



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

MAY 23 2018

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

MEMORANDUM

SUBJECT: ICR No. 1365.11 Renewal, Asbestos-Containing Materials in Schools Rule and Revised Asbestos Model Accreditation Plan Rule

FROM: *FCR* Brian Lynne
Tanya Hodge Mottley, Director
National Program Chemicals Division

TO: Angela Hofmann, Director
Regulatory Coordination Staff
Office of Chemical Safety and Pollution Prevention

The current Asbestos-Containing Materials in Schools Rule and Revised Asbestos Model Accreditation Plan Rule Information Collection Request expires on August 31, 2018. As part of the Information Collection Request renewal process, the EPA solicited public comment on the proposed information collection, including regulatory compliance and cost burden. This ICR, EPA ICR No. 1365.11 and Office of Management and Budget Control No. 2070-0091, was open for public comment from January 2, 2018 to March 5, 2018 on *regulations.gov* under Docket Identification number EPA-HQ-OPPT-2017-0319. During the comment period for this ICR, the agency received six comments relating to training and recordkeeping compliance from health and safety professionals and other individuals.

The Asbestos Hazard Emergency Response Act (15 U.S.C. § 2641-2656) requires Local Education Agencies to conduct inspections, develop management plans, and design or conduct response actions with respect to the presence of asbestos-containing materials in school buildings. AHERA also requires states to develop model accreditation plans for persons who perform asbestos inspections, develop management control plans, and design or conduct response actions. This information collection addresses the burden associated with recordkeeping requirements imposed on LEAs by the Asbestos-Containing Materials in Schools rule (40 CFR part 763, subpart E), and reporting and recordkeeping requirements imposed on states and training providers related to the Model Accreditation Plan rule (Appendix C to 40 CFR part 763, subpart E).

Comments Related to Training

One commenter suggests that the annual training requirement for certified asbestos consultants is "excessively costly" at \$500-\$800 per year with three lost days of work and an application fee of \$325. Another commenter stresses the importance of qualified professionals and asbestos awareness training.

Response: The EPA appreciates comments provided about asbestos training requirements; however, the scope of this ICR is reporting and recordkeeping. Therefore, the agency will not change the ICR based on these comments.

Comments Related to Recordkeeping and Compliance

Several commenters generally support maintaining the reporting and recordkeeping requirements, and some commenters suggest that recordkeeping encourages compliance with AHERA. One commenter estimates the AHERA recordkeeping burden to LEAs is an “average annual cost of for 2 periodic surveillances per year, a triennial inspection and the associated recordkeeping requirements is approximately \$450 per building, including K-12 schools and associated support buildings, primarily administration, transportation and maintenance facilities,” which is in line with the EPA’s burden estimates presented in *Worksheet 4: Annual Cost per Local Education Agency* of the ICR.

Several commenters state that the recordkeeping requirements are not adequately met by the LEAs. One commenter asserts that LEAs do not conduct the required triennial inspections. The same commenter suggests that, in part, lack of compliance with the recordkeeping requirements results in additional burden of “unexpected expenses and delays during maintenance and renovation projects” for LEAs. Another commenter similarly suggests that proper AHERA administration and compliance would likely reduce other aspects of the burden on LEAs.

Response: The EPA appreciates these comments and for bringing these issues to the EPA’s attention. However, these comments do not directly affect the current burden estimates for the ICR. Accordingly, the ICR will not be revised based on these comments.

Suggestions to Reduce Burden

One commenter suggests reducing the certified asbestos consultant training requirement from once per year to once every three years. Another commenter suggests requiring new asbestos surveys and multilayered and exterior materials sampling for all schools covered by AHERA in order to avoid unexpected maintenance delays and expenses. Lastly, another commenter suggests requiring electronic reporting and allowing AHERA records to be publicly available online.

Response: The EPA appreciates these suggestions; however, resolving the issues identified by these suggestions would require amending rules, not the ICR. Therefore, the agency will not be making any changes to the ICR based on these comments.

In closing, after taking all submitted information into consideration, the EPA found no additional data that would compel a revision to this ICR. Finally, the EPA appreciates the commenters’ perspectives and participation in this ICR renewal process.

If you have any questions about the ICR renewal package, please contact Lea Carmichael at (202) 564-4689 or carmichael.lea@epa.gov.

Anonymous Public Comment

All current reporting and recordkeeping requirements should be maintained.

Comment submitted by C. Springer

The requirement to attend three days of training each year for asbestos Certified Asbestos Consultant training is excessively costly. The cost is now \$500-\$800 per year for training, three lost days of work, and \$325.00 application fee. I request that the training be required every three years instead of annually. Thank you, Sincerely, Christine Springer, 13684 Mar Scenic Drive, Del Mar, CA. 92014, 858-353-8803

Comment submitted by D. Maser

Dear Representative,

As a practicing professional in the field of Health and Safety for over 40 years, I wish to share my thoughts about the record-keeping and training requirements for schools dealing with asbestos. I as a Certified Safety Professional and Certified Industrial Hygienist, feel the continued record-keeping and awareness training associated with asbestos is extremely important to maintain. There are issues with the Asbestos Hazard Emergency Response Act (AHERA) and the model accreditation plan rule. When those rules came out, because of their failure to require truly qualified professionals (those with specific college level training in Industrial Hygiene, toxicology, and/or safety) I chose to stop offering my services in the field of asbestos. Here, after almost 30 years one can say AHERA did little to protect children from exposure to asbestos, other than helping to identify where it is located, who can work on it, and how much can be disturbed. These guidelines very poorly outlined how to truly protection our children when schools rushed to get as much asbestos containing materials abated to comply with the requirements of AHERA. Yes, I am suggesting the enactment of this regulation caused unnecessary exposures of our children to airborne asbestos concentrations. However, in the long run it has caused a lot of the asbestos to be removed, which will protect future children, and it has forced schools to identify what asbestos still remains, to continue to educate personnel what asbestos still exists at their school, and requires proper labeling and education of health hazards if it is disturbed. Thus, I feel that post the "AHERA Rush", the regulation is helping to prevent unnecessary exposures to asbestos by school staff and ultimately our children.

Thank you,
Daniel C. Maser, MS, CIH, CSP, ROH, FAIHA
46410 Continental Drive
Chesterfield, MI 48047

Comment submitted by F. Stephen Masek, Masek Consulting Services, Inc./ Asbestos & Lead Poisoning Prevention Association

There are three major issues:

1) Due to lack of enforcement, many LEAs are not conducting the required three year re-inspections, so the burden is not really a burden.

2) AHERA essentially allowed LEAs to not have exterior items such as stucco, window putty and roofing materials sampled, and many LEAs still do not have good data on such items which can cause exposures to asbestos and unexpected costs. In this case, the burden is created by this original flaw in AHERA.

3) Many LEAs have poor-quality asbestos survey data. This is due to lack of knowledge at the time of the original AHERA surveys, poor quality follow-on surveys (e.g. not sampling all of the layers of stucco, gypsum plaster, floor tile and mastic) and misplaced or lost records. This lack of good data leads to exposures to asbestos and burdens the LEAs with unexpected expenses and delays during maintenance and renovation projects.

To reduce the burdens, it would be appropriate to require new asbestos surveys of all of the schools covered by AHERA. The cost today is far, far lower than almost 30 years ago, and would quickly be recovered through reductions in unexpected expenditures and delays during maintenance and renovation projects. Of course, these surveys should require sampling of the various layers of layered materials and all of the exterior suspect materials.

F. Stephen Masek
Masek Consulting Services, Inc. / Asbestos & Lead Poisoning Prevention Association

COMMENTS TO DOCKET NUMBER EPA-HQ-OPPT-2017-0319

These comments to Docket Number EPA-HQ-OPPT-2017-0319 are supplied by the Alliance of Hazardous Materials Professionals (AHMP). AHMP members, primarily Certified Hazardous Materials Managers (CHMMs), are professionals engaged with hazardous materials and environmental regulation on a daily basis. A significant number of our members provide asbestos-related services to LEAs.

Our comments will address the burden associated with recordkeeping requirements imposed on LEAs by AHERA. Our comments do not include any reporting or recordkeeping requirements imposed on states or training providers. Our comments also do not address any state regulations which vary from or are in addition to the requirements of 40 CFR 763, Subpart E, Asbestos Containing Materials in Schools. Further, our comments do not reflect any costs associated with personnel licensing/accreditation.

Specifically, we address the “recordkeeping requirements” as the requirements under AHERA for maintenance of management plans; the periodic surveillance and reinspection of known or suspect materials as required under AHERA; and AHERA-specific costs related to response actions. These comments do not address costs associated with physical removal of asbestos-containing building materials (abatement of more than three square or linear feet of asbestos containing material, which requires use of an accredited/licensed personnel), or costs associated with patch and repair, operations and maintenance activities, or small scale, short duration activities.

The average annual cost of for 2 periodic surveillances per year, a triennial inspection and the associated recordkeeping requirements is approximately \$450 per building, including K-12 schools and associated support buildings, primarily administration, transportation and maintenance facilities. Small structures, which may be subject to the management plan requirements (such a storage sheds, press boxes at athletic facilities, dugouts and other ancillary structures) are not reflected in the per building average cost. Ancillary structures often do not contain suspect materials, and while required to be part of the LEA’s management plan, do not require additional resources for additional surveillances or inspections.

AHERA poses no additional regulatory burden for actual asbestos abatement activities (removal, encapsulation or enclosure) beyond current NESHAP requirements.

AHERA requires a project design for any response action which exceeds 3 square or 3 liner feet. NESHAP does not require a project design for asbestos abatement projects. Almost all LEAs contract project design services, so there is no additional recordkeeping burden associated with project design. The cost for project design varies according to the size of the project, and typically ranges from \$1,500 to \$5,000.

AHERA requires demonstration of the completion of response actions using air sampling and analysis. Air testing is not required under the asbestos NESHAP. The cost for an air monitoring event, using phase contrast microscopy (via NIOSH Method 7400), is approximately \$1,000 per air sampling event, including reporting. When the use of transmission electron microscopy is required (projects involving abatement of more than 160 square feet or 260 liner feet of asbestos-containing material), the cost per air sampling event increases to approximately \$1,450 per sampling event, including reporting. The air sampling event typically adds one day to the project schedule.

AHERA also has certain recordkeeping requirements for response actions, which must be incorporated into the management plan. Costs for an AHERA complaint response action report vary with the size of the project, and are included as part of the LEA's management plan. Required elements of the response action report include information regarding the materials removed, waste disposal, worker licensure and air sampling results. Costs for response action reporting can range from \$500 to \$2,500 per report. Costs for response action reports are typically included with project design and/or air monitoring services. The time to assemble a response action report, again, varies with the complexity of the response action, and can range from approximately 4 hours to over 40 hours. As with project design, most LEAs contract out response action reporting, so the only burden to LEAs is the cost of reporting.

Although AHERA requires the use of licensed/accredited personnel for most asbestos functions, licensing is now required for both NESHAP and AHERA related asbestos projects by most states. Therefore, the AHERA requirement for use of licensed personnel for asbestos inspections and abatement poses no additional recordkeeping or financial burden on LEAs.

AHERA also requires LEAs to provide two-hour awareness training for maintenance and custodial staff who may work in buildings which contain asbestos-containing building materials, whether or not they are required to work with asbestos. There is no similar training requirement under NESHAP. There is essentially no burden to LEAs for this training, as similar training is also required by OSHA.

Other commenters have noted, here and in previous hearings, that the current lack of enforcement effectively creates no AHERA burden to LEAs. Lack of enforcement has allowed LEAs, especially small and rural schools, to either cease internal programs related to AHERA, or remove AHERA related costs (primarily management plan maintenance, surveillance and reinspections) from their budgets. While this essentially reduces regulatory burden through inaction, it may also create additional regulatory burden when asbestos-containing building materials are encountered or unintentionally disturbed during renovation and demolition activities. In these cases, which are common, additional burden is created. Disturbance of asbestos-containing building materials typically results in contamination of a larger area, requiring intensive inspection to delineate the affected area, and additional labor and materials for and expedited and larger response action. This creates additional financial burden, recordkeeping burden and often results in a schedule delay while the asbestos contamination issues are addressed. Should this happen in an occupied school, the LEA encounters additional burdens related to employee and parent notification, public relations/publicity, and potential enforcement. Compliance with AHERA will, in many cases, reduce regulatory burden on LEAs.

In summary, while AHERA may be seen to impose some recordkeeping and financial burdens to LEAs, proper administration, and enforcement of AHERA will likely reduce LEA compliance burdens in other manners, and the overall scope should be considered when evaluating burden.

About AHMP

The Alliance of Hazardous Materials Professionals™ (AHMP) is a professional association with a membership of the nation's leading experts in environmental, health, safety and security management.

AHMP is the only national organization devoted to the professional advancement of the hazardous materials management field.

A handwritten signature in black ink, appearing to read "B. A. Donato". The signature is fluid and cursive, with the first name "B." and last name "Donato" clearly distinguishable.

Bruce A. Donato, CHMM, CSP, CECD

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RE: Docket ID No. EPA-HQ-OPPT-2017-0319

To whom it may concern:

The Environmental Health and Safety Committee of the Massachusetts Teachers Association submits these comments in response to the Agency Information Collection Activities; Proposed Collection (EPA ICR No. 1365.11), described in the Federal Register dated January 2, 2018, Vol. 83, No. 1, page 114. The Massachusetts Teachers Association (MTA) is a state-wide union of educational personnel, including K-12 educators and support staff in public schools, and has 110,000 members. The MTA Environmental Health and Safety Committee (EH&S Committee) has members who are educators in K-12 and higher education settings, as well as staff and outside liaison personnel, including specialists and advocates for workers' health and safety.

The Federal Register of January 2, 2018 indicates that EPA is interested in information that would enable it to perform four functions:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.



What follows are the MTA EH&S Committee's comments pertaining to each of the four functions described in the Federal Register, with an introductory section describing the data on which the MTA EH&S Committee's comments are based.

INTRODUCTION

The MTA EH&S Committee has been concerned with AHERA compliance among school districts in Massachusetts for several years. There are over 1800 public schools in Massachusetts that are subject to AHERA, and MTA has members in the vast majority of those schools. In the last ten years, the EH&S Committee has periodically sought and reviewed information on AHERA compliance. The EH&S Committee's comments are based on data concerning AHERA compliance obtained by or made available to the Committee in 2009, 2011, 2015, and 2017.

2009

Massachusetts is a waiver state for purposes of AHERA enforcement. The Mass. Dept. of Labor Standards (MDLS) is the state agency with AHERA enforcement authority. In 2009, the EH&S Committee, through a public records request, obtained information about the number of routine audits conducted by MDLS from 1998 to 2008. "Routine audits" were unannounced visits that MDLS inspectors made to schools, to verify AHERA compliance. Where MDLS found a lack of compliance with AHERA, it issued a Notice of Noncompliance (NON). Annual reports from MDLS to the EPA summarizing MDLS inspections from 1998 through 2008, obtained by the EH&S Committee through its public records request, revealed the following information:

- in 2008, MDLS conducted 40 Routine Audits, which resulted in 38 NONs (95% rate of noncompliance)
- in 2007, MDLS conducted 33 Routine Audits, which resulted in 33 NONs (100% rate of noncompliance)
- in 2006, MDLS conducted 24 Routine Audits, which resulted in 22 NONs (91.67% rate of noncompliance)
- in 2005, MDLS conducted 20 Routine Audits, which resulted in 19 NONs or letters noting violations (95% rate of noncompliance)
- in 2004, MDLS conducted 20 Routine Audits, which resulted in 18 NONs or letters noting violations (90% rate of noncompliance)
- in 2003, MDLS conducted 41 Routine Audits, which resulted in 38 resulted in NONs or letters noting violations (95% rate of noncompliance)

- in 2002, MDLS conducted 41 audits, which resulted in 32 NONs and 9 letters (information for 2002 does not specify whether these were Routine or Requested Audits¹, nor does it indicate whether the letters noted violations) (noncompliance rate not known)
- in 2001, MDLS conducted 30 Routine Audits which resulted in 27 NONs (90% rate of noncompliance)
- in 2000, MDLS conducted 14 Routine Audits which resulted in 14 NONs (100% rate of noncompliance)
- in 1999, MDLS conducted 15 Routine Audits which resulted in 13 NONs (86.67% rate of noncompliance)
- in 1998, MDLS conducted 27 Routine Audits which resulted in 22 NONs or letters citing violations (81.48% rate of noncompliance)

The information contained in MDLS's annual reports to EPA did not provide details about the nature of the noncompliance issues found by MDLS in its audits. However, the EH&S Committee's experience is that the vast majority of NONs issued by MDLS include, at least some record keeping problems.

2011

In August 2011, MDLS sent a memo to school superintendents in Massachusetts, requesting, "To ensure that all schools within your district are in compliance with the AHERA regulation, DLS is requesting that you forward to our agency, a copy of your most recent three-year re-inspection for each school within the district."² The MTA EH&S Committee requested information from MDLS about the response it received to its memo. MDLS received fewer than two thirds of the expected responses MDLS would have received, had all superintendents responded and provided the requested reports for all schools in their districts. MDLS characterized the reports received as follows: "Overall, less than 15% of the re-inspection reports received by MDLS were in technical compliance with the AHERA requirements. Accordingly, 85% of the schools which responded were not in full compliance with the AHERA requirements for a management plan."³ MDLS received no information concerning almost 1,000 schools. Consequently, neither MDLS nor the MTA had any idea what the status was or is of compliance with AHERA in those 1,000 buildings.

¹ "Requested Audits," are audits conducted as a result of a request or complaint

² Memo to All School Superintendents from Heather Rowe, Director, Department of Labor Standards, dated August 1, 2011

³ Correspondence from Brian Wong, Chief of Investigations and Enforcement Unit, MDLS, to Michael Sireci, MTA Staff Liaison to the MTA EH&S Committee, dated June 13, 2013

2015

In March 2015, Senator Edward Markey (Ranking Member of the Subcommittee on Superfund, Waste Management, and Regulatory Oversight) and Senator Barbara Boxer (Ranking Member of the Committee on Environment and Public Works) sent out a survey to the governor of each state to gather information about how well AHERA was being enforced. Senators Markey and Boxer received responses from 20 states, including Massachusetts. Based on the information received from the 20 states who responded, and on the lack of response from 30 states, the Senators issued a report in December, 2015⁴ with the following general conclusions:

#1: The scope of asbestos hazards in schools in the United States is likely widespread but remains difficult to ascertain.

#2: States do not appear to be systematically monitoring, investigating or addressing asbestos hazards in schools.

#3: States do not report conducting regular inspections of schools to detect asbestos hazards and enforce compliance.

#4: States do not report record-keeping activities intended to keep track of asbestos hazard information or remediation activities in schools.

Massachusetts' response to Senator Markey and Senator Boxer's survey indicated that MDLS could confirm that 748 schools (including public, private and charter schools) in the state have asbestos-containing materials in them; 368 schools (including public, private and charter schools) have provided certification from architects that they were built after 1988 and do not contain any asbestos. However, MDLS had no information about the state of asbestos containing material in the majority of schools in Massachusetts (1446 remaining public, private or charter schools).⁵ Massachusetts' response to Senators Markey and Boxer also indicates that between October 2012 and May 2015, MDLS conducted AHERA inspections with the following results:

10/1/12 – 9/20/13	43 inspections; 42 resulted in issuance of NONs, written warnings, or advisory letters
10/1/13 – 9/30/14	42 inspections; 12 resulted in issuance of NONs, written warnings, or civil penalties; no information available for 18 inspections
10/1/14 – 5/12/15	24 inspections; 15 resulted in issuance of written warnings or civil penalties; no information available for 2 inspections

⁴ *Failing the Grade: Asbestos in America's Schools*, December 2015, available through Sen. Markey's website, <https://www.markey.senate.gov/>

⁵ Letter to Sen. Boxer and Sen. Markey from Gov. Baker dated May 5, 2012 in response to inquiry about AHERA

With respect to Senator Markey's and Senator Boxer's questions about compilation of AHERA-related data, the MDLS emphasized that AHERA does not require LEAs to provide copies of any survey or inspection reports to enforcing agencies, thus MDLS does not have information for any schools unless those schools have been inspected.

2017

On March 1, 2017, the Mass. Attorney General's Environmental Protection Division, MDLS, the Mass. School Building Authority, the Mass. Facilities Administrators Association, the Mass. Association of School Business Officials, and the Mass. Association of School Superintendents sent a letter to all school superintendents in the state, requesting the following information related to AHERA:

1. Whether asbestos is present in any of the district's schools
2. The name and contact information for the person in the district responsible for AHERA compliance at each school
3. Whether the district is in currently in compliance with basic requirements of AHERA outlined in the letter

The letter requested school districts to respond by email by April 3, 2017. As of October, 2017, no response had been received for more than 400 schools.

COMMENTS

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

One of the functions of the Agency (the EPA) is to monitor compliance with and enforce AHERA, either directly or through state agencies in waiver states. The MTA EH&S Committee asserts that without the information contained in records generated by LEAs as part of their responsibilities under AHERA, the EPA or state agencies would have very limited means of enforcing AHERA. The records are, therefore, essential for the proper performance of the functions of the EPA.

Although Congress enacted AHERA in recognition that asbestos in schools posed a potential health threat in schools, AHERA does not require that asbestos in schools be removed. AHERA requires that asbestos be managed, through inspections and maintenance. There is no confirmation that inspections have taken place or that maintenance is ongoing without the reports required of school districts – also known as Local Education Agencies, or LEAs. Since its enactment in 1986, AHERA has depended heavily upon the record keeping practices of LEAs to ensure compliance.

As the data from MDLS demonstrate, it is unrealistic to assume that an enforcing agency can conduct inspections with sufficient frequency to confirm that asbestos in schools is being properly managed. MDLS appears to conduct about 40 inspections per year. There are more than 1800 public schools in Massachusetts subject to AHERA (that number does not include even more schools within MDLS's enforcement authority, such as charter schools and private schools). At the rate of 40 inspections per year, it would take MDLS more than 45 years to complete one cycle of inspections of every public school. AHERA thus depends on the availability to the public of records of required surveys and inspections as the primary incentive to LEAs to comply with its requirements. Put bluntly, if a school district risks bad publicity if it fails to conduct required inspections, it may be more likely to conduct the inspections. Record keeping is, therefore, the only realistic means of encouraging compliance with AHERA.

The data presented in the Introduction to these comments, from 1998 – 2008, 2011, 2015, and 2017 consistently indicate that there is reason for concern that LEAs are not complying with AHERA. MDLS inspections have consistently revealed issues with AHERA compliance. In the hundreds of schools that MDLS has not inspected, the sole means of measuring compliance is to review AHERA records. The records that document each school's asbestos management plan, required 6-month periodic surveys and 3-year re-inspections are the only means available to school occupants to determine where asbestos is located in their buildings, and its condition. It is difficult to know how, if records were not required, the EPA (or similar agencies in AHERA waiver states) could perform their functions of monitoring compliance with AHERA. The MTA EH&S Committee's opinion is that record keeping required by AHERA is essential to verifying compliance with AHERA.

AHERA records provide the only existing information to building occupants about AHERA-related activities, and thus provide occupants with the only means of analyzing whether intervention by enforcing agencies is needed. The data from MDLS show that if MDLS received a complaint, it responded by conducting an inspection. If building occupants have no AHERA reports, they will not know whether something they see or have heard about merits calling in an enforcing agency. In addition, an enforcing agency may be able to answer questions from or provide reassurance to a concerned school occupant based on information contained in AHERA records, and save the agency's inspectional resources. Lack of AHERA records would render the EPA and state enforcing agencies incapable of making sensible decisions about allocating resources.

As the information described in the Introduction establishes, compliance with AHERA by LEAs is not at all certain. In more than one instance, LEAs have not even bothered to respond to MDLS information-collecting efforts. Record keeping is the sole structural method of accountability that AHERA provides. If record keeping requirements are relaxed or dismantled, there is even less to prevent AHERA non-compliance.

Finally, the records required by AHERA have practical – sometimes critical – utility. Public schools must constantly maintain flexibility in how space is used to meet the needs of changing student populations or changes in educational programs. It is not uncommon for space in a school building that

has served one function, to be repurposed to serve a different function: to cite just one example, storage closets get transformed into areas in which educators can assess students with special needs, and administer tests. Without the required reports or other records required by AHERA, it is very difficult for facilities directors, school administrators, or educators to know whether it is safe to add technology wiring, or whether the newly repurposed space might present an asbestos hazard. Similarly, during renovation projects, if dust or debris from a construction zone enters occupied space in a building (usually because of failure of isolation measures surrounding the construction area), AHERA records provide presumably accurate and reliable information for building personnel affected by the release of dust or debris as to what they may have been exposed to. Finally, the EH&S Committee is aware of more than one situation in which a school building was damaged by water from pipes that burst during a school vacation, and school personnel who arrived on the scene, faced with wet ceiling tiles that had fallen onto classroom floors, needed to know whether the tiles could be removed and disposed of by custodial personnel, or whether an abatement operation was necessary. The primary source of that information is AHERA records, without which, responders do not know whether it is safe to enter the building to begin cleaning up, or safe for school personnel to enter the building to sort through water-damaged property.

2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

The MTA EH&S Committee does not have any basis for commenting on whether EPA has accurately calculated how many hours it estimates AHERA's recordkeeping imposes on school districts or state agencies, and therefore offers no comment on that subject. However, the EH&S Committee is of the opinion that collecting AHERA information by LEAs consists largely of receiving reports from employees who have conducted 6-month surveys, receiving reports from outside firms who have conducted 3 year re-inspections, and making sure that those reports, along with annual notifications and notifications to contractors, are kept in the main office of each school with the school's original asbestos management plan. The amount of time per year that a building administrator might have to spend on such record keeping activities seems unlikely to amount to more than a few hours per academic year.

3. Enhance the quality, utility, and clarity of the information to be collected.

As demonstrated in the examples described in section #1 above, MDLS, various state agencies, including the Attorney General, and a U.S. Senator have been unable to obtain comprehensive AHERA-related information from LEAs even when they have asked directly for that information. The lack of response puts government entities in the position of not being able to determine whether an LEA is in compliance with AHERA but has not bothered to respond to an inquiry, or is not in compliance. If AHERA required LEAs to post all AHERA-related reports for each school online (such as 6 month surveys, 3-year re-inspection reports, asbestos management plans, copies of required notifications to parents, employees, and contractors) MDLS, the EPA, and concerned members of the public would be able to

obtain AHERA information directly. The utility of AHERA information would be enhanced if school districts posted records online.

One purpose of AHERA record keeping is to keep members of the school community updated on asbestos in school buildings. Copies of asbestos management plans and all re-inspection reports are supposed to be on file in every school's main office. School personnel and families are supposed to be reminded annually that each school's AHERA documents are located in the main office. The experience of the EH&S Committee and anecdotal evidence from MTA members is that reports are not always on file where they are supposed to be. In addition, even if reports are available in the main office, it sometimes takes time to locate the documents and make them available to the person requesting access. This interrupts the primary activity of a school – education. If copies were readily available on a website, any member of the public, including enforcing agencies, could get access to information without taking time away from the educational activities of the building principal or other keepers of the records.

The MTA EH&S Committee also urges EPA and state enforcing agencies to require school districts to submit AHERA records to the agencies, and to make those records accessible online. The Committee recognizes that the EPA or state agencies would need to spend resources to set up a system for online submission of AHERA information, and a system for storing and sorting the information received according to school district and school, but an online submission requirement would have several benefits: Information about each state's schools and AHERA would be in one central place, a submission requirement might result in greater compliance with AHERA inspection requirements, and an efficient system for submitting AHERA records might make it easier for each school district to format and make available its AHERA records locally.

Online access is particularly important when physical access to the main office of a school building is impossible or dangerous. For example, in the event of a water pipe break with resulting water damage to a school building, it may be temporarily impossible to obtain physical copies of AHERA reports that locate asbestos-containing building material in the school. Online access permits district personnel to compare the location of asbestos with the location of the water damage, and make appropriate decisions about how best to respond to the damage.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

Please see the MTA EH&S Committee's comments in section #3 above.

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February 28, 2018
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Thank you for the opportunity to submit these comments. Please contact me if you have questions or would like additional information.

Respectfully submitted,

A handwritten signature in cursive script that reads "Scott Fulmer".

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