

SUPPORTING STATEMENT
EPA ICR 2159.05
RENEWAL BACKGROUND CHECKS FOR CONTRACTOR EMPLOYEES

1. IDENTIFICATION OF THE INFORMATION COLLECTION

(a) Title of the Information Collection

This information collection request is for the Environmental Protection Agency (EPA) requirement entitled **“Background Checks for Contractor Employees (Renewal),” EPA ICR Number 2159.05 and OMB Control Number 2030-0043**. The Agency requires background checks for specified contractor employees working in sensitive locations or sensitive projects who are not otherwise covered by a background check in accordance with Homeland Security Presidential Directive -12 (HSPD12).

(b) Short Characterization

The EPA uses contractors to perform services throughout the nation with regard to environmental emergencies involving the release, or threatened release, of oil, radioactive materials or hazardous chemicals that may potentially affect communities and the surrounding environment. Releases may be accidental, deliberate, or may be caused by natural disasters. The Agency may request contractors responding to any of these types of incidents to conduct background checks and apply Government-established suitability criteria in determining whether employees are acceptable to perform on given sites or on specific projects. In addition to emergency response contractors, EPA may require background checks for contractor personnel working in sensitive sites or on sensitive projects. The background checks and application of the Government’s suitability criteria must be completed prior to contract employee performance. The contractor shall maintain records associated with all background checks.

2. NEED FOR AND USE OF THE COLLECTION

(a) Need/authority for the Collection

The legal authority for this collection is Title 5, Code of Federal Regulations, Parts 731, 732, and 736. The EPA has a responsibility to protect the public, Agency employees, and contractors through a background check and application of Government-established suitability criteria to ensure reliability, trustworthiness, and good conduct and character. This process is necessary to allow the EPA to meet its responsibilities and mitigate any threat to the public health, welfare and the environment.

(b) Uses/users of the Data

Information collected by contractors for performing background checks is necessary for applying the Government-established suitability criteria on contract employees before the

individual employees perform contractual services for the EPA.

3. NONDUPLICATION, CONSULTATION, AND OTHER COLLECTION CRITERIA

(a) Nonduplication

Information requested from a contractor's employee to determine suitability to perform on a response contract is unique to a specific individual; this information cannot be obtained from any other source.

(b) Public Notice Required Prior to ICR submission to the Office of Management and Budget.

The information collection request was initially published as a Notice in the Federal Register on June 10, 2005, and for renewal on November 13, 2008 and October 31, 2011. There were no comments received on the initial notice or the first renewal; however, there were two comments received on the October 31, 2011 notice of renewal. Both comments are related to equal employment opportunities. The first comment stated that in accordance with the Equal Employment Opportunity Commission's (EEOC) guidance, in order to exclude a person from employment based on a criminal conviction, the criminal conduct must be recent enough and sufficiently job-related to be predictive of performance in the position sought. The current EPA policy states that individuals must not have a weapons offense in the last five years or a felony conviction in the last three years in order to be qualified to work at an EPA response site. At sensitive sites, the individual cannot have a weapons offense in the past ten years, a felony conviction in the last seven years, or a misdemeanor conviction in the last five years. The commenter urged the EPA to narrow its exclusions to focus on specific misdemeanor and felony convictions that relate to the work and the site of the contract.

The EPA recognizes the merit in this comment; however, because the nature and location of work varies, it would be difficult to list only certain misdemeanors and convictions which would be applicable without leaving the Agency at undue risk. Current EPA procedures, which have been communicated to our contractors, allow for a waiver process if a contractor feels an individual is otherwise qualified and the nature of the conviction or misdemeanor does not pose a risk to the current work. The EPA is currently in the process of rewriting its policies regarding background checks and will ensure that the language is revised to add a statement that specifies that the individual cannot have a felony or misdemeanor conviction that poses unreasonable risk to the work or Agency, rather than blankly stating no misdemeanors or convictions are allowed. The new policy will also spell out the current procedures for obtaining a waiver.

The second comment was a recommendation that the EPA implement a waiver process so that individuals or contractors can request an individualized assessment. As stated above, this process is already in place and will be clearly identified in the upcoming policy revision.

(c) Consultations

To determine contractor burden associated with the information collection identified in this request, the following vendors were contacted:

<u>Representative</u>	<u>Firm</u>	<u>Phone</u>
Lisa Friday	Weston Solutions	(610) 701-3157
Jack Jemsek	Sovereign Consulting	(413) 540-0650
Joe Baer	Tech Law	(304) 230-1230
Chrystal Guthrie	Chenega	(703) 822-2767
Amy Clark	Tetra Tech	(626) 470-2516
Chuck Baker	URS Corp	(303) 296-3523
Franceska Parkman	G2	(865) 482-4271
Mark Ruck	Environmental Restoration	(636) 680-2405
Sherry Maule	Guardian Environmental	(302) 918-3070
John Mount	Kemron	(404) 636-0928
Greg Sulan	WRS	(609) 371-7500
Dhroov Shivjiani	Ecology & Environment	(206)652-5853

Each individual consulted indicated that he/she understood the need for the information collection and did not find the collection burdensome. The majority of respondents stated that their organization performs Background Checks of new hires as standard practice. Estimated time to complete the information collection is described in section 6, “Estimating the Burden and Cost of the Collection.”

(d) Effects of Less Frequent Collection

The information provided by the contractors’ employees is collected once prior to the employee performing work for EPA. The requirement for a background check and application of the Government’s suitability criteria cannot be met with a less frequent collection.

(e) General Guidelines

The information contained in this ICR is in accordance with the Office of Management and Budget’s general guidelines for Federal data collection, except that small entities have to follow the same collection procedures as other respondents.

(f) Confidentiality

The EPA contractor is responsible for collecting and maintaining information under this collection of information; therefore, each contractor will have his own procedures for ensuring confidentiality.

(g) Sensitive Questions

Information requested is commonly collected as a normal business practice. The contractor will collect and maintain employee information. The EPA will not collect contractor employee information nor maintain it. The Agency is responsible for receiving the suitability notification from contractors.

If a contractor employee's background check does not meet the suitability criteria, but the contractor wants the employee to work on the response site, the contractor must submit a waiver request to the Director, Superfund/RCRA Regional Procurement Operations Division (SRRPOD). The information submitted to SRRPOD is maintained and protected in accordance with Privacy Act requirements.

4. THE RESPONDENTS AND THE INFORMATION RECEIVED

(a) Respondents/North American Industry Classification System Codes

Information is collected for employees of the contractors and subcontractors who perform work in sensitive sites or sensitive projects. All contractor employees who will perform on response actions are subject to a background check and must meet the Government-established suitability criteria prior to contract performance. Typically, these contractor respondents fall into the following North American Industry Classification System code: 562910 Remediation Services. Other contractors may be subject to background check requirements if they are working at sensitive sites.

(b) Information Requested

(i) Data items

The contractor's employees will be required to provide information such as name, social security number, proof of US citizenship or legal resident status, employment history, education, military service, and address of residence.

(ii) Respondent Activities

After performing a background check and applying the Government's suitability criteria for an employee, the contractor must notify the contracting officer that the background checks and the application for the Government's suitability criteria have been completed and that named individuals are suitable to work on a specific contract.

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

(a) Agency Activities

EPA contracting officers are responsible for ensuring that they have received notification from the contractor that all of its employees working at sensitive sites have undergone a background check and have met the Government-established suitability criteria.

(b) Collection Methodology and Management

The information is collected by each contractor from each employee who will be working at sensitive sites or in sensitive positions which could involve law enforcement activities, indoor cleanups (including occupied household residences), drug lab cleanups, and emergency response actions at geographically sensitive locations such as military installations and Government buildings. Submissions are accepted in any format so long as they include the requested data. No information is submitted to the Agency, but compliance is mandatory and no employee may work on a response site without meeting the Government-established suitability criteria, unless the requirement has been waived by the contracting officer. On a case-by-case basis, contracting officers may either temporarily or permanently waive the requirements if they determine in writing that these requirements are not necessary at a specific location, or for a specific individual, in order to protect the Government's interests. The suitability criteria has been developed by the Government to determine that there are reasonable grounds to believe that an individual will likely be able to perform the contract requirements on a sensitive site or in a sensitive position without undue risk to the interests of the Government. Once the contractor has applied the criteria, and the employee has met the requirements as prescribed in the Statement of Work, contractors must notify the EPA contracting officer. Contractors must maintain the records of their background checks and application of the Agency's suitability criteria.

(c) Small Entity Flexibility

Separate or further simplified requirements for small entities are not practical because the stated objectives cannot be met under such alternatives. The requirements of the information collection apply to the awardees of the contract. Reasonable expense associated with the EPA background checks is reimbursable; therefore, small businesses are not expected to experience financial difficulties in fulfilling these requirements. Additionally, there are numerous commercial sources that perform background checks.

(d) Collection Schedule

Information will be collected periodically as individuals are requested to work at a sensitive site or in a sensitive position under new or existing contracts.

6. ESTIMATING THE BURDEN AND COST OF THE COLLECTION

(a) Estimation of Respondent Burden

Respondent burden estimates for this collection are based upon interviews with the contractors identified in 3(c) above and discussions with Agency personnel. The Agency anticipates that the contractor burden for complying with this requirement includes the time it takes for employees to provide the required information, the time to manage a subcontract for background checks, the administrative time to apply the Government's suitability criteria, the time to notify the Agency, and the effort to maintain the records.

(b) Estimation of Respondent Costs

(i) Estimating Labor Costs

Respondent Cost Estimate

Respondent Cost Estimate

<u>Step</u>	<u>Collection Activity</u>	<u>Labor Cat.</u>	<u>Burden Loaded</u>		
			<u>Hours</u>	<u>Rate</u>	<u>Cost</u>
1.	Time to fill out information	Employees	.25 hour	\$ 58.30	\$ 14.58
2.	Cost to perform Background Check (Third party/Subcontractor)				\$ 75.00
3.	Review/apply suitability criteria	HR Manager	.25 hour	\$168.35	\$ 42.09
4.	Submit notification	HR Manager	.25 hour	\$168.35	\$ 42.09
5.	Maintain files	Admin. Support	.25 hour	\$ 51.88	\$ 12.97
			1 hour		
Estimated Respondent Cost per Background Check					\$ 186.73

Step 1 of the information collection is completed by a contractor employee working at a sensitive site. On average, respondents stated this process normally takes the employee about 15 minutes to complete. The cost for Step 2, having a third party perform a background check, is based upon market research and input from the vendors surveyed. Vendors' costs for this activity ranged from \$25 to \$175. Websites like www.hireright.com and www.monster.com show prices ranging from \$30-\$100. The cost varies depending on the number of background checks purchased per year, the parameters of the check, as well as the individual employee. A background check for an employee who has only lived in one state will be less than the cost for an employee who has lived in multiple jurisdictions. The median price of the research performed is \$75 which is the figure used for the purpose of this ICR. Steps 3 and 4, reviewing suitability and notifying EPA, are performed by a human resource type manager and/or a security manager responsible for personnel management. Administrative support personnel are responsible for completing step 5, which includes filing the background check in personnel records.

The cost associated with this effort was estimated using an hourly rate based upon the National Compensation Survey: Occupational Wages in the United States, May 2010 published by the U.S. Department of Labor, Bureau of Labor Statistics, and represents the most current survey data available. The categories used included the following: Hazardous Materials Removal Workers, Human Resource Manager, and Office and Admin Support.

Since the labor rates used in this estimate are from 2010, an escalation factor of 3% was applied for each year to determine an average wage for the respective year. The cost for each labor category was determined by multiplying the escalated hourly labor rate by an estimated loading factor of 2.95 to reflect industries' overhead, fringe benefits, and general and administrative costs for each year (2012-2014) that the ICR will be in effect. The 2.95 estimate was provided by an EPA cost analyst as representative of average labor related burdens experienced by EPA contractors. The loaded labor costs for 2012 thru 2014 were added together then divided by three (number of years for the ICR) to arrive at an annualized labor cost for each labor category.

The following are the loaded labor rates used in the calculations in the table above:

Employees:

2010 = \$18.08
 2011 = (\$18.08 x 1.03) \$18.62
 2012 = (\$18.62 x 1.03) \$19.18 x 2.95 = \$ 56.58
 2013 = (\$19.18 x 1.03) \$19.76 x 2.95 = \$ 58.29
 2014 = (\$19.76 x 1.03) \$20.35 x 2.95 = \$ 60.03
 \$174.90/3 = \$58.30

Human Resource Manager:

2010 = \$52.21
 2011 = (\$52.21 x 1.03) \$53.78
 2012 = (\$53.78 x 1.03) \$55.39 x 2.95 = \$ 163.40
 2013 = (\$55.39 x 1.03) \$57.05 x 2.95 = \$ 168.30
 2014 = (\$57.05 x 1.03) \$58.76 x 2.95 = \$ 173.34
 \$ 505.04/3 = \$168.35

Administrative Support:

2010 = \$16.09
 2011 = (\$16.09 x 1.03) \$16.57
 2012 = (\$16.57 x 1.03) \$17.07 x 2.95 = \$ 50.36
 2013 = (\$17.07 x 1.03) \$17.58 x 2.95 = \$ 51.86
 2014 = (\$17.58 x 1.03) \$18.11 x 2.95 = \$ 53.42
 \$155.64/3 = \$51.88

(ii) Capital/ Start-up Costs

Respondents will not be required to acquire capital goods to provide the requested information; therefore, capital start-up costs have not been included in this estimate.

(iii) Operating and Maintenance Costs

Operating and maintenance costs, which include such items as file storage, photocopying, and postage, will be nominal.

(c) Estimating Agency Burden and Cost

Agency burden for responses to background check and application of Government suitability criteria.

Agency Burden Cost Estimate					
<u>Step</u>	<u>Collection Activity</u>	<u>Labor Category</u>	<u>Burden Hours</u>	<u>Loaded Rate</u>	<u>Cost</u>
1.	Ensure Compliance and document file	GS-13	.25 hour	\$87.26	<u>\$21.82</u>

Estimated Agency cost per background check \$21.82

Performing background checks and applying the Government’s suitability criteria are the responsibility of the EPA contractor. The Agency is primarily responsible for ensuring that contractors notify the Agency that a background check and application of the suitability criteria have been completed for all applicable employees. The Agency’s current effort is estimated to be approximately 15 minutes and performed by an employee at the GS-13 level. This is less than previous years, which was estimated at thirty minutes. After interviewing contracting officers, it was apparent that the process has become more efficient and takes less time. The GS-13 per hour salary for 2011 with a locality pay for “Rest of US” is \$39.21. Since government wages are frozen for 2012, an escalation factor has only been applied for 2013 and 2014 using a factor of 3.0% based upon historical cost of living increases for federal workers. These wage rates were then multiplied by a factor of 2.16 to reflect Federal employee benefits. The 2.16 estimate was provided by an EPA cost analyst as representative of labor related burdens for government employees. The loaded labor costs for 2012 thru 2014 were added together then divided by three (number of years for the ICR) for an annualized loaded rate of \$87.26 for the three years the ICR is in effect.

2011 =	\$39.21	
2012 =	\$39.21 x 2.16	= \$84.69
2013 =	(\$39.21 x 1.03) \$40.39 x 2.16	= \$87.24
2014 =	(\$40.39 x 1.03) \$41.60 x 2.16	= <u>\$89.86</u>
		\$261.79/3 = \$87.26

(d) Estimating the Respondent Universe and Total Burden

All EPA contractor personnel performing on a response site must provide the required background information unless this requirement is waived by the contracting officer. The number of contractor employees expected to submit the requested information for background checks for the life of this ICR (3 years) is 3,000. This number was derived by estimating the number of currently performing contract employees under emergency response contracts. The Agency estimated this number of employees by reviewing current contract databases, interviews with contractors and information received from the regions.

There are both small and large businesses working in the field with diverse response site situations that require large variations in the number of employees. Contractors may be on-site for a few days or many years depending on the situation. Per the EPA Office of Acquisition Management's active contract list, there are currently 44 contracts which include a requirement for contractors to perform background checks on employees working at sensitive sites. The number of employees with background checks for each contract ranges from 5-350 per year, not counting subcontracts. Many contracts require employees to be prepared to report to work locations with no notice. Therefore, these employees must have background checks and meet the Government's suitability criteria even if not continuously located on-site.

Additionally, there are contractors working at their own facilities or at other than government locations who work on sensitive locations or on sensitive projects. These may include, but are not limited to, maintenance of anti-terrorism equipment warehouses, water systems, environmental information, private laboratories working on genetically modified herbicides and pathogens, and law enforcement activities.

The number of employees needed at each sensitive site varies depending on the size and nature of the cleanup. Therefore, it is very difficult to ascertain the exact number of employees on which background checks are being performed. The estimate of 1,000 represents our best estimate given current information.

(e) Bottom Line Burden Hours and Costs

(i) Respondent Tally

The annual respondent cost for this ICR is 1,000 hours at an estimated cost of \$186,730. The hours were calculated by multiplying the number of hours per occurrence, which is one, by the number of annual occurrences, 1,000. The cost was calculated by multiplying the respondent burden cost of \$186.73 per background check by the number of annual occurrences, 1,000. The estimated respondent cost over the life of the ICR, three years, is \$560,190 ($\$186,730 \times 3$). The previous estimate for respondent cost was \$81,410 per year. There are several reasons for the increase. The previous ICR estimated the cost of a background check at \$35; however, interviews with contractors and online market research shows that while basic checks can be

\$35, more in depth searches can run two to three times this cost. Also, the basic rate used for a general type manager in the previous estimate was \$50 less an hour than that used in today's calculations. Interviews with contractors showed that the type of manager who performs work associated with background checks is a Human Resource Manager; therefore, the rate for a Human Resource Manager was used for current calculations. Lastly, the previous ICR calculations underestimated the required effort which resulted in unrecognized overall costs.

(ii) The Agency Tally

The annual Agency burden for this collection request is estimated at 250 hours. This is calculated by multiplying the estimated burden hours per background check, which is .25, by the number of annual occurrences, 1,000 to arrive at 250 hours. The previous ICR calculation was 500 hours. This is because the government estimated that the Agency processed waiver requests on approximately 25% of the background checks performed. However, interviews with both contractors and EPA contracting officers revealed that to date no waivers have been requested or processed. It is possible an occurrence could arise where a waiver would be necessary, but it would be rare, and the contracting officer could likely perform this work in the course of his or her normal duties.

The total annual Agency cost for this collection request is estimated at \$21,815. This amount is calculated by multiplying the number of hours, 250, by the contracting officer's loaded rate of \$87.26 per hour. The estimated Agency cost over the life of the ICR, three years, is \$65,445.

(f) Reasons for Change in Burden

As detailed above, there are a number of differences between the previous estimate and the current estimate. The previous calculations for the contractor burden resulted in unrecognized costs. Also, the rate for the manager in the previous estimate was substantially lower than the 2010 estimate for a human resource manager, and the rate for a background check was substantially lower than the estimates confirmed by current market research. Lastly, the previous estimate accounted for costs associated with waivers; however, research showed no waivers have been required to date.

(g) Burden Statement

The annual public reporting and record keeping burden for this collection of information is estimated on average to be one hour per response. 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. This includes the time needed to review instructions; develop, acquire, 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 numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

To comment on 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, EPA has established a public docket for this ICR under Docket ID Number EPA-HQ-OARM-2011-0803, which is available for online viewing at www.regulations.gov, or in person viewing at the Office of Environmental Information in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW, Washington, D.C. The EPA Docket Center 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 Reading Room is (202) 566-1744, and the telephone number for the Office of Environmental Information is (202) 566-1752. An electronic version of the public docket is available at www.regulations.gov. This site can be used to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the Docket ID Number identified above. Also, you can send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, D.C. 20503, Attention: Desk Officer for EPA. Please include the EPA Docket ID Number EPA-HQ-OARM-2011-0803 and OMB Control Number 2030-0043 in any correspondence.