

4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 9th day of November, 2012.

**Lyssa E. Hall,**

*Director of Exemption Determinations,  
Employee Benefits Security Administration,  
U.S. Department of Labor.*

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. OSHA-2012-0031]

#### Standard on 4,4'-Methylenedianiline in Construction; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comments.

**SUMMARY:** OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Standard on 4,4'-Methylenedianiline in Construction (29 CFR 1926.60).

**DATES:** Comments must be submitted (postmarked, sent, or received) by January 15, 2013.

**ADDRESSES:** *Electronically:* You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Facsimile:* If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693-1648.

*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA-2012-0031, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

*Instructions:* All submissions must include the Agency name and OSHA docket number (OSHA-2012-0031) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at <http://www.regulations.gov>. For further information on submitting comments see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

*Docket:* To read or download comments or other material in the

docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

#### FOR FURTHER INFORMATION CONTACT:

Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N-3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693-2222.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The information collection requirements specified in the 4,4'-Methylenedianiline Standard for Construction (the "MDA Standard") (29 CFR 1926.60) protect workers from the adverse health effects that may result from their exposure to MDA, including cancer, liver and skin disease. The major paperwork requirements specify that employers must perform initial, periodic, and additional exposure

monitoring; notify each worker in writing of their results, as soon as possible but no longer than 5 days after receiving exposure monitoring results; and routinely inspect the hands, face, and forearms of each worker potentially exposed to MDA for signs of dermal exposure to MDA. Employers must also: establish a written compliance program; institute a respiratory protection program in accordance with 29 CFR 1910.134 (OSHA's Respiratory Protection Standard); and develop a written emergency plan for any construction operation that could have an emergency (i.e., an unexpected and potentially hazardous release of MDA).

Employers must label any material or products containing MDA, including containers used to store MDA-contaminated protective clothing and equipment. They also must inform personnel who launder MDA-contaminated clothing of the requirement to prevent release of MDA, while personnel who launder or clean MDA-contaminated protective clothing or equipment must receive information about the potentially harmful effects of MDA. In addition, employers are to post warning signs at entrances or accessways to regulated areas, as well as train workers exposed to MDA at the time of their initial assignment, and at least annually thereafter.

Other paperwork provisions of the MDA Standard require employers to provide workers with medical examinations, including initial, periodic, emergency and follow-up examinations. As part of the medical surveillance program, employers must ensure that the examining physician receives specific written information, and that they obtain from the physician a written opinion regarding the worker's medical results and exposure limitations.

The MDA Standard also specifies that employers are to establish and maintain exposure monitoring and medical surveillance records for each worker who is subject to these respective requirements, make any required record available to OSHA compliance officers and the National Institute for Occupational Safety and Health (NIOSH) for examination and copying, and provide exposure monitoring and medical surveillance records to workers and their designated representatives.

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the

Agency's functions, including whether the information is useful;

- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

## III. Proposed Actions

The Agency is requesting that it retain its previous burden hour request of 1,029 hours. As reported by the Consumer Price Index (CPI) there was a 9.1% inflation from 2007 to 2010. Therefore, there is an overall increase in capital costs of \$5,640 (from \$62,838 to \$68,478). This adjustment is a result of an increase in the estimated cost of medical examinations from \$168 to \$183. Also, there is an increase in the estimated cost of laboratory airborne sample analysis from \$107 to \$117.

The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the Standard.

*Type of Review:* Extension of a currently approved collection.

*Title:* 4,4'-Methylenedianiline in Construction Standard (29 CFR 1926.60).

*OMB Control Number:* 1218-0183.

*Affected Public:* Business or other for-profits; Not-for-profit organizations; Federal Government; State, Local, or Tribal Government.

*Number of Respondents:* 330.

*Total Responses:* 2,631.

*Frequency:* On occasion.

*Average Time per Response:* Varies from 5 minutes (.08 hour) for employers to provide information to the physician to 2 hours for initial monitoring.

*Estimated Total Burden Hours:* 1,029.

*Estimated Cost (Operation and Maintenance):* \$68,478.

## IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows:

- (1) Electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal;
- (2) by facsimile (fax); or
- (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA-2012-0031).

You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693-2350, (TTY) (877) 889-5627). Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site.

All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <http://www.regulations.gov> Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

## V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1-2012 (77 FR 3912).

Signed at Washington, DC, on November 13, 2012.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

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