as asbestos waste in accordance with federal, state, and local regulations and in compliance with 1910.1001(k)(6). The label must include the following information: "DANGER, CONTAINS ASBESTOS FIBERS, AVOID CREATING DUST, CANCER AND LUNG DISEASE HAZARD."

7. Immediately clean spills or releases of asbestos containing waste material from inside the enclosure or vacuum hose or filter. Properly dispose of waste as asbestos waste.

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Vacuum enclosure units should be large enough to fully enclose and remove the brake drum with enough room for hammering if the drums are difficult to remove because of wear, rust, or other reasons. Enclosure systems should have good interior lighting to illuminate the work area. The enclosure should completely enclose the brake drum, and form a tight seal behind the backing plate. Air guns should never be aimed towards the seal as this may reduce or eliminate its protective ability.

After cleaning with compressed air, the inside surfaces of the enclosure should be HEPA vacuumed to keep the inside clean and maintain visibility. Each brake component should be vacuumed as it is removed and the backing plate should be vacuumed after all the components have been removed. Rags used to wipe or clean used brake parts, should not be used to wipe hands. Mechanics should wear an appropriate NIOSH-approved respirator for asbestos when changing vacuum unit filters.

Low pressure/wet cleaning method

The **low pressure/wet cleaning method** involves the following steps:

1. Position a catch basin under the brake assembly to avoid splashes and spills.

2. Gently flood the brake assembly with water containing an organic solvent or wetting agent to prevent asbestos-containing brake dust from becoming airborne.

3. For drum brakes, ensure that the water solution flows between the brake drum and the brake support before removing the brake drum.

4. After removing the brake drum, thoroughly wet the wheel hub and back of the brake assembly with the water solution to suppress dust.

5. Thoroughly wash the brake support plate, brake shoes, and other parts before removing the old brake shoes.

6. If your system uses a filter, wet the filter when it becomes full and before removal, with a fine mist of water, and place immediately in an impermeable container. Label the container and dispose of it as asbestos waste.

7. Immediately clean spills of asbestos-containing liquid or asbestos-containing waste material using a HEPA-filtered vacuum and/or wet methods. Properly dispose of waste as asbestos waste.

8. Dry brushing is prohibited.

9. The brake washer solution should be changed regularly for maximum efficiency of the unit.

Wet method

For shops that perform infrequent brake work and clutch repair work, OSHA allows the use of a **wet method** as a "preferred" method. Therefore, in facilities in which five (5) or fewer brake "jobs" (five brake "jobs" are equivalent to five vehicles) or 5 clutches, or some combination totaling 5, are inspected, disassembled, reassembled and/or repaired per week, the mechanic/technician may control potential asbestos exposure through the use of a spray bottle, hose nozzle, or any implement capable of delivering a fine mist of water or amended water at low pressure to wet down the drum or clutch housing before removing it and to control asbestos fiber release during subsequent activities. However, any wastewater generated must be captured and properly disposed of without allowing it to dry on any surfaces. OSHA anticipates that using a spray bottle will adequately control dust without generating a large volume of wastewater.

The wet method requires the following steps:

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1. Brake and clutch parts must be wetted with water or amended water before taking any other action.

2. Wipe the brake and clutch parts clean with a cloth.

3. Place contaminated cloth into an impermeable, properly labeled container, and then dispose of it as asbestos waste. Alternatively, the cloth can be laundered to prevent the release of asbestos fibers in excess of 0.1 fiber per cubic centimeter of air, expressed as an 8-hour time-weighted average.

4. Any spilled water or amended water or asbestos-containing waste material must be cleaned immediately with a cloth or HEPA-filtered vacuum and not allowed to dry.

5. Do not dry brush.

The simplicity of the wet control does not eliminate the need for correct work practices. For example, holding the spray nozzle too close to the brake surface may cause asbestos fibers to become airborne. Brake components should be sprayed to saturate the parts as they are removed from the assembly.

Equivalent methods

Like the preferred methods, an equivalent method must include a detailed description of the practices that must be followed when the method is used. An employer who uses such a method must have a written description of the method that contains sufficient detail that the method can be reproduced. The employer must provide information demonstrating that the exposures resulting from an equivalent method are equal to or less than exposures from the negative pressure enclosure/HEPA vacuum system method. For purposes of equivalency, employee exposures must not exceed 0.016 f/cc, as measured by the OSHA reference method and averaged over at least 18 personal samples.

The following method, **spray can/solvent system**, may be used as an "equivalent" method. The spray can/solvent system may be used when proper work practices are followed. At a minimum, the spray can/solvent system method must follow detailed written procedures including the following:

1. Wet the brake and clutch parts with the spray can/solvent before taking any other action.

2. Wipe the brake and clutch parts clean with a cloth.

3. Place contaminated cloth into an impermeable, properly labeled container, and then dispose of it as asbestos waste. Alternatively, the cloth can be laundered to prevent the release of asbestos fibers in excess of 0.1 fiber per cubic centimeter of air, expressed as an 8-hour time-weighted average.

4. Immediately clean any spilled solvent or dispersed asbestos with a cloth or HEPA vacuum.

5. Dry brushing during spray can/solvent system operations is prohibited.

The solvents typically used in brake and clutch work are hazardous chemicals, which requires the employer to comply with the Hazard Communication standard. If the solvents are flammable, appropriate precautions against fire and explosion must be taken.

Best Practices

Mechanics should assume that all brakes have asbestos-type shoes. Worn nonasbestos-type brake shoes cannot be readily distinguished from asbestos-type shoes. If a mechanic assumes incorrectly that a shoe is a nonasbestos-type and fails to utilize brake dust control procedures, increased asbestos exposure may result.

Mechanics must be trained in the correct and most effective way to use the control system selected by

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the facility manager or owner. The danger of increased exposure to asbestos as the result of improper work practices should be explained. Examples of improper work practice include: directing an air nozzle at an enclosure seal, placing the nozzle of a spray mist too close to the work surface, not placing the vacuum nozzle close enough to the contaminated surface, turning on the vacuum pumps before positioning the vacuum enclosure over the wheel and leaving them on when removing the enclosure, and splashing or spilling contaminated solutions on the floor. A control system must always be used and consistent work procedures are essential.

Use pre-ground, ready-to-install parts when possible. If asbestos-containing friction materials must be drilled, grooved, cut, beveled, or lathe-turned, low speeds should always be used to keep down the amount of dust created. All machinery should have an adequate, HEPA equipped local exhaust dust collection system to prevent asbestos exposures and shop contamination. Immediately clean spills of brake dust or contaminated solutions by HEPA vacuuming or wet mopping.

A regular maintenance program for the system used to control brake dust is essential. Maintenance should include checking and replacing seals, nozzles, other hardware, contaminated filters and solutions. Any deficiencies such as ineffective seals, or air nozzles should be repaired. Disposal of asbestos contaminated material, whether it is filters or solutions, must be in accordance with federal and state regulations and in compliance with 1910.1001(k)(6). Periodic cleaning will help reduce the possibility of asbestos contamination of workbenches, floors, etc. Mechanics should perform brake and clutch work in an area isolated from other work areas. Signs should be posted informing employees not to eat, drink, or smoke in the brake and clutch work area. Asbestos and other potentially toxic materials can be ingested or inhaled during these activities.

Personal hygiene, such as frequent hand washing with soap or detergent, should be stressed. Changing from soiled work clothes into clean clothes before leaving work provides additional protection against bringing asbestos into the home environment. A laundry service with facilities for cleaning asbestos contaminated clothing must be provided for any asbestos-contaminated work clothes.

Conclusion

Engineering controls and good work practices must be implemented throughout the process of performing brake and clutch inspection, disassembly, repair, and assembly. The four types of control systems or methods described here can effectively reduce employees' asbestos exposure below the OSHA permissible exposure level.

Information about job hazards must be disseminated through a training program that describes how to do properly perform a task, how each work practice reduces potential exposure, and how employees can benefit from these practices. No matter, which control system, is used, employees must be trained in how to properly use it. Employees (and do-it-yourselfers who choose not to have brake and clutch work conducted by professional mechanics) who can recognize and control hazards are better equipped to protect themselves from asbestos exposure. Training and work practices should be frequently reinforced.

Business owners who are concerned about the cost of professional help can contact the OSHA Consultation Project Office in their state for free consultation service. Priority is given to businesses with fewer than 250 employees at a worksite, with further consideration given to the severity of the worksite problem. The Consultation Program can help the employer evaluate and prevent hazardous conditions in the workplace that can cause injuries and illness.

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Source: OSHA.

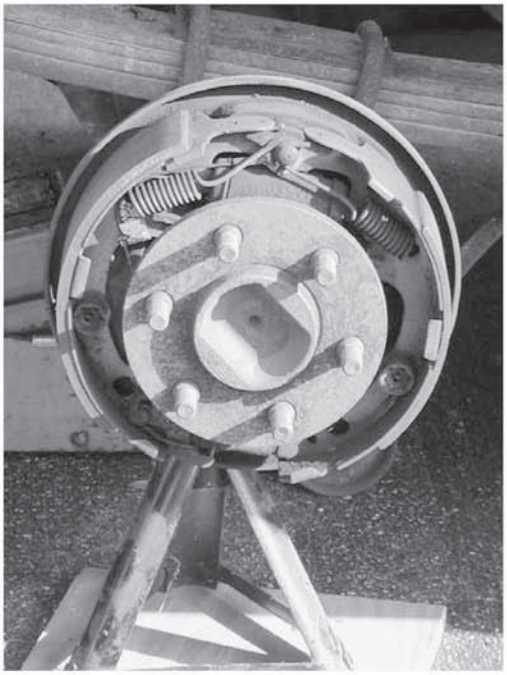
Appendix IV: Current Best Practices for Preventing Asbestos Exposure Among Brake and Clutch Repair Workers

Page 1

EPA
United States
Environmental Protection
Agency

Current Best Practices For

Preventing Asbestos Exposure Among Brake and Clutch Repair Workers



March 2007 EPA-747-F-04-004

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Who can this information help?

This information can help professional automotive technicians and home mechanics who repair and replace brakes and clutches. By law, most professional automotive shops must follow the Occupational Safety and Health Administration's (OSHA) regulations at 29 CFR 1910.1001, specifically paragraph (f)(3) and Appendix F. These are mandatory measures that employers must implement for automotive brake and clutch inspection, disassembly, repair, and assembly operations. State and local governments with employees who perform brake and clutch work in states without OSHA-approved state plans must follow the identical regulations found under the EPA Asbestos Worker Protection Rule (Subpart G of 40 CFR 763).

While home mechanics are not required to follow the OSHA work practices (or the identical requirements under the EPA Asbestos Worker Protection Rule), by using these practices home mechanics can minimize potential exposure to asbestos if it is present and thereby reduce their potential risk of developing any asbestos-related diseases.

What is asbestos and how can it cause health problems?

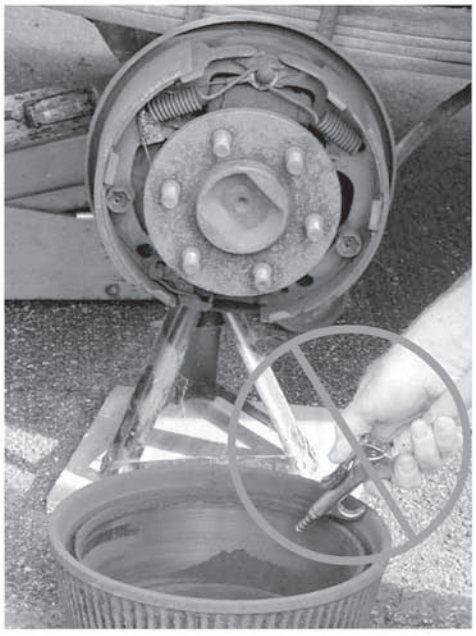
Asbestos, a naturally occurring mineral fiber that is highly heat resistant, can cause serious health problems when inhaled into the lungs. If products containing asbestos are disturbed, thin, lightweight asbestos fibers can be released into the air. Persons breathing the air may then inhale asbestos fibers. Continued exposure can increase the amount of fibers deposited in the lung. Fibers embedded in the lung tissue over time may result in lung diseases such as asbestosis, lung cancer, or mesothelioma. It can take from 10 to 40 years or more for symptoms of an asbestos-related condition to appear. Smoking increases the risk of developing illness from asbestos exposure.

For more information on the health effects of asbestos exposure, visit the Agency for Toxic Substances and Disease Registry (ATSDR) at http://www.atsdr.cdc.gov/asbestos/index.html.

Why should mechanics be concerned about asbestos exposure?

Because some, but not all, automotive brakes and clutches available or in use today may contain asbestos, professional automotive technicians and home mechanics who repair and replace brakes and clutches may be exposed to asbestos dust. Brake and clutch dust can be seen when a brake disk, drum, clutch cover, or the wheel is removed from a car, truck, or other equipment. There are also many small dust particles that cannot be seen with the eye. If the brakes contain asbestos, the dust may contain asbestos fibers, which could be inhaled.

Do not blow dust from brakes and clutches!



Using compressed air, a brush (wet or dry), or a dry rag to clean brake assemblages has the potential to expose you to asbestos fibers.

How do I know if I have asbestos brake or clutch components?

You cannot tell whether brake or clutch components contain asbestos simply by looking at them. For newer vehicles and parts, auto manufacturers, auto parts retailers and packaging information, such as labels or Material Safety Data Sheets, may be able to tell you whether or not your brake or clutch components contain asbestos. For older vehicles, or vehicles that have had brakes replaced, you may not be able to easily find out if the brake or clutch components contain asbestos.

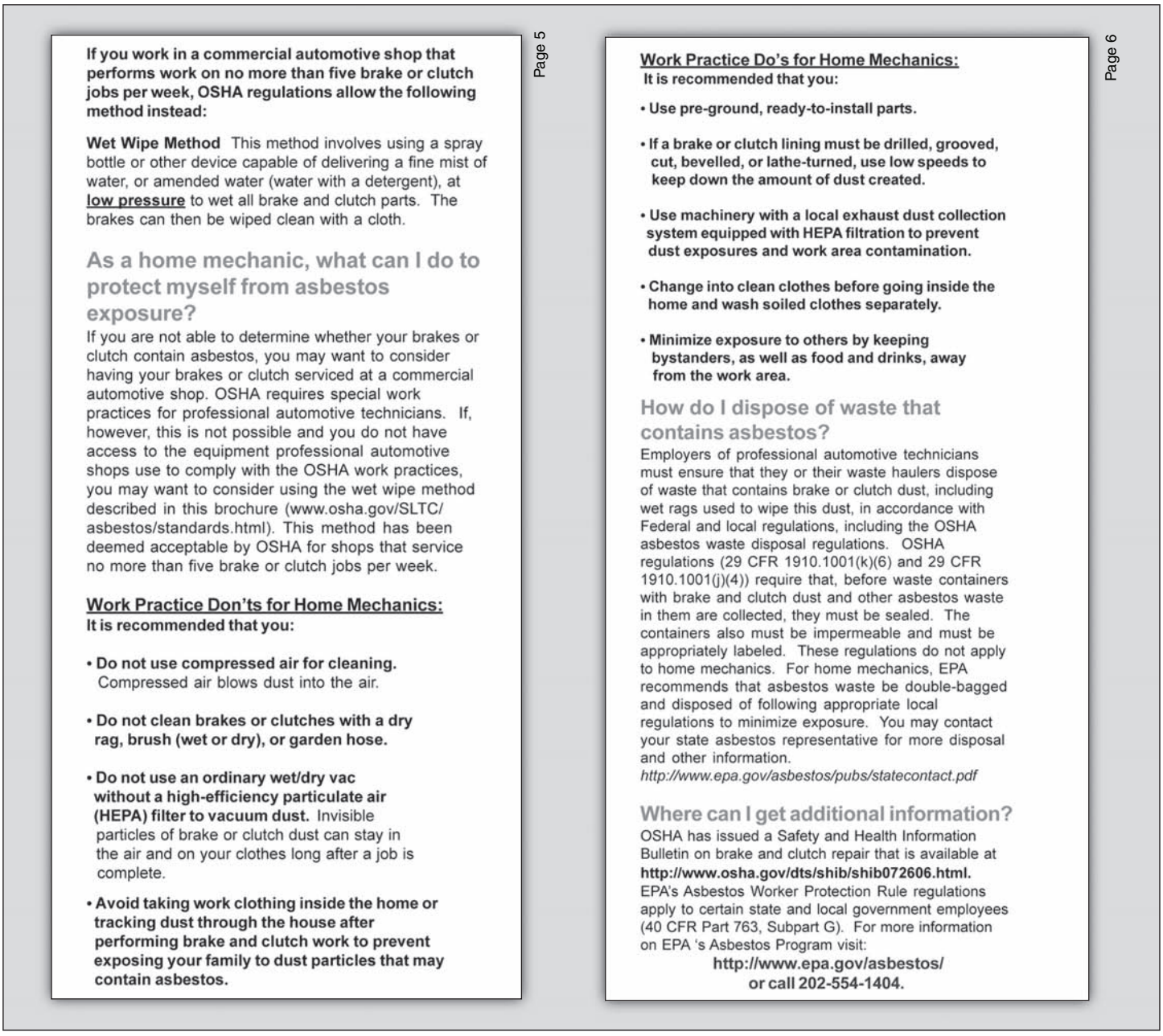
As a best practice, OSHA states that mechanics should assume that all brakes have asbestos-type shoes. Worn non-asbestos-type brake shoes cannot be readily distinguished from asbestos-type shoes. If a mechanic assumes incorrectly that a shoe is a non-asbestos type and fails to utilize brake dust control procedures, increased asbestos exposure may result.

As a professional automotive technician, what work practices must I follow to reduce potential exposures to asbestos?

If you work in a commercial automotive shop that performs work on more than five brake or clutch jobs per week, OSHA regulations require the use of one of the following work practices or an equivalent method such as the spray can/solvent system.

Negative-Pressure Enclosure/HEPA Vacuum System Method This type of enclosure and vacuum system has a special box with clear plastic walls or windows, which fits tightly around a brake or clutch assembly to prevent asbestos exposure.

Low Pressure/Wet Cleaning Method This specially designed low-pressure spray equipment wets down the brake assembly and catches the runoff in a special basin to prevent airborne brake dust from spreading in the work area. (over)



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If you work in a commercial automotive shop that performs work on no more than five brake or clutch jobs per week, OSHA regulations allow the following method instead:

Wet Wipe Method This method involves using a spray bottle or other device capable of delivering a fine mist of water, or amended water (water with a detergent), at **low pressure** to wet all brake and clutch parts. The brakes can then be wiped clean with a cloth.

As a home mechanic, what can I do to protect myself from asbestos exposure?

If you are not able to determine whether your brakes or clutch contain asbestos, you may want to consider having your brakes or clutch serviced at a commercial automotive shop. OSHA requires special work practices for professional automotive technicians. If, however, this is not possible and you do not have access to the equipment professional automotive shops use to comply with the OSHA work practices, you may want to consider using the wet wipe method described in this brochure (www.osha.gov/SLTC/asbestos/standards.html). This method has been deemed acceptable by OSHA for shops that service no more than five brake or clutch jobs per week.

Work Practice Don'ts for Home Mechanics:

It is recommended that you:

- **Do not use compressed air for cleaning.** Compressed air blows dust into the air.
- **Do not clean brakes or clutches with a dry rag, brush (wet or dry), or garden hose.**
- **Do not use an ordinary wet/dry vac without a high-efficiency particulate air (HEPA) filter to vacuum dust.** Invisible particles of brake or clutch dust can stay in the air and on your clothes long after a job is complete.
- **Avoid taking work clothing inside the home or tracking dust through the house after performing brake and clutch work to prevent exposing your family to dust particles that may contain asbestos.**

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Work Practice Do's for Home Mechanics:

It is recommended that you:

- **Use pre-ground, ready-to-install parts.**
- **If a brake or clutch lining must be drilled, grooved, cut, bevelled, or lathe-turned, use low speeds to keep down the amount of dust created.**
- **Use machinery with a local exhaust dust collection system equipped with HEPA filtration to prevent dust exposures and work area contamination.**
- **Change into clean clothes before going inside the home and wash soiled clothes separately.**
- **Minimize exposure to others by keeping bystanders, as well as food and drinks, away from the work area.**

How do I dispose of waste that contains asbestos?

Employers of professional automotive technicians must ensure that they or their waste haulers dispose of waste that contains brake or clutch dust, including wet rags used to wipe this dust, in accordance with Federal and local regulations, including the OSHA asbestos waste disposal regulations. OSHA regulations (29 CFR 1910.1001(k)(6) and 29 CFR 1910.1001(j)(4)) require that, before waste containers with brake and clutch dust and other asbestos waste in them are collected, they must be sealed. The containers also must be impermeable and must be appropriately labeled. These regulations do not apply to home mechanics. For home mechanics, EPA recommends that asbestos waste be double-bagged and disposed of following appropriate local regulations to minimize exposure. You may contact your state asbestos representative for more disposal and other information.
http://www.epa.gov/asbestos/pubs/statecontact.pdf

Where can I get additional information?

OSHA has issued a Safety and Health Information Bulletin on brake and clutch repair that is available at **http://www.osha.gov/dts/shib/shib072606.html.** EPA's Asbestos Worker Protection Rule regulations apply to certain state and local government employees (40 CFR Part 763, Subpart G). For more information on EPA 's Asbestos Program visit:

http://www.epa.gov/asbestos/
or call 202-554-1404.

Source: EPA.

Appendix V: Comments from the Environmental Protection Agency

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

March 19, 2008

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

Mathew Scire, Director
Strategic Issues
Government Accountability Office (GAO)

Dear Mr. Scire:

Thank you for providing us with an opportunity to review the final draft report entitled: "Health and Safety Information; EPA and OSHA Could Improve Their Processes for Preparing Communication Products." The report emphasizes that public communication is a valuable tool to use in fulfilling the mission of EPA and other agencies, such as the Occupational Safety and Health Administration (OSHA). EPA agrees with and endorses that view. Equally important and valid is the point by GAO that a formal, well-understood process for coordination and review of communication materials is important to ensure quality information products. We appreciate the opportunity to work with your staff in recent months to explain EPA's product development and review process, and we acknowledge the recommendations you have made to EPA. We sincerely appreciate the opportunity to allow our suggestions of technical clarity to inform your final report.

Generally speaking, communications products represent a broad category of materials and a fair amount of flexibility and discretion is necessary for their development to ensure the product meets the program's needs. There is no one template that can be used for every product, particularly during development at the programmatic level. In addition, the Agency has a longstanding process to ensure that products that go out to the public are clear and consistent. This process is managed by EPA's Office of Public Affairs (OPA). OPPTS diligently adheres to the OPA process. The brochure, "Current Best Practices for Preventing Asbestos Exposure Among Brake and Clutch Repair Workers," which is the focus of your report, followed the longstanding OPA process.

GAO's first recommendation suggests that "*...the Administrator of EPA should ensure that their key general process guidance for preparing communication products include, as appropriate, timeframes or benchmarks to help ensure that products that the agencies have determined are needed are developed, reviewed, and disseminated in a timely manner.*"

The Agency agrees that developing timely communication materials is important. However, there are times when the Agency should be allowed the flexibility to divert resources and adjust schedules, when necessary, from lower-priority projects to higher-priority projects while we also endeavor to meet internally established timeframes. We both note that the process for development and publication of the brakes brochure was lengthy. But equally important is that the necessary health and safety information relating to potential asbestos hazards associated

with brake and clutch repair was at all times publicly available. The timeframe associated with developing the brakes brochure was an anomaly, and may not be a useful standard to compare in other cases. In addition, we urge caution in comparing the processes and products of a single program office within EPA to the processes and products of an entire Agency such as OSHA.

GAO's second recommendation suggests that "*...the Administrator of EPA should take steps to ensure that their general policies and procedures for preparing communication products are fully documented. To the extent feasible, this should include identifying the applicable policies and procedures governing OMB/interagency coordination and reviews of such products, as well as any other key processes that the agencies believe are important to understanding how they prepare their products.*"

We agree with this recommendation and, in fact, have been taking steps to document more fully Agency actions as a result of the Office of Management and Budget "*Final Bulletin for Agency Good Guidance Practices.*" As the Agency has been implementing "Good Guidance," we discover that increased clarity of procedures and standardization of product development can increase efficiencies and accountability within EPA programs and in OPPTS in particular. OPPTS has initiated development of guidance on products developed within our office to help foster "Good Guidance" compliance and increased standardization and accountability for products even if they are non regulatory or do not need to comply with the Bulletin. Importantly, the overall Agency product review process managed by OPA is the Agency's principal means to ensure that all aspects of materials produced for the public are reviewed for communications value and effectiveness, policy coordination and conformity with various EPA requirements. Additionally, OPA maintains an inventory of public communication products that are under development or has reviewed. Information on this process is published on the EPA Website and is publicly available at: www.epa.gov/productreview/faqs.html.

GAO's third recommendation suggests that "*the Administrator of EPA should ensure that their agencies make public the key general process guidance for preparing communication products, including any updated in response to the previous objective.*"

As stated above, OPA's process for preparation and clearance of communication products is published on the EPA Web-site both on its intranet and Internet pages. It is rather detailed and well-known to the communications staffs in Program and Regional Offices, and is available to the general public via the aforementioned web-site.

GAO's fourth recommendation suggests that "*the Administrator of EPA should consider adopting for OPPTS—and other EPA offices, as appropriate—a centralized database or databases to more completely account for the inventory of communication materials disseminated by the agency.*"

We agree with your fourth suggestion and in fact, in OPPTS we have existing management strategies to ensure communication materials have a documented process to ensure timeliness, appropriate management oversight, effectiveness and adherance to Executive Orders and other Agency requirements. Also, the Agency does have a centralized approach to developing communication materials, as well as a database of communication materials planned for dissemination by the Agency. This system is called the Product Review Tracking System

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(PROTRAC). Individual Program Offices enter planned communications projects into the database and manage them through the clearance process, which overseen by OPA.

Again, we appreciate the opportunity to review the final draft of this report. Should you have any further questions, please contact Beverly Fletcher, our GAO Liaison for this report, at 202-564-5717.

Sincerely,

Jim Jones
Deputy Assistant Administrator

Appendix VI: GAO Contact and Staff Acknowledgments

GAO Contact

Mathew J. Scire, (202) 512-6806 or sciremj@gao.gov

Acknowledgments

In addition to the contact named above, key contributors to this report were Tim Bober, Assistant Director; Andrea Levine; Shawn Mongin; Joseph Santiago; John Sauter; and Crystal Williams. In addition, Tom Beall, Robert Cramer, Donna Miller, Michael Volpe, and Greg Wilmoth provided key assistance.

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