

Supporting Statement for an Information Collection Request (ICR) Under the Paperwork Reduction Act (PRA)

EXECUTIVE SUMMARY

Identification of the Information Collection – Title and Numbers

Title: Asbestos; Regulation of Certain Uses under TSCA §6(a) (Proposed Rule; RIN 2070-AK86)

EPA ICR No.: 2707.01

OMB Control No.: 2070-NEW

Docket ID No.: EPA-HQ-OPPT-2021-0057

Abstract

The Environmental Protection Agency (EPA) is developing a proposed rule to address unreasonable risks to human health from chrysotile asbestos under section 6 of the Toxic Substances Control Act (TSCA). The proposed rule would prohibit certain uses of chrysotile asbestos. It also would require each person who disposes of chrysotile asbestos and any chrysotile asbestos containing articles related to those uses to adhere to requirements described in the OSHA Asbestos General Standard in 29 CFR 1910.1001(k) regarding asbestos waste disposal. Additionally, EPA is proposing to cross-reference the disposal requirements of Asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) (40 CFR Part 61, Subpart M) at 40 CFR section 61.150 for the following conditions of use: chrysotile asbestos diaphragm for use in chlor alkali facilities; oilfield brake blocks; other vehicle friction products; and any non-consumer use of other gaskets and aftermarket automotive brakes and linings. The proposed rule also requires each person who disposes of chrysotile asbestos or any chrysotile asbestos containing articles subject to the rule to retain at the headquarters of the company, or at the facility for which the records were generated, documentation showing compliance with the disposal requirements as well as any documentation, such as invoices or bills of lading, related to compliance with the prohibitions in the rule.

EPA is proposing this rule under section 6(a) of TSCA in response to a finding that chrysotile asbestos presents an unreasonable risk to human health when used in certain ways. The portions of the proposed rule that trigger this Information Collection Request (ICR) are the recordkeeping requirement. The records must be retained for 5 years from the date of generation.

Summary Total Burden and Costs

	Number of Respondents	Average Burden per Response (hours)	Total Burden (hours)	Average Cost per Respondent	Total Costs
Agency	0	0	0	0	0
Respondents	16	1.9	29	\$74	\$1,166

Summary

The Environmental Protection Agency (EPA) is proposing a rule under section 6 of the Toxic Substances Control Act (TSCA) to address unreasonable risk of injury to health it has identified for certain uses of chrysotile asbestos following completion of the Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos. While chrysotile asbestos is used primarily in the chlor-alkali industry, EPA is also addressing other identified categories of use. EPA has determined that chrysotile asbestos presents an unreasonable risks of injury to health for the following conditions of use: processing and industrial use of chrysotile asbestos diaphragms in the chlor-alkali industry; processing and industrial use of chrysotile asbestos-containing sheet gaskets in chemical production; industrial use and disposal of chrysotile asbestos-containing brake blocks in the oil industry; commercial use, consumer use, and disposal of aftermarket automotive chrysotile asbestos-containing brakes/linings; commercial use and disposal of other chrysotile asbestos-containing vehicle friction products, excluding for use on the NASA Super Guppy; commercial use, consumer use, and disposal of other asbestos-containing gaskets. To address these unreasonable risks, EPA is proposing under TSCA section 6 to prohibit manufacture (import), processing, distribution-in-commerce and commercial use of chrysotile asbestos, including products or articles containing chrysotile asbestos, pursuant to TSCA section 6(d)(1). EPA is also proposing disposal and recordkeeping requirements for these conditions of use.

Legal authority: The Toxic Substances Control Act (TSCA), 15 U.S.C. § 2605(a).

Respondents/affected entities: Entities potentially affected by this ICR include persons that manufacture, process, or distributes in commerce chrysotile asbestos or products or articles containing chrysotile asbestos.

Respondent's obligation to respond: Respondents are not obligated to respond or report to EPA.

Confidentiality of responses: Not applicable. 11

Total Burden and Costs

Estimated total number of potential respondents: 16

Frequency of response: Once per year for recordkeeping for disposal activities (16 respondents as estimated in the economic analysis).

Estimated total annual burden: 29 hours. Burden is defined at 5 CFR 1320.3(b).

Estimated total annual costs: \$1,166

Changes in the estimates: Not applicable. This is a request for a new OMB Control Number.

SUPPORTING STATEMENT

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

Under section 6(a) of TSCA (15 U.S.C. § 2605(a)), if EPA determines after risk evaluation that a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation, under the conditions of use, EPA must by rule apply one or more requirements to the extent necessary so that the chemical substance or mixture no longer presents such risk. Section 6(a) authorizes EPA to:

- (1) Prohibit or restrict manufacture, processing, or distribution in commerce,
- (2) Prohibit or restrict the manufacture, processing, or distribution in commerce of the chemical substance above a specified concentration,
- (3) Require minimum warnings or instructions with respect to use, distribution, or disposal,
- (4) Require manufacturers or processors to make and retain records,
- (5) Prohibit or regulate any manner of commercial use,
- (6) Prohibit or regulate any manner of disposal, and/or
- (7) Require manufacturers or processors to give notice of the unreasonable risk of injury, and to recall products if required.

This proposed rule would:

- 1) Prohibit all persons from manufacturing, processing, distributing in commerce, and commercial use of chrysotile asbestos after 2 years from the effective date of this rule for the following conditions of use:
 - a. Processing and industrial use of diaphragms in the chlor-alkali industry.
 - b. Processing and industrial use of sheet gaskets in chemical production.

- 2) Prohibit all persons from manufacturing, processing, distributing in commerce, and commercial use of chrysotile asbestos after 180 days from the effective date of this rule for the following conditions of use:
 - a. Industrial use and disposal of Oilfield Brake Blocks.
 - b. Commercial and consumer use and disposal of Aftermarket Automotive Brakes and Linings.
 - c. Commercial use and disposal of Other Vehicle Friction Products, excluding brake system components used on the NASA “Super-Guppy” Turbine (SGT) aircraft.
 - d. Commercial and consumer use and disposal of other Gaskets.
- 3) Requires persons who disposes of any chrysotile asbestos and any chrysotile asbestos-containing products or articles subject to the disposal provisions must retain any records generated pursuant to, or otherwise documenting compliance with specified disposal regulations. These records must be retained in one location at the headquarters of the company, or at the facility for which the records were generated, and they must be retained for five years from the date of generation.
- 4) Require that disposal adhere to requirements described in the OSHA Asbestos General Standard in 29 CFR 1910.1001(k) regarding asbestos waste disposal. Additionally, for the chrysotile asbestos diaphragm condition of use, as well as oilfield brake blocks, other vehicle friction products, and any non-consumer use of other gaskets and aftermarket automotive brakes and linings, EPA is proposing to cross-reference the disposal requirements of Asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) (40 CFR Part 61, Subpart M) at 40 CFR section 61.150.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the Agency has made of the information received from the current collection.

EPA. This information collection will provide EPA with information only upon inspection of such materials. There are no reporting requirements to submit information to EPA under this information collection activity.

Regulated Entities. The regulated entities will compile and retain records that are necessary as a reference for EPA or authorized entities. These records demonstrate that regulated entities are in compliance with the disposal requirements in this rule. Compliance with the rule is required to mitigate the unreasonable risks to human health identified in EPA’s risk evaluation for chrysotile asbestos. These recordkeeping requirements are also necessary to permit the EPA to conduct its enforcement activities and to ensure compliance within the regulated community.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision

for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

There will be no information collection by EPA. Therefore, there is no need for any technology facilitation under the proposed rule related to the information collection activities. The recordkeeping requirement does not specify a particular technology or method of retaining the required information.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

The EPA's collection pursuant to the TSCA section 6(a) regulations do not duplicate any other collection. There is no other Federal program that requires the information collection activities related to the prohibitions and disposal requirements under the proposed rule.

5. If the collection of information impacts small businesses or other small entities, describe the methods used to minimize burden.

Cost-revenue impact ratios are only estimated for the aftermarket automotive brakes use category. Brakes containing asbestos are estimated to have a very small share of the total market, and the cost impact of the rule is modest (estimated unit cost of \$178 per establishment for annual recordkeeping costs). It is expected that the affected firms would pass the higher cost of non-asbestos brakes (estimated unit cost of \$4) on to their customers.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

The information collection activities covered by this ICR are necessary in order to enhance the mitigation of unreasonable risks identified in certain uses of chrysotile asbestos. Due to EPA's finding that chrysotile asbestos presents an unreasonable health risk under the specified conditions of use, EPA is proposing a rule that involves information collection activities that mitigate the unreasonable health risks and do not present unreasonable burdens to the regulated entities.

EPA has authority under section 6 of TSCA to require recordkeeping related to the regulatory requirements imposed by EPA. This is important where, as here, such records and reports are necessary for effective enforcement of the section 6 rule and would apply to persons who are not covered by section 8(a) of TSCA, i.e., those who are not manufacturers or processors.

Due to the nature of the triggering events that initiate information collection activities under the proposed rule, less frequent collection is not feasible. The proposed rule does not require reporting information to EPA.

Under section 6(a) of TSCA (15 U.S.C. § 2605(a)), if EPA determines after risk evaluation that a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation, under the conditions of use, EPA must by rule apply one or more requirements, (see #1 above) to the extent necessary so that the chemical substance or mixture no longer presents such risk.

The recordkeeping requirement under the proposed rule mandates that each person who disposes of any chrysotile asbestos or chrysotile asbestos containing articles must retain in one location at the headquarters of the company documentation, for which the records were generation, documentation of compliance with the prohibition, and any ordinary business records, such as invoices or bills of lading related to compliance with the prohibition.

- 7. Explain any special circumstances that require the collection to be conducted in a manner:**
- a) requiring respondents to report information to the agency more often than quarterly;**
 - b) requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
 - c) requiring respondents to submit more than an original and two copies of any document;**
 - d) requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**
 - e) in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
 - f) requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
 - g) that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**

- h) requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

This rule proposes to require entities to retain certain records for five years. These records are required to mitigate unreasonable risks to human health.

- 8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken in response to the comments. Specifically address comments received on cost and hour burden.**

Describe efforts to consult with persons outside EPA to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The proposed rulemaking serves as the public notice for this ICR amendment. Interested parties should submit comments referencing Docket ID No. EPA-HQ-OPPT-2021-0057 to the address listed at the end of this document. Responses will be taken into account in developing the final rulemaking.

- 9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

This collection does not provide any payment or gift to respondents.

- 10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy. If the collection requires a systems of records notice (SORN) or privacy impact assessment (PIA), those should be cited and described here.**

EPA will not be collecting any information. Therefore, confidential information will not be submitted to EPA.

- 11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from**

whom the information is requested, and any steps to be taken to obtain their consent.

The information collection activities do not include questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information.

The statement should:

- a) Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- b) If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.**
- c) Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included under ‘Annual Cost to Federal Government’.**

EPA’s *Economic Analysis of the Proposed Rule for Asbestos Part 1 Risk Management* (U.S. EPA, 2022) provides the detailed methodology for estimating the number of respondents.

Recordkeeping

Under the proposed rule primary option, the recordkeeping requirement mandates companies that manufacture (import), process, distribute in commerce and use chrysotile asbestos to retain certain information at the company headquarters for five years from the date of shipment. These information collection activities are necessary to provide EPA with information upon inspection. In the Economic Analysis, it is generally assumed recordkeeping associated with maintaining ordinary business records is performed in the baseline. However, there are two exceptions. End users of sheet gaskets and end users of aftermarket automotive brakes will incur additional recordkeeping costs associated with disposal activities.

For recordkeeping among these two groups of end users, 16 respondents are estimated to incur an average burden over the first three years of the rule of 29 hours each, for a total annual burden of 87 hours. Each respondent is expected to complete this activity

once per year. Sheet gasket end users are expected to complete this activity in Years 1 and 2, and end users of aftermarket automotive brakes are expected to complete this activity in Year 1 only.

Summary of Three Year Average Incremental Cost Burden for Primary Option			
Activity	Number of Respondents	Average 3-Year Burden per Respondent for Technical and Clerical Staff	Total 3-Year Burden for Technical and Clerical Staff
Recordkeeping	16	29	87

- 13. Provide an estimate for the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).**
- a) **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**
 - b) **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
 - c) **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

Among end users in the sheet gaskets and aftermarket automotive breaks industries, a total of 16 respondents are estimated to each incur an average annual cost of \$1,166

per year over the first three years of the rule for a total cost of \$3,498. Sheet gasket end users are expected to incur these costs in Years 1 and 2, and end users of aftermarket automotive brakes are expected to incur these costs in Year 1 only.

Summary of Three Year Average Incremental Burden Hours and Costs for Primary Option				
Activity	Number of Respondents	Loaded Wage Rates	Average 3-Year Cost (\$2021)	Total 3-Year Cost (\$2021)
Recordkeeping	16	\$83.76 (technical) \$35.84 (clerical)	\$1,166	\$3,498

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

There will be no agency collection activities under the proposed rule. There will only be recordkeeping requirements. Annualized costs for recordkeeping requirements are not provided as costs are only incurred during the first three years of the rule.

15. Explain the reasons for any program changes or adjustments reported in hour or cost burden.

This is a new, rule-related information collection. The total burden requested for this ICR is 29 hours per year. The total annual cost burden requested for this ICR is \$1,166.

16. For collections whose results will be published, outline the plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

Not applicable.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

Not applicable.

18. Explain each exception to the certification statement identified in “Certification for Paperwork Reduction Act Submissions.”

EPA does not request an exception to the certification of this information collection.

SUPPLEMENTAL INFORMATION

The annual public burden for this collection of information is estimated to average approximately 1.7 hours annually per respondent over the three-year period. 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 and understand instructions; prepare and submit reports (including searching data sources); complete and review the collection of information; transmit the information; and keep records.

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-OPPT-2021-0057, which is available at <http://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.

You can also provide comments to the Office of Information and Regulatory Affairs, Office of Management and Budget via <http://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

All comments received by EPA will be included in the docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

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LIST OF ATTACHMENTS

The attachments listed below can be found in the docket for this ICR or by using the hyperlink that is provided in the list below. The docket for this ICR is accessible electronically through <http://www.regulations.gov> using Docket ID Number: EPA-HQ-2021-0057.

Ref.	Title (hyperlink)
1.	TSCA section 6 (15 U.S.C. 2605)
2.	Proposed Rule