

**Supporting Statement for a Request for OMB Review under  
The Paperwork Reduction Act**

**1. IDENTIFICATION OF THE INFORMATION COLLECTION**

**1(a) Title and Number of the Information Collection**

**TITLE:**           **Reporting and Recordkeeping for Asbestos Abatement Worker Protection**

**EPA ICR No.:**       **1246.10**           **OMB Control No.:**   **2070-0072**

**1(b) Short Characterization**

The Asbestos Worker Protection Rule (WPR) (40 CFR 763, Subpart G; see Attachment C) establishes workplace standards for the protection of State and local government employees who work with asbestos and who are not covered by an OSHA-approved State Plan. Currently, employees in 26 States, the District of Columbia and certain other U.S. territories who perform construction work, including building construction, renovation, demolition, and maintenance activities, and employees who perform brake and clutch repair work are covered by the WPR. The WPR incorporates, by reference, the OSHA Construction Industry Standard for Asbestos (29 CFR 1926.1101) and the General Industry Standard for Asbestos (29 CFR 1910.1001). As a result, the WPR requires State and local government employers to use engineering controls and appropriate work practices to control the release of asbestos fibers. Covered employers must also monitor employee exposure to asbestos and provide employees with personal protective equipment, training, and medical surveillance to reduce the risk of asbestos exposure. Exposure monitoring records must be maintained for 30 years, medical surveillance records for the duration of employment of the affected employees plus 30 years, and training records for the duration of employment plus 1 year. Employers must also establish written respiratory protection programs and maintain procedures and records of respirator fit tests for 1 year.

**2. NEED FOR AND USE OF THE COLLECTION**

**2(a) Need/Authority for the Collection**

The records maintained as a result of this information collection will provide the Environmental Protection Agency (EPA) with the data necessary for effective enforcement of the WPR, as authorized under Sections 6 and 8(a) of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2605, 2607(a)). (See Attachments A and B.)

**2(b) Use/Users of the Data**

The purpose of the WPR is to provide protection from adverse health effects associated with occupational exposure to asbestos for State and local government employees who are

engaged in asbestos-related construction, custodial, and brake and clutch repair activities in States that do not have OSHA-approved State plans. Like the OSHA Standards, the rule requires employers (in this case, State and local governments) to monitor employee exposure to asbestos, to take action to reduce exposures to levels below the permissible exposure limits (PELs), to provide employees with personal protective equipment, to monitor employee health, to train employees about the hazards of asbestos and how to minimize those hazards, and to provide employees with information about exposures to asbestos and the associated health effects.

The recordkeeping provisions contained in the rule are designed to ensure that employers are complying with applicable standards and that protection of employees exposed to asbestos is provided to the full extent required. EPA's compliance officers examine the records for this purpose when conducting inspections. Additionally, the data contained in exposure measurements records are useful to employers in pinpointing areas of their operations that may require additional efforts to reduce exposure. If these data were not collected and maintained, compliance monitoring would be very difficult for EPA, and failures of asbestos-control measures could easily go undetected by the employer.

Records of medical examinations are used by physicians who must periodically examine employees exposed to asbestos. Without records of previous medical examinations, the physician may not be able to determine whether an employee has suffered an adverse health effect since his or her last examination. Furthermore, when symptoms of organic damage appear, the physician often needs information regarding the patient's previous medical condition in order to make an accurate diagnosis of the new problem, its apparent cause, and the course of treatment required.

In addition, the data and information contained in the records required to be kept and maintained by the WPR may be used by EPA for the development of asbestos exposure assessments. Exposure data and medical surveillance information may be used for epidemiological and diagnostic investigations to determine, for example, dose-response relationships in diseases caused by asbestos exposure.

### **3. NON-DUPLICATION, CONSULTATIONS, AND OTHER COLLECTION CRITERIA**

#### **3(a) Non-Duplication**

EPA is not aware of any other laws or regulations that require the general compilation, maintenance, or provision of access to occupational exposure and medical records for State and local government workers in the 26 States, the District of Columbia and certain other U.S. territories without an OSHA-approved State plan. Currently, all private sector workers, as well as State and local government employees in the 24 States as well as Puerto Rico and the U.S. Virgin Islands that have OSHA-approved State plans, are protected by the OSHA regulations.

The rule uses the Office of Federal Register's incorporation-by-reference (IBR) approach to cross-reference the OSHA regulations in the EPA WPR. In addition to ensuring that all State and local government employees and private sector employees receive identical protection from occupational asbestos exposures under federal law, the use of IBR also ensures that this identical protection is maintained in the future.

This approach eliminates potential confusion by ensuring that the regulated community only has to learn and comply with the OSHA standards, and ensures that the same level of protection for all persons who work with asbestos-containing material (ACM), whether those persons are employed by the private sector or by a State or local government.

### **3(b) Public Notice Required Prior to ICR Submission to OMB**

In proposing to renew this ICR, EPA provided a 60-day public notice and comment period that ended on April 2, 2007 (72 FR 4705, February 1, 2007). EPA received no comments during the comment period.

### **3(c) Consultations**

The data collection contemplated by this request was originally part of a proposed rule subject to notice and comment procedures. One of the eleven comments EPA received during that period on the proposal suggested that the annual training requirement for custodians, and the associated recordkeeping, was too burdensome. However, the respondent did not dispute EPA's estimate of the costs associated with this requirement.

The identical recordkeeping and reporting requirements as applied to the private sector and to States with OSHA-approved State plans have been subject to notice and comment as part of OSHA rulemaking efforts. EPA previously consulted with OSHA in August 2003 to discuss whether any comments had been received or any additional activity had taken place to determine changes in industry burden after the regulations were promulgated under 29 CFR 1910.1001 and 1926.1101. OSHA officials stated that they had not received additional comments from industry after these rules were promulgated.

Additionally, under 5 CFR 1320.8(d)(1), OMB requires agencies to consult with potential ICR respondents and data users about specific aspects of ICRs before submitting an ICR to OMB for review and approval. In accordance with this regulation, EPA submitted questions to representatives of five randomly chosen State governments that do not have OSHA-approved State Plans. The individuals represented the States of Florida, Idaho, Massachusetts, Illinois and Wisconsin. The respondents were presented with the draft ICR supporting statement and an internet address to access the WPR ICR Federal Register notice and were asked the following:

1. Are the data collection and recordkeeping requirements [for the ICR] clear and concise?
2. Are you aware of other sources the Agency could use for the requested data?
3. Would you make electronic submissions?
4. Are the estimated burdens and costs accurate?
5. If we spoke to you before about this ICR, are your positions accurately reflected?

Additionally, EPA submitted questions in September 2006 to seven parties via e-mail. The individuals contacted are listed below. The potential respondents that EPA contacted included representatives of five randomly chosen State governments that do not have OSHA-approved State Plans and are therefore subject to the EPA Asbestos Worker Protection Rule. The individuals represented the States of Montana, Mississippi, North Dakota, Florida and Colorado. Additionally, EPA contacted the American Federation of State, County, and Municipal Employees, and the National Association of State Facilities Administrators. All seven of the individuals contacted were asked the above mentioned five questions regarding the ICR. All of the respondents were presented with the draft ICR supporting statement, which included updated wage rates and burden estimates. EPA received five responses from the seven entities contacted. Those responses are summarized below.

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Mr. Podolinsky is a state regulator with the Montana Department of Environmental Quality. When asked whether the data collection and recordkeeping requirements for the WPR were clear and concise, he answered that they appeared to be clear and concise. Mr. Podolinsky didn't discuss other sources where EPA could get the data required under the WPR, but did mention that his program would be interested in reviewing such data for compliance purposes if it involves a facility in Montana. He went on to answer that he would be interested in electronic submissions, if applicable. When asked if he thought the estimated burdens and costs were accurate he stated that he had not spent enough time reviewing the estimated burdens and costs to determine accuracy. This was the first time that Mr. Podolinsky was asked about the EPA WPR ICR, so the fifth question regarding whether his positions were accurately reflected was not applicable.

Mr. Podolinsky also provided additional feedback beyond the five questions posed to him. As far as he was aware, State and local public employees (city and county) in Montana are not allowed to conduct asbestos abatement activities because their position descriptions do not allow them to. He further stated that the State's Risk Management and Tort Defense Division does not allow state, county and city employees to conduct asbestos work. That said, he went on to discuss that he had in the past responded to complaints where public employees had inadvertently conducted asbestos abatement work because of a failure to inspect for asbestos prior to a renovation or demolition (as EPA, OSHA, and Montana State regulations require). He also asked specifically what purpose the asbestos WPR had if the Federal OSHA regulations are in place. The State of Montana does not have an OSHA approved Occupational Safety and Health Plan. Therefore, although private employees are covered by the applicable OSHA regulations, State and local employees are not covered. The specific purpose of the EPA WPR is to close the regulatory gap to protect those employees. No changes to the ICR supporting statement need to be made based on Mr. Podolinsky's responses.

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Mr. Jackson, a State regulator with the Mississippi DEQ, stated that the data collection and recordkeeping requirements related to the ICR are clear and concise. When asked if he was aware of any other sources the Agency could use for the requested data relating to the ICR, he said no. Mr. Jackson stated that he would be interested in electronic submissions. When asked if the estimated burdens and costs for the ICR were accurate, the respondent stated that he was not able to determine if the estimates were accurate. This was the first time that Mr. Jackson was asked about the EPA WPR ICR, so the fifth question regarding whether his positions were accurately reflected was not applicable. Based on Mr. Jackson's responses, no changes were needed to the ICR supporting statement.

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Mr. Johannes, an Industrial Hygienist for the Air Pollution Control Division of the Colorado Department of Public Health and Environment, stated that the data collection and recordkeeping requirements related to the ICR are clear and concise. Mr. Johannes suggested the EPA could use school districts, especially larger ones, as a source for data collected under the current ICR. EPA disagrees that school districts are a source for the information collected under the asbestos WPR ICR. EPA believes that Mr. Johannes misunderstood the posed question to mean what other sources EPA could consult with regarding the burden of the current ICR, not if another data source was available, making the requirements of the WPR ICR duplicative. When asked whether he would be interested in electronic submissions, he stated yes, but only if such requirements existed. Mr. Johannes said his division was unable to adequately determine if the burdens and costs were accurate. The respondent had not been consulted with before regarding the WPR ICR. Based on the responses from Mr. Johannes, no changes were needed to the ICR supporting statement.

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Mr. August of the American Federation of State, County, and Municipal Employees, an established union for State, County, and municipal employees, found the data collection and recordkeeping requirements related to the ICR to be clear and concise. When asked whether he was aware of other sources the Agency could use for the data requested under the ICR, he said no. When asked about whether he would make electronic submission, he said yes, to the extent possible. When Mr. August was asked whether estimated burdens and costs for the ICR were accurate, he responded the he did not have additional information to improve the accuracy of the cost estimates provided by EPA in the draft ICR supporting statement. Mr. August was not consulted on the previous version of the ICR.

Mr. August also noted that in the draft ICR supporting statement EPA had indicated that 27 States are covered by the EPA WPR. He correctly clarifies that only 26 States are covered by the WPR since 24 States, a commonwealth and a territory (Puerto Rico and the U.S. Virgin Islands) have federally approved OSHA State plans which cover state and local employees. The draft ICR supporting statement was amended to clarify that 26 states, the District of Columbia and certain other U.S. territories are currently covered by the EPA WPR.

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Ms. Stone is the Association Manager for the National Association of State Facilities Administrators. EPA contacted Ms. Stone's organization believing they would be an appropriate entity to contact regarding the EPA WPR based on the membership of the association. However, Ms. Stone's organization stated it is unable to provide comment on the ICR based on its unfamiliarity with the WPR.

### **3(d) Effects of Less Frequent Collection**

The information collection frequencies specified by this rule are the minimum EPA considers necessary to ensure that the health of public employees engaged in asbestos abatement activities is adequately monitored. Initial exposure monitoring must be performed for most projects covered by this rule, but the employer will be able to rely on those results for approximately three years when performing similar projects. All employees covered by this rule must receive training on an annual basis. Most of these employees must also receive annual medical exams. These requirements are necessary to ensure that the employees are being adequately protected from asbestos hazards.

### **3(e) General Guidelines**

Information collected as a result of this request does not violate any of the guidelines imposed by 5 CFR 1320.6. The requirement that records for medical surveillance and exposure monitoring be retained for more than 3 years is permissible under a provision contained in 5 CFR

1320.6 that expressly exempts the retention of health and medical records from limitations otherwise imposed by the regulation.

**3(f) Confidentiality**

The Agency has instituted procedures to avoid the inappropriate release of confidential information as specified by 5 CFR 1320.8(b)(3)(v). The confidentiality of collected information will be maintained pursuant to the provisions of the Toxic Substances Control Act, 15 U.S.C. 2613, the Privacy Act of 1974 and OMB Circular A-108.

**3(g) Sensitive Questions**

The rule requires employers to allow EPA access to medical records upon request. EPA primarily intends to use this information to determine whether the employer has complied with the medical surveillance requirements of the rule, although EPA may also use this information in epidemiological and diagnostic investigations. EPA will treat this information as confidential and exempt from disclosure under the Freedom of Information Act pursuant to 40 CFR 2.119(b).

**4. THE RESPONDENTS AND THE INFORMATION COLLECTED**

**4(a) Respondents/North American Industrial Classification System (NAICS) Codes**

Respondents for this information collection include States and local government employers in the 26 states, the District of Columbia and certain other U.S. territories that have employees engaged in asbestos-related construction, custodial, and brake and clutch repair activities without OSHA-approved State plans. The following table is intended to help identify potentially affected categories and entities. This listing is not, however, intended to be exhaustive. The North American Industrial Classification System (NAICS) applies to certain entities. To determine whether a State or local government employer is subject to the WPR, carefully examine the applicability provisions in the regulation at 40 CFR 763.121.

Categories	NAICS Codes	Examples of Potentially Affected Entities
Public Administration	92	State or local government employers not subject to an OSHA-approved State Asbestos Plan or a State Asbestos Worker Protection Plan that EPA has determined is exempt from the requirements of the EPA WPR, AND whose employees work with or near asbestos-containing material.
Educational Services	61	School Districts (subset of local government employers identified above) whose employees work with or near asbestos-containing material.

**4(b) Respondent Activities and Information Requested**

The WPR contains several paperwork related requirements for State and local government employers in the 26 states, the District of Columbia and certain other U.S. territories covered by the WPR. The overall estimated potential economic impact of this rule is presented

in the document entitled “Final Asbestos Worker Protection Rule Economic Analysis,” which is available as a part of the public version of the official record for the rule. This ICR describes the information collection activities contained in the rule, along with the estimated burden and costs related to those information collection requirements.

This rule requires employers to collect, disseminate, and maintain information relating to employee asbestos exposures, respiratory protection, medical surveillance and training. The records maintained as a result of this information collection will provide EPA with the data necessary for effective enforcement of the WPR, as authorized under TSCA sections 6 and 8. These activities are described in more detail in this section.

#### 4(b)(i) Data Items

This rule requires State and local government employers to develop and maintain a written respiratory protection program if their employees use respirators. Employers must provide information and guidance on the selection, use, and care of respirators, give annual fit tests, and maintain records of fit tests for one year. Fit-testing record summaries must include the following information:

- Name or identification of the employee tested;
- Type of fit test performed;
- Specific make, model, style, and size of respirator tested;
- Date of test; and
- The test results.

The rule requires an exposure assessment to determine accurately the airborne concentrations of asbestos to which employees are exposed. Employers can meet this requirement through objective data that demonstrate that the product or material containing the asbestos cannot release airborne fibers in concentrations exceeding the permissible exposure limits (PELs), historical monitoring data from similar projects that indicates that the PELs will not be exceeded, or initial monitoring results that demonstrate that employee exposures are below the PELs. However, employers must continue periodic exposure monitoring for employees who work in areas where exposures exceed or can reasonably be expected to exceed the PELs. Employers may forgo periodic monitoring if affected employees are equipped with supplied-air respirators, and EPA assumes that employers will choose to provide supplied-air respirators in these instances.

Employers who use objective data to demonstrate that the PELs will not be exceeded are required to maintain records for the duration of the employer’s reliance upon such data. The records must include the following information:

- The product qualifying for exemption;
- The source of the objective data;
- The testing protocol, results of testing, and/or analysis of the material for asbestos release;
- A description of the operation exempted and how the data support the exemption; and



- Other data relevant to the operations, materials, processing or employee exposures covered by the exemption.

Employers must notify all affected employees of the monitoring results, and they must notify individual employees of monitoring results representing their personal exposures. For all measurements taken to monitor employee exposure to asbestos, the employer must maintain records of each measurement for a period of 30 years. Exposure monitoring records must be made available, upon request, to the affected employees. The records must include the following information for each exposure measurement:

- The date of measurement;
- The operation involving exposure to asbestos that is being monitored;
- Sampling and analytical methods used and evidence of their accuracy;
- Number, duration, and results of samples taken;
- Type of protective devices worn, if any; and
- Name, social security number, and exposure of the employees whose exposures are represented.

The rule requires employers to institute a medical surveillance program for all employees who engage in asbestos removal, renovation, and maintenance projects, or who are exposed at or above a PEL for 30 or more days each year. For each employee subject to medical surveillance, the employer is required to maintain for the duration of employment plus 30 years records that contain the following information:

- The name and social security number of the employee;
- A copy of the employee's medical examination results, including the medical history, questionnaire responses, results of any tests, and physicians' recommendations;
- Physicians' written opinions;
- Any employee medical complaints related to exposure to asbestos; and
- A copy of the information provided to the physician.

The employer must provide a copy of the physician's written opinion to the employee within 30 days of his/her receipt of the opinion. In addition, medical surveillance records must be made available to the affected employee upon request.

The rule requires that a training program be instituted for all employees who are likely to be exposed above the PELs and for those employees who perform asbestos removal, renovation, maintenance or construction-related custodial tasks. Employees must be provided access to the training materials, including self-help smoking cessation information. In addition, each construction project must be supervised by a competent person, who must have, in most cases, additional training. Employers are required to maintain records of training for one year beyond the last date of the worker's employment.

Under, the rule, employers must presume that asbestos is present in thermal system insulation (TSI) and surfacing material installed in buildings built prior to 1981. Employers may rebut this presumption in two ways, through the results of a building inspection that meets the

requirements of the Asbestos Hazard Emergency Response Act (AHERA) regulations at 40 CFR 763.85, or by testing the material. Such records must be maintained for as long as they are relied upon to rebut the presumption.

Finally, the rule requires specific engineering control and work practice methods for each type of project. Employers are permitted to use alternative control methods if it is determined, in advance, that the alternative control method is adequate to reduce employee exposures below the PELs. For Class I projects, those that involve TSI, or surfacing material, an appropriately-qualified person must certify that the alternative control method will reduce employee exposures below the PELs and that the method will also prevent asbestos contamination beyond the regulated area where the project will be performed. For larger Class I projects, the employer who wishes to use alternative control methods must provide EPA with a copy of the evaluation and certification before the alternative control methods are used. EPA assumes that employers will choose to use listed control methods rather than alternatives in these instances.

#### 4(b)(ii) Respondent Activities

This section lists the major activities required of respondents, with specific steps necessary to fulfill all the conditions of the major activity. Respondents must:

- A. Read and interpret regulations.
- B. Develop a respirator program.
  - Provide guidance on selection, use, and care of respirators.
  - Provide periodic fit tests and maintain records of fit tests for one year.
- C. Establish a monitoring program.
  - Provide objective data showing that the PELs will not be exceeded, or
    - Initially monitor employee exposures if objective data are not provided;
    - Periodically monitor employees whose exposures are expected to exceed a PEL, unless such employees are provided with supplied-air respirators;
    - Notify workers of the results of employee exposure monitoring; and
    - Maintain records of all exposure measurements for 30 years.
- D. Communicate hazards to employees.
  - Have a competent person evaluate risk associated with Class I and II work;
  - Notify employees engaged in asbestos-related work about the nature of the work prior to beginning the project; and
  - Notify other employees and building occupants about the occurrence of the asbestos-related work.

- E. Institute training programs.
  - Provide training for all employees engaged in asbestos removal, renovation, maintenance and construction-related custodial activities, as well as for all other employees exposed above the PELs;
  - Provide employees with access to information and training materials;
  - Maintain training records for one year.
  
- F. Institute a medical surveillance program.
  - Provide medical examinations for all employees who engage in asbestos removal, renovation, and maintenance projects, or who are exposed at or above a PEL for 30 or more days each year;
  - Provide information to the examining physician;
  - Obtain a completed medical questionnaire from the affected employee;
  - Obtain a written opinion from the examining physician; and
  - Maintain records of medical examinations for the duration of employment plus 30 years.
  
- G. Provide access to records at employee and/or EPA request.
  
- H. Institute training for competent persons.
  - Provide training for competent persons who will supervise construction projects.

**5. THE INFORMATION COLLECTED--AGENCY ACTIVITIES, COLLECTION METHODOLOGY, AND INFORMATION MANAGEMENT**

**5(a) Agency Activities**

In connection with this information request, the Agency may:

- (1) Perform inspections and respond to inquiries;
- (2) Investigate complaints and handle legal matters; and
- (3) Develop asbestos exposure assessments and epidemiological/diagnostic studies.

**5(b) Collection Methodology and Management**

Nothing in this information collection is derived from a survey or is form-related. EPA does not receive the data; therefore, EPA does not have any special data collection methodology and management. All information subject to this collection request is to be gathered and retained by the employer. The regulations specify the methods to be used for employee exposure monitoring and medical surveillance, as well as the subjects to be covered in training. In general, the rule identifies what data must be collected and maintained without specifying a particular collection method. Therefore, industry has the option of utilizing improved data collection and maintenance technology.

### **5(c) Small Entity Flexibility**

The only small entities potentially impacted by this rule are small government entities consisting of local governments (e.g., county, municipal, or towns) and school districts. The primary function of the statutory requirements of TSCA Section 6 is the protection of human health and the environment. Consequently, no specific provisions exist for easing the burden on small local government entities. The records required are as necessary for the protection of employees of small local governments as for other affected employees. However, State and local governments may use private contractors for the activities covered by the Asbestos Worker Protection Standard and, thus, avoid the recordkeeping burden themselves.

### **5(d) Collection Schedule**

Employers who use their own employees to conduct asbestos construction, custodial, or brake and clutch repair activities after the effective date of this rule will be subject to the information collection and recordkeeping requirements described above. Depending upon the type of project, some or all of the information collection and recordkeeping requirements must be complied with before the project commences. For example, in most instances, employers must provide and document training for their employees before they may participate in the asbestos-related activities covered by this rule.

## **6. ESTIMATING THE BURDEN AND COST OF THE COLLECTION**

Section 6(a) discusses respondent burden, and Section 6(b) addresses respondent costs. Section 6(c) reports EPA burdens and costs, and Sections 6(d), 6(e), and 6(f) summarize respondent burdens, discuss changes in burden estimates, and provide the *Federal Register* burden statement, respectively.

### **6(a) Estimating Respondent Burden**

The respondents for this rule are State and local governments in the 26 states, the District of Columbia and certain other U.S. territories that do not have OSHA-approved State plans. Tables 1 through 3 document EPA's calculations of the respondent burden. Table 1 provides EPA's estimates of the burden per response for each paperwork requirement. Table 2 provides EPA's estimates of the total number of responses for each requirement. Finally, Table 3 provides EPA's estimates of total respondent burden by multiplying the burden per response (Table 1) and the total number of responses (Table 2) for each requirement.

Respondent burden calculations for the previous ICR were based on 27 states. However, the Economic Analysis for the Worker Protection Rule originally excluded the District of Columbia and certain other territories because of a lack of data, and thus underestimated both the costs and benefits of the rule. At the time of the Worker Protection Rule, New Jersey did not yet have an approved OSHA state plan for public sector employees, and thus 27 states were subject to the Worker Protection Rule. New Jersey has since obtained an approved OSHA state plan for public sector employees. For this ICR, respondent burden calculations are still based on 27

entities. EPA feels that calculating the burden for 27 entities (26 states, and additional entity to represent the combined District of Columbia and territories) will correct the original underestimation for the District of Columbia and territories without state plans as well as compensate for the loss of one state subject to the WPR. The Economic Analysis noted that the District of Columbia and territories probably account for fewer affected buildings and workers than any of the other states. As a result of this change, the costs and benefits will no longer be underestimated; in fact, they may be slightly overestimated.

Typically, respondents will need three categories of labor to comply with the ICR requirements: supervisory, employee (e.g., asbestos abatement worker/custodial worker or brake and clutch repair mechanic), and clerical. In addition, exposure monitoring and developing a respiratory protection plan will require an industrial hygienist's time.

The estimated burden hours and cost estimates for this ICR are based on data and methods discussed in the Economic Analysis for this rule and on OSHA ICRs for its Construction and General Industry Standards for Asbestos (U.S. EPA, 2000; OSHA, 2000a,b).

**Table 1. Burden Per Response**

COLLECTION ACTIVITY	BURDEN PER RESPONSE			
	Clerical	Employees	Supervisory	Industrial Hygienist
<u>READ AND INTERPRET REGULATION</u>	-	-	3 hours [a]	-
<u>RESPIRATOR PROGRAM</u>				
-DEVELOP PROGRAM, Large Gov'ts	-	-	-	4 hours [b]
<u>-FIT TESTING</u>				
-Full-Face Respirators	-	15 minutes	15 minutes	-
-Half-Mask-Face Respirators	-	10 minutes	10 minutes	-
-MAINTAIN RECORDS FOR FIT TESTS	5 minutes	-	-	-
<u>EXPOSURE MONITORING</u>				
<u>-INITIAL EXPOSURE ASSESSMENT</u>				
-Construction	-	-	-	2 hours
-Brake and Clutch Repair	-	-	-	2 hours
-MAINTAIN RECORDS	5 minutes	-	-	-
-POST MONITORING RESULTS, BRAKE/CLUTCH	5 minutes	-	-	-
<u>HAZARD COMMUNICATION</u>				
-EVALUATE RISKINESS	-	-	45 minutes	-
<u>-NOTIFY EMPLOYEES</u>				
-Construction	-	-	5 minutes	-
-Brake and Clutch Repair	-	-	5 minutes	-
-NOTIFY OTHER EMPLOYEES/TENANTS	-	-	5 minutes	-
<u>TRAINING</u>				
-PROVIDE TRAINING				

COLLECTION ACTIVITY	BURDEN PER RESPONSE			
	Clerical	Employees	Supervisory	Industrial Hygienist
-Class II	-	32 hours	-	-
-Class III	-	16 hours	-	-
-Class IV	-	2 hours	-	-
-MAINTAIN RECORDS	5 minutes	-	-	-
<u>MEDICAL SURVEILLANCE</u>				
-MEDICAL EXAMS	-	45 minutes	45 minutes	-
-INITIAL QUESTIONNAIRE	-	30 minutes	30 minutes	-
-PERIODIC QUESTIONNAIRE	-	10 minutes	10 minutes	-
-INFORMATION TO PHYSICIANS	5 minutes	-	-	-
-PHYSICIAN'S WRITTEN OPINION	5 minutes	-	-	-
-MAINTAIN RECORDS	5 minutes	-	-	-
<u>ACCESS TO RECORDS</u>				
-EMPLOYEE ACCESS	5 minutes	-	-	-
-EPA ACCESS				
-Construction	5 minutes	-	5 minutes	-
-Brake and Clutch Repair	5 minutes	-	5 minutes	-
<u>COMPETENT PERSON</u>				
-TRAINING				
-Class I and II	-	-	14 hours [c]	-
-Class III and IV	-	-	3 hours [c]	-
-MAINTAIN RECORDS	5 minutes	-	-	-

Note: Except where noted, these estimates reflect annual burden estimate for each response.

[a] This burden was incurred by all supervisors over the three year period of the initial ICR. EPA assumes that five percent of the annual number of respondents from the initial ICR will incur the burden each year to account for turnover by supervisors. The number of responses in Table 2 (422) is five percent of the initial figure (8,437), and unchanged from the previous ICR.

[b] This burden is only incurred once every five years. EPA adjusted the number of responses in Table 2 to annualize total burden estimates in Table 3.

[c] This is the annualized number of hours for this requirement. The Class II and Class IV competent person training occurs once every five years.

**Table 2. Total Annual Response Estimates**

COLLECTION ACTIVITY	TOTAL ANNUALIZED RESPONSES				
	Clerical	Employees	Supervisory	Industrial Hygienist	TOTAL
<u>READ AND INTERPRET REGULATION</u>	0	0	422 [a]	0	422
<u>RESPIRATOR PROGRAM</u>					
-DEVELOP PROGRAM, Large Gov'ts	0	0	0	163 [b]	163
<u>-FIT TESTING</u>					
-Full-Face Respirators	0	40	40	0	80
-Half-Mask-Face Respirators	0	2,651	2,651	0	5,302
-MAINTAIN RECORDS FOR FIT TESTS	2,691	0	0	0	2,691
<u>EXPOSURE MONITORING</u>					
<u>-INITIAL EXPOSURE ASSESSMENT</u>					
-Construction	0	0	0	4,240	4,240
-Brake and Clutch Repair	0	0	0	1,268	1,268
-MAINTAIN RECORDS	13,012	0	0	0	13,012
-POST MONITORING RESULTS, BRAKE/CLUTCH	2,996	0	0	0	2,996
<u>HAZARD COMMUNICATION</u>					
-EVALUATE RISKINESS	0	0	4,507	0	4,507
<u>-NOTIFY EMPLOYEES</u>					
-Construction	0	0	507,508	0	507,508
-Brake and Clutch Repair	0	0	11,984	0	11,984
-NOTIFY OTHER EMPLOYEES/TENANTS	0	0	507,508	0	507,508
<u>TRAINING</u>					
<u>-PROVIDE TRAINING</u>					
-Class II	0	2,140	0	0	2,140
-Class III	0	1,000	0	0	1,000
-Class IV	0	51,905	0	0	51,905
-MAINTAIN RECORDS	55,045	0	0	0	55,045
<u>MEDICAL SURVEILLANCE</u>					
-MEDICAL EXAMS	0	1,915	1,268	0	3,183
-INITIAL QUESTIONNAIRE	0	91	60	0	151
-PERIODIC QUESTIONNAIRE	0	1,824	1,208	0	3,032
-INFORMATION TO PHYSICIANS	3,183	0	0	0	3,183
-PHYSICIAN'S WRITTEN OPINION	3,183	0	0	0	3,183
-MAINTAIN RECORDS	3,183	0	0	0	3,183
<u>ACCESS TO RECORDS</u>					
-EMPLOYEE ACCESS	6,089	0	0	0	6,089

COLLECTION ACTIVITY	TOTAL ANNUALIZED RESPONSES				
	Clerical	Employees	Supervisory	Industrial Hygienist	TOTAL
-EPA ACCESS					
-Construction	5,097	0	5,097	0	10,194
-Brake and Clutch Repair	30	0	30	0	60
<u>COMPETENT PERSON</u>					
-TRAINING					
-Class I and II	0	0	704	0	704
-Class III and IV	0	0	29,343	0	29,343
-MAINTAIN RECORDS	30,047	0	0	0	30,047
<b>TOTALS</b>	<b>124,556</b>	<b>61,566</b>	<b>1,072,330</b>	<b>5,671</b>	<b>1,264,123</b>

[a] EPA assumes that five percent of the annual number of respondents from the initial ICR will incur the burden each year to account for turnover by supervisors. The number of responses in Table 2 (422) is five percent of the initial ICR figure (8,437), and unchanged from the previous ICR.

[b] This is the annualized number of responses. EPA assumes that respirator programs will require updating once every five years. Thus, this is calculated by dividing the total number of affected respondents (817 large governments with industrial hygienists on staff) by five.



**Table 3. Total Annual Burden Estimates**

COLLECTION ACTIVITY	TOTAL ANNUAL BURDEN HOURS				
	Clerical	Employees	Supervisory	Industrial Hygienist	TOTAL
<u>READ AND INTERPRET REGULATION</u>	0	0	1,266	0	1,266
<u>RESPIRATOR PROGRAM</u>					
-DEVELOP PROGRAM, Large Gov'ts				652	652
-FIT TESTING					
-Full-Face Respirators	0	10	10	0	20
-Half-Mask-Face Respirators	0	442	442	0	884
-MAINTAIN RECORDS FOR FIT TESTS	224	0	0	0	224
<u>EXPOSURE MONITORING</u>					
-INITIAL EXPOSURE ASSESSMENT					
-Construction	0	0	0	8,480	8,480
-Brake and Clutch Repair	0	0	0	2,536	2,536
-MAINTAIN RECORDS	1,084	0	0	0	1,084
-POST MONITORING RESULTS, BRAKE/CLUTCH	250	0	0	0	250
<u>HAZARD COMMUNICATION</u>					
-EVALUATE RISKINESS	0	0	3,380	0	3,380
-NOTIFY EMPLOYEES					
-Construction	0	0	42,292	0	42,292
-Brake and Clutch Repair	0	0	999	0	999
-NOTIFY OTHER EMPLOYEES/TENANTS	0	0	42,292	0	42,292
<u>TRAINING</u>					
-PROVIDE TRAINING					
-Class II	0	68,480	0	0	68,480
-Class III	0	16,000	0	0	16,000
-Class IV	0	103,810	0	0	103,810
-MAINTAIN RECORDS	4,585	0	0	0	4,585
<u>MEDICAL SURVEILLANCE</u>					
-MEDICAL EXAMS	0	1,436	951	0	2,387
-INITIAL QUESTIONNAIRE	0	46	30	0	76
-PERIODIC QUESTIONNAIRE	0	304	201	0	505
-INFORMATION TO PHYSICIANS	265	0	0	0	265
-PHYSICIAN'S WRITTEN OPINION	265	0	0	0	265
-MAINTAIN RECORDS	265	0	0	0	265
<u>ACCESS TO RECORDS</u>					
-EMPLOYEE ACCESS	507	0	0	0	507

COLLECTION ACTIVITY	TOTAL ANNUAL BURDEN HOURS				
	Clerical	Employees	Supervisory	Industrial Hygienist	TOTAL
-EPA ACCESS					
-Construction	425	0	425	0	850
-Brake and Clutch Repair	3	0	3	0	6
<u>COMPETENT PERSON</u>					
-TRAINING					
-Class I and II	0	0	9,856	0	9,856
-Class III and IV	0	0	88,029	0	88,029
-MAINTAIN RECORDS	2,504	0	0	0	2,504
<b>TOTALS</b>	<b>10,377</b>	<b>190,528</b>	<b>190,176</b>	<b>11,668</b>	<b>402,749</b>

Reporting requirements vary among the different burden categories. Some categories impose annual paperwork burdens at the State or local government level while others impose paperwork burdens at the project or employee level<sup>1</sup>. EPA estimates that 25,312 State and local governments will be affected by these information collection activities and that these are the respondents for the ICR. However, many of these respondents will not be affected by all of the information collection requirements. Furthermore, the estimates presented here reflect the incremental hours and costs relative to the asbestos WPR that was in place prior to this rule. In the sections that follow, EPA discusses (a) each burden category, (b) the level at which the burden is applied, and (c) the data and assumptions used to derive burden estimates.

### Activity-by-Activity Burden Estimation Methods

#### A. Reading and interpreting the regulation.

In the initial ICR, EPA assumed that at least one person at the State or local government would need to read and interpret the requirements of the rule. EPA expected that this person would be a construction supervisor. The supervisor would read the relevant sections of the Federal Register Notice as well as the relevant cross-referenced sections of OSHA's Construction and General Industry Standards. Approximately half of the regulatory text, however, consists of technical appendices that will not be of direct importance to the supervisor. For example, most projects will not need to employ fit testing methods, and monitoring methods presumably will be performed by a contracted specialist. Given these assumptions, EPA projected that, on average, the supervisor would need three hours to read and understand the regulation. EPA expected that some supervisors would require more time to read and interpret the regulations while some would require less time. Thus, EPA assumed that on average a supervisor in each State or local government would need to spend three hours on this activity. This requirement, however, was assumed to be incurred only in the first year of the rule. To provide an annualized estimate of the burden over the three-year ICR period, EPA divided the total number of respondents (25,312 State and local governments) by three. This provided an

<sup>1</sup> Except for brake and clutch repair workers, the estimated numbers of employees reflect the numbers of full-time equivalents (FTEs). The estimated numbers of brake and clutch repair employees reflect the actual numbers of workers.

annualized estimate of 8,437 responses. Thus, this activity was assumed to require 25,312 hours on an annualized basis (8,437 responses × 3 hours).

Although the initial ICR assumed that this activity would be undertaken by supervisors only during the first year of the rule, the ICR still needs to account for turnover by supervisors. EPA is assuming that there will be a turnover of five percent of all supervisors annually and that the new supervisors will need to read and interpret the regulation. Thus, for purposes of this analysis, five percent of the annual respondents cited in the initial ICR ( $.05 \times 8,437 = 422$ ) will spend three hours reading and interpreting the rule annually. This activity is assumed to require 1,266 hours on an annualized basis (422 responses × 3 hours).

#### B. Respirator Program.

The respiratory protection program under the rule encompasses three paperwork activities: (a) developing written guidance for implementing the respirator requirements of the rule, (b) fit testing, and (c) maintaining records of the fit tests.

Written standard operating procedures covering the care, use, and selection of respirators must be established for each workplace in which respirators are used. Much of the information needed to develop these procedures is specified in the OSHA asbestos standard for construction, as amended by OSHA's 1998 respiratory protection standard (63 FR 1152; January 8, 1998). EPA assumed that large governments would have an industrial hygienist on staff who would need four hours to comply with this requirement<sup>2</sup>. EPA assumes that small governments, on the other hand, will not have an industrial hygienist on staff and will instead contract out this service. Using the Regulatory Flexibility Act (RFA) definition of small government, 24,495 affected governments (96.77 percent of the 25,312 total) would be classified as small, leaving 817 large governments with an industrial hygienist on staff. EPA further assumes that the respirator program will need updating every five years. Thus, dividing the total number of large governments by five yields 163 responses annually. Multiplying by the burden per response (4 hours) results in an estimated annual burden of 652 hours of industrial hygienists' time.

Fit testing imposes a requirement on both the worker being fit-tested and the worker's supervisor who conducts the fit test. EPA estimates that fit tests for full-face respirators will require 15 minutes and half-mask respirators will require a fit test lasting 10 minutes. EPA further estimates that 40 full-time equivalents (FTEs) will require full-face fit tests and 2,651 FTEs will require half-mask fit tests, annually. Thus, fit tests for full-face respirators will require 10 hours for both workers and supervisors (0.25 hours per fit test × 40 fit tests) and half-mask respirator fit tests will require 442 hours for both workers and supervisors (0.1667 hours × 2,651 fit tests). In total, workers and supervisors will need to spend 452 hours each on fit-testing each year.

Maintaining records of the fit tests is assumed to require five minutes of clerical time for each fit test. Thus, a total of 2,691 fit tests will occur annually (40 for full-face respirators and

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<sup>2</sup> As defined by the Regulatory Flexibility Act, a small government is any specified government entity, excluding States, with jurisdiction over a population of less than 50,000. For purposes of this analysis, a large government would be any government entity not classified as small.

2,651 for half-mask respirators), requiring 224 hours of clerical labor time each year (0.0833 hours  $\times$  2,691 fit tests).

### C. Exposure Monitoring.

The exposure monitoring section of the rule requires affected projects to perform periodic exposure monitoring unless a negative exposure assessment has been made. For the construction-related activities, this will require affected crews (i.e., groups of workers) to have an initial exposure assessment. EPA estimates that this will require two hours of an industrial hygienist's time every three years. There are a total of 30,047 crews that must be evaluated, resulting in an annual average of 10,016 crews. As with developing respirator programs, EPA assumes that only large governments incur this as a paperwork burden<sup>3</sup>. Furthermore, EPA assumes that large governments will incur a disproportionate amount of the hours associated with this requirement. Specifically, EPA assumes that the number of crews employed by large governments is proportional to the populations of large governments. Based on data in the Economic Analysis for this rule, EPA estimates that 57.66 percent of the total population in the 26 affected States, the District of Columbia and certain other U.S. territories resides in small local government jurisdictions<sup>4</sup>. Thus, EPA assumes that the remainder (42.34 percent) reside in large government jurisdictions. This implies that 4,240 annual responses are generated under this requirement (10,016 crews  $\times$  42.34 percent) in the construction sector. Multiplying by the burden per response (2 hours) results in an annual burden of 8,480 industrial hygienist hours.

For brake and clutch repair activities (which are classified as a general industry activity), this provision will require affected repair shops to establish an exemption from periodic exposure monitoring. EPA estimates that this will require two hours of an industrial hygienist's time annually. As noted above, only large governments with on-staff industrial hygienists will incur a paperwork burden under this rule. As with the number of crews above, EPA assumes that large governments will operate a disproportionate number of the affected brake and clutch shops. Specifically, EPA assumes that the number of affected brake and clutch shops in large governments is proportional to the population residing in large governmental jurisdictions. Thus, EPA estimates that 42.34 percent of all affected brake and clutch shops are owned by large State and local governments. Thus, the annual burden for this requirement is based on establishing exemptions at 1,268 repair shops (42.34 percent of the 2,996 affected repair shops) for an annual burden of 2,536 industrial hygienist hours.

In addition to performing the initial exposure assessment, the rule requires that records of the findings from the assessment be kept on file. EPA estimates that this activity will require five minutes of clerical time for each assessment. Although some of the assessments are performed by non-staff industrial hygienists (i.e., those for small local governments), records from all assessments will need to be kept on file. Thus, there are a total of 13,012 annual assessments for which records must be kept (10,016 in the construction sector and 2,996 in the

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3 <sup>3</sup> EPA assumes that small local governments hire contractors to perform industrial hygiene tasks such as this.

4 <sup>4</sup> See Chapter 6, Table 6-3 of the Economic Analysis.

brake and clutch sector). Multiplying by the burden per response (five minutes) yields an estimated annual clerical burden of 1,084 hours.

As part of the brake and clutch repair assessment, EPA assumes that some sampling will be performed. The rule requires that the results of any exposure monitoring conducted pursuant to the rule be posted for employees to review. Following OSHA's ICRs, EPA assumes that it will require five minutes of clerical time to post the results. All 2,996 repair shops will need to have results posted annually (i.e., shops owned by both small and large governments), resulting in an annual burden of 250 clerical hours.

#### D. Hazard Communication - Notification Requirements

The rule contains three notification requirements that will impose paperwork burdens: (a) evaluating the risk associated with Class I and II work, (b) notifying employees engaged in asbestos-related work about the nature of the work, and (c) notifying other employees (i.e., employees not engaged in asbestos-related work) and building occupants about the occurrence of asbestos-related work.

The rule requires competent persons to evaluate the risk associated with asbestos-related construction projects. EPA assumes that this only imposes a paperwork burden on Class I and II projects. EPA assumes that other covered activities (Class III and IV projects and new construction activities) can be evaluated without any incremental burden. Following OSHA's Asbestos Construction Standard ICR, EPA assumes that this will impose a burden of 45 minutes of supervisory time for each Class I and II project. A total 4,507 Class I and II projects are covered by the rule, implying a total annual burden of 3,380 supervisory hours (0.75 hours  $\times$  4,507 projects).

The rule also requires employers to notify employees that will be performing asbestos-related work prior to beginning the project. For construction activities, EPA assumes that this will require 5 minutes of a construction supervisor's time for all affected projects. EPA excludes Class IV custodial projects from this burden estimate because custodial activities are assumed to occur continuously over the course of the year and are not generally divided into discrete "projects."<sup>5</sup> Based on data in the Economic Analysis, EPA estimates that 507,508 construction projects will require these notifications. Multiplying the estimated number of projects by five minutes (0.0833 hours) yields an estimated 42,292 construction supervisor hours to comply with this requirement (507,508 projects  $\times$  0.0833 hours).

For brake and clutch repair, EPA assumes that this requirement will be incurred four times (e.g., quarterly) each year at each brake and clutch repair shop. Furthermore, EPA assumes that compliance with this requirement will impose a five minute burden on brake and clutch repair supervisors. There are 2,996 repair shops, so the annual burden for this requirement among brake and clutch repair shops will be 999 hours (2,996 shops  $\times$  0.0833 hours  $\times$  4 times annually).

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<sup>5</sup> In providing costs for the Economic Analysis for the rule, EPA did estimate a number of projects for custodial work. That estimate, however, was used only to estimate materials usage for some of the compliance requirements.

Finally, the rule requires employers to notify other employees (i.e., those not performing the asbestos-related work) and tenants about the occurrence of asbestos-related work in the building. EPA assumes that this will be incurred only by construction projects and will impose a burden of five minutes of supervisory time per project. In the Economic Analysis for the rule, EPA estimates that 507,508 projects will be affected by this requirement. Multiplying by the burden per response (five minutes) results in an estimated burden of 42,292 hours of supervisory time annually to comply with this requirement (507,508 projects  $\times$  0.0833 hours).

#### E. Training Program.

The rule requires affected construction workers to be trained based on the Class of work they perform. Training requirements for Class I abatement workers are not incremental to the rule and thus do not impose an incremental paperwork burden. The annual training requirements are 32 hours for Class II workers, 16 hours for Class III workers, including new construction projects, and 2 hours for Class IV workers. EPA estimates that training will be required for 2,140 Class II workers, 1,000 Class III workers, and 51,905 Class IV workers. This implies annual training requirements of 68,480 hours for Class II workers (32 hours  $\times$  2,140 workers), 16,000 hours for Class III workers (16 hours  $\times$  1,000 workers), and 103,810 hours for Class IV workers (2 hours  $\times$  51,905 workers). The total annual employee hours required for training is 188,290.

Records of the training must be kept on file for each worker who is trained. EPA assumes that this will require five minutes of clerical time per worker trained. A total of 55,045 workers will be trained annually (2,140 Class II workers + 1,000 Class III workers + 51,905 Class IV workers), requiring 4,585 clerical hours annually to maintain these records (55,045  $\times$  0.0833 hours).

The rule also requires employers to maintain training materials on file for employees to access. The burden associated with this requirement has been included in the burden estimate under Employee Access to Records, below.

#### F. Medical Surveillance.

The rule requires a medical exam for Class I, II, or III employees, including new construction workers, and for workers who are exposed at or above the PEL for more than 30 days annually. The medical surveillance section of the rule will impose five paperwork activities on affected entities: (1) medical exams, (2) initial and periodic questionnaires, (3) providing information to physicians, (4) obtaining the physician's written opinion, and (5) maintaining records of the medical exam. In estimating the paperwork burden for this requirement, EPA does not include the physician's time as part of the burden estimate. EPA assumes that the physicians performing these activities are not part of the affected entities' staff, but provide these services under contract.

EPA assumes that all Class II and III construction workers will need to undergo medical exams each year. Although Class I workers will also require medical exams, the 1987 EPA

asbestos WPR covers these activities and thus medical exams are not incremental for Class I workers under the revised rule. Based on the Economic Analysis for this rule, EPA estimates that 3,032 workers will require medical exams. Of this total, 1,208 are supervisors (one for each crew; 704 Class II crews and 504 in Class III) and 1,824 are non-supervisory construction workers. To account for turnover, EPA inflated each of these estimates by five percent. Thus, each year, a total of 3,183 workers, including 1,268 supervisors and 1,915 non-supervisory construction workers, will require medical exams. EPA assumes that these exams will require 45 minutes each, imposing an annual burden of 2,387 hours (1,436 hours for construction workers and 951 hours for supervisors).

The rule also requires that workers undergoing medical exams fill out medical questionnaires designed to assess current and past asbestos-related risk. For a first-year worker's initial exam under the rule, the worker must fill out an initial medical questionnaire. For subsequent exams, the worker fills out an abbreviated form of that questionnaire (i.e., the periodic questionnaire). Both of these questionnaires can be found in OSHA's Construction Standard (29 CFR 1926.1101, Appendix D). EPA estimates the annual number of initial exams given to first-year workers for this three-year ICR period as five percent of the number of initial exams that took place during the first three-year period of the ICR. Thus, 60 supervisors ( $1,208 \times .05$ ) and 91 non-supervisory construction workers ( $1,824 \times .05$ ) will fill out initial questionnaires annually. EPA assumes that completing the initial questionnaire imposes a burden of one half-hour. Thus, completing initial questionnaires will impose an annual burden of 30 hours on supervisory construction workers (60 workers  $\times$  .5 hour) and 46 hours on non-supervisory construction workers (91 workers  $\times$  .5 hour).

EPA assumes that all workers who undergo a non-initial exam will be required to complete a periodic questionnaire each year. Thus, EPA estimates that 1,208 supervisors and 1,824 non-supervisory workers will complete the periodic questionnaire each year. EPA assumes that the periodic questionnaire will take 10 minutes to complete. Thus, this requirement imposes a burden of 201 hours on supervisors ( $1,208$  workers  $\times$  0.1667 hours) and 304 hours on non-supervisory construction workers ( $1,824$  workers  $\times$  0.1667 hours).

The rule requires employers to provide examining physicians with a number of pieces of information, including:

- A copy of the OSHA Construction Standard including Appendices D, E, and I of the Standard;
- A description of the employee's duties;
- The employee's representative exposure level;
- A description of any personal protective equipment used by the employee; and
- Information from previous medical exams that is not otherwise available to the physician.

EPA assumes that providing this information will impose a five-minute burden for each annual medical exam and that affected government entities will use clerical labor to comply with this requirement. There are a total of 3,183 medical exams (initial and non-initial) performed annually (1,268 for supervisory construction workers and 1,824 for non-supervisory construction workers). Thus, this requirement will impose an annual burden of 265 clerical hours.

The rule requires employers to obtain a written opinion from the physician for each medical exam. EPA assumes that obtaining the physician's written opinion will impose a five-minute burden for each annual medical exam and that affected government entities will use clerical labor to comply with this requirement. There are a total of 3,183 medical exams performed annually. Thus, obtaining the physician's written opinion will impose an annual burden of 265 clerical hours.

The rule requires employers to maintain medical records for each employee. EPA assumes that maintaining medical records will impose a five-minute burden for each annual medical exam and that affected government entities will use clerical labor to comply with this requirement. There are a total of 3,183 medical exams performed annually. Thus, EPA estimates that maintaining medical records will impose an annual burden of 265 clerical hours.

#### G. Access to Records.

The rule requires affected employers (a) to allow employees access to a variety of records and (b) to allow the EPA to inspect those records.

EPA assumes that allowing employees to access their own records will require five clerical minutes for each occurrence. EPA estimates that 60,890 employees will be affected by the rule and that 10 percent of those will access their own records each year. Thus, employees will access records 6,089 times annually. This results in a total annual burden of 507 clerical hours.

EPA assumes that its access to employer records will require five minutes for both a clerical worker and a supervisor for each time the Agency accesses records. For the construction sector, EPA assumes that this will occur in approximately five-percent of Class I projects and one percent of new construction and Class II, III, and IV projects. For brake and clutch work, EPA assumes that one-percent of all brake and clutch repair shops will be inspected annually. Based on these assumptions, EPA will access the records of 5,097 construction projects each year and the records of 30 brake and clutch repair shops. Thus EPA will access records 5,127 times annually. This results in a total annual burden of 425 hours of both clerical and supervisory time for construction-related work and a total annual burden of three hours of both clerical and supervisory time for brake and clutch repair.

#### H. Competent Person.

The rule requires all construction work sites that are covered by the rule to be supervised by an individual trained as a competent person. This will require affected State and local governments to train one person from each work crew as a competent person. EPA assumes that competent person training for Class I crews is not incremental to the rule. For Class II work, EPA competent person training will require a 40-hour training course every five years with an eight-hour course in all other years. The average annual training hours for Class II competent persons during the three-year period of the ICR can be calculated as follows:  $8 \text{ hours} + 32 \text{ hours}/5 \text{ years} = 14.4$ , rounded to 14 hours per year. The 32 hours is the additional training



beyond the 8 hours of training that occurs each year (40 hours – 8 hours = 32 hours) which is annualized over a five-year period ( $32/5 = 6.4$ , rounded to 6), and then added to the annual training requirement of 8 hours, for a total of 14 hours average training per year. This can be applied to the 704 supervisors that must be trained as Class II competent persons, for an annual burden of 9,856 hours.

For Class III and IV workers, including new construction workers, EPA assumes that competent person training will require a 16-hour training course once every five years. Thus, the average annual burden for training Class III and IV competent persons is 3 hours (16 hours/five years rounded to 3 hours). This can be applied to 29,343 supervisors that must be trained as Class III or IV competent persons, for an annual burden of 88,029 supervisor hours.

In addition to training, records must be kept to document that the persons have been trained. EPA assumes that for each person trained, affected State and local governments will incur a burden of five minutes of clerical time. Based on the estimates above, a total of 30,047 competent persons will be trained annually (704 under Class II and 29,343 under Class III and IV). Thus, maintaining records of competent person training will require 2,503 clerical hours (30,047 competent persons x (5 min./60 min.)) annually.

### **Summary of Burden Estimates**

Table 3 summarizes the total burdens associated with each of the categories discussed above. EPA estimates that the total annual respondent burden for this ICR will be 402,749 hours. The ICR affects a total 25,312 respondents (i.e., all affected State and local governments). The total number of annual responses is estimated to be 1,264,123 (see Table 2), unchanged from the previous ICR. Thus, the burden per respondent is 15.91 hours ( $(402,749 \text{ burden hours}) / (25,312 \text{ respondents})$ ) and the average burden per response is 0.32 hours ( $(402,749 \text{ burden hours}) / (1,264,123 \text{ responses})$ ), a slight decrease from the previous ICR estimate of .33 hours per response.

The total burden for this ICR (402,749 hours) is 9,494 hours less than the total burden under the previous ICR (412,243 hours). The principal reason for this decrease is the corrected lower training burden for Class I and Class II competent persons that results from annualizing the 40 hour training over 5 years rather than over a three-year period. While some changes were made in the calculations of the numbers of initial and periodic questionnaires that are completed by construction employees and supervisors, the net result of those changes has a very slight impact on the total annual burden hour estimate.

### **6(b) Estimating Respondent Costs**

Table 4 provides an estimate of respondent costs, based on the burden estimates (Table 3) and the following hourly labor cost assumptions:

- Clerical labor costs \$21.89 per hour,
- Construction employee (non-supervisory) labor costs \$30.16 per hour,
- Brake and clutch repair employee labor costs \$27.72 per hour,
- Construction supervisor labor costs \$43.94 per hour,
- Brake and clutch repair supervisor labor costs \$42.87 per hour, and
- Industrial hygienist labor costs \$52.86 per hour.

These hourly labor costs reflect both wage and non-wage benefits for these categories of employees in year 2005 dollars. The derivation of the labor costs appear in Attachment D to the ICR. Cost estimates in Table 4 are derived by multiplying the respondent burden hours for each requirement by the appropriate hourly labor cost from above.

Based on the above hourly labor cost data, EPA has calculated the total respondent cost to be approximately \$15 million annually. This translates into a per-respondent cost of \$592.39<sup>6</sup>. The total respondent and per respondent costs of the burden have increased because of labor cost increases since the previous ICR (see Attachment D).

### **6(c) Estimating Agency Burden and Cost**

Table 5 shows the estimated Agency burden associated with this ICR. EPA has determined that only one Agency activity will create a burden under the rule: inspecting projects. Projects can be inspected for two reasons: (a) as part of the neutral administrative inspection program or (b) in response to a complaint. In the previous ICR, EPA provided separate estimates for each category. However, the data in the Economic Analysis do not allow EPA to make such a distinction in this ICR because of the expanded scope of the rule.

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<sup>6</sup> This estimate is based on 25,312 affected State and local governments that comprise the set of respondents.

**Table 4. Total Annual Cost of Respondent Burden Hours**

COLLECTION ACTIVITY	TOTAL ANNUAL COSTS				
	Clerical	Employees	Supervisory	Industrial Hygienist	TOTAL
<u>READ AND INTERPRET REGULATION</u>	\$0	\$0	\$55,628	\$0	\$55,628
<u>RESPIRATOR PROGRAM</u>					
-DEVELOP PROGRAM, Large Gov'ts				\$34,465	\$34,465
-FIT TESTING					
-Full-Face Respirators	\$0	\$302	\$439	\$0	\$741
-Half-Mask-Face Respirators	\$0	\$13,331	\$19,421	\$0	\$32,752
-MAINTAIN RECORDS FOR FIT TESTS	\$4,903	\$0	\$0	\$0	\$4,903
<u>EXPOSURE MONITORING</u>					
-INITIAL EXPOSURE ASSESSMENT					
-Construction	\$0	\$0	\$0	\$448,253	\$448,253
-Brake and Clutch Repair	\$0	\$0	\$0	\$134,053	\$134,053
-MAINTAIN RECORDS	\$23,729	\$0	\$0	\$0	\$23,729
-POST MONITORING RESULTS, BRAKE/CLUTCH	\$5,473	\$0	\$0	\$0	\$5,473
<u>HAZARD COMMUNICATION</u>					
-EVALUATE RISKINESS	\$0	\$0	\$148,517	\$0	\$148,517
-NOTIFY EMPLOYEES					
-Construction	\$0	\$0	\$1,858,310	\$0	\$1,858,310
-Brake and Clutch Repair	\$0	\$0	\$43,896	\$0	\$43,896
-NOTIFY OTHER EMPLOYEES/TENANTS	\$0	\$0	\$1,858,310	\$0	\$1,858,310
<u>TRAINING</u>					
-PROVIDE TRAINING					
-Class II	\$0	\$2,065,357	\$0	\$0	\$2,065,357
-Class III	\$0	\$482,560	\$0	\$0	\$482,560
-Class IV	\$0	\$3,130,910	\$0	\$0	\$3,130,910
-MAINTAIN RECORDS	\$100,366	\$0	\$0	\$0	\$100,366
<u>MEDICAL SURVEILLANCE</u>					
-MEDICAL EXAMS	\$0	\$43,310	\$41,787	\$0	\$85,097
-INITIAL QUESTIONNAIRE	\$0	\$1,387	\$1,318	\$0	\$2,705
-PERIODIC QUESTIONNAIRE	\$0	\$9,169	\$8,832	\$0	\$18,001
-INFORMATION TO PHYSICIANS	\$5,801	\$0	\$0	\$0	\$5,801
-PHYSICIAN'S WRITTEN OPINION	\$5,801	\$0	\$0	\$0	\$5,801
-MAINTAIN RECORDS	\$5,801	\$0	\$0	\$0	\$5,801
<u>ACCESS TO RECORDS</u>					
-EMPLOYEE ACCESS	\$11,098	\$0	\$0	\$0	\$11,098
-EPA ACCESS					

COLLECTION ACTIVITY	TOTAL ANNUAL COSTS				
	Clerical	Employees	Supervisory	Industrial Hygienist	TOTAL
-Construction	\$9,303	\$0	\$18,675	\$0	\$27,978
-Brake and Clutch Repair	\$66	\$0	\$132	\$0	\$198
<u>COMPETENT PERSON</u>					
-TRAINING					
-Class I and II	\$0	\$0	\$433,073	\$0	\$433,073
-Class III and IV	\$0	\$0	\$3,867,994	\$0	\$3,867,994
-MAINTAIN RECORDS	\$58,813	\$0	\$0	\$0	\$58,813
<b>TOTALS</b>	<b>\$231,154</b>	<b>\$5,746,326</b>	<b>\$8,356,332</b>	<b>\$616,771</b>	<b>\$14,980,583</b>

Note: Some rounding error exists in these estimates.

For the construction sector, EPA assumes that five percent of Class I projects and one percent of new construction and Class II, III, and IV projects will be inspected annually. For brake and clutch work, EPA assumed that one percent of all brake and clutch repair shops will be inspected annually. EPA further assumes that inspections of Class I and Class II construction projects and brake and clutch establishments will require one hour of an inspector's time and that inspections of Class III and IV construction projects (including new construction projects) will require 15 minutes. EPA used these assumptions in combination with estimates of the numbers of projects and brake and clutch establishments to generate estimates of the time required to comply:

- Based on an estimated 554 Class I construction projects, EPA will inspect 28 Class I projects annually (554 projects × .05 percent) requiring 28 hours for Class I construction project inspections.
- Based on an estimated 3,953 Class II construction projects, EPA will inspect 40 Class II projects annually (3,953 projects × .01 percent) requiring 40 hours for Class II construction project inspections.
- Based on an estimated 503,000 non-custodial Class III and IV construction projects, including new construction projects, EPA will inspect 5,030 non-custodial Class III and IV projects annually (503,000 projects × .01 percent) requiring 1,258 hours for non-custodial Class III and IV construction project inspections.
- Based on an estimated 2,996 brake and clutch repair shops, EPA will inspect 30 brake and clutch repair shops annually (2,996 shops × .01 percent) requiring 30 hours for brake and clutch repair shop inspections.

In total, EPA will incur an annual requirement of 1,356 hours associated with inspections.

A GS-9, Step 1 base salary of \$38,175 was used to calculate costs for inspections<sup>7</sup>. The annual salary was then inflated by a factor of 1.6 to account for overhead and benefits<sup>8</sup>. Thus, the fully loaded annual labor cost for Federal employees who will conduct the inspections under this ICR is \$61,080. Based on a 2,080 hour work year, the fully loaded hourly labor cost is \$29.36 for a GS-9 employee.

**Table 5. Annual Agency Burden and Cost Estimate**

Activity	Burden Hours	Cost
Inspections (GS-9-Step 1)	1,356	\$39,812
Total	1,356	\$39,812

**6(d) Bottom Line Burden Hour and Costs/Master Tables**

The total annual respondent burden hour and cost estimates for this information collection are as follows:

Respondent Burden Hours: 402,749  
 Respondent Cost: \$14,980,583

**6(e) Reasons for Change in Burden**

This request reflects a decrease of 9,494 hours (from 412,243 hours to 402,749 hours) in the total estimated respondent burden from that currently in the OMB inventory. The principal reason for this decrease is the corrected lower training burden for Class I and Class II competent persons that results from correct annualizing the 40 hour training over 5 years rather than over a three-year period. While some changes were made in the calculations of the numbers of initial and periodic medical questionnaires that are completed by construction employees and supervisors, the net result of those changes has a very slight impact on the total annual burden hour estimate. The burden per respondent for this ICR (15.91 hours) is slightly lower than the estimate in the previous ICR (16.29) for the same reason.

**6(f) Burden Statement**

The annual public burden for this collection of information, which is approved under OMB Control No. 2070-0072, is estimated to average 0.32 hours per response. According to the Paperwork Reduction Act, “burden” means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection it includes the time needed to review instructions; develop, acquire,

<sup>7</sup> Salary figure taken from: U.S. Office of Personnel Management (OPM), 2006. *2006 General Schedule (Not Including Locality Rates of Pay)*, January. Because 26 different states, the District of Columbia and certain territories are covered by this rule, it is not possible to include a single locality pay raise adjustment that would apply to all of them. Therefore, EPA used OPM’s general schedule as an estimate of the annual salary.

<sup>8</sup> U.S. EPA, 1996. *Draft ICR Handbook, EPA’s Guide to Writing Information Collection Requests Under the Paperwork Reduction Act of 1995*, p. A-36, September 1996.

install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection appears above. In addition, the OMB control numbers for EPA's regulations, after initial display in the Federal Register, are listed in 40 CFR part 9.

The Agency has established a public docket for this ICR under Docket ID No. EPA-HQ-OPPT-2006-0853, which is available for online viewing at [www.regulations.gov](http://www.regulations.gov), or in person viewing at the Pollution Prevention and Toxics Docket in the EPA Docket Center (EPA/DC). The EPA/DC Public Reading Room is located in the EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the Pollution Prevention and Toxics Docket is (202) 566-0280. You may submit comments regarding the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden, including the use of automated collection techniques.

Submit your comments, referencing Docket ID No. EPA-HQ-OPPT-2006-0853 and OMB Control No. 2070-0072, to (1) EPA online using [www.regulations.gov](http://www.regulations.gov) (our preferred method), or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mail Code: 7407T, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

## **References for Section 6**

OSHA, 2000a. *Supporting Statement for the Information Collection Requirements of the Asbestos Standard (Construction)*, OMB Approval Number 1218-0134.

OSHA, 2000b. *Supporting Statement for the Information Collection Requirements of the Asbestos Standard (General Industry)*, OMB Approval Number 1218-0133.

U.S. EPA, 2000. *Final Asbestos Worker Protection Rule Economic Analysis*, Economic and Policy Analysis Branch, Economics, Exposure and Technology Division, Office of Pollution Prevention and Toxics, September 25.

## ATTACHMENTS TO THE SUPPORTING STATEMENT

Attachments to the supporting statement are available in the public docket established for this ICR under docket identification number EPA-HQ-OPPT-2006-0853. These attachments are available for online viewing at [www.regulations.gov](http://www.regulations.gov) or otherwise accessed as described in section 6(f) of the supporting statement.

- Attachment A:**      **15 USC 2605 - TSCA Section 6.** Also available at online at the US House of Representatives' Office of the Law Revision Counsel's [US Code website](#)
- Attachment B:**      **15 USC 2607(a) - TSCA Section 8(a).** Also available at online at the US House of Representatives' Office of the Law Revision Counsel's [US Code website](#)
- Attachment C:**      **40 CFR part 763, Subpart G - Asbestos Worker Protection.** Also available online at the National Archives and Records Administration's [Electronic CFR Webpage](#)
- Attachment D:**      **Hourly Labor Costs Used in Estimating Respondent Burden Costs**
- Attachment E:**      **Display Related to OMB Control #2070-0072 -Listings of Related Regulations in 40 CFR 9.1**