

ENVIRONMENTAL PROTECTION
AGENCY

40 CFR Part 763

[OPPTS-62125B; FRL-6751-3]

RIN 2070-AC66

Asbestos Worker Protection

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Final rule.

SUMMARY: In this Final Rule, EPA is amending both the Asbestos Worker Protection Rule (WPR) and the Asbestos-in-Schools Rule. The WPR amendment protects State and local government employees from the health risks of exposure to asbestos to the same extent as private sector workers by adopting for these employees the Asbestos Standards of the Occupational Safety and Health Administration (OSHA). The WPR's coverage is extended to State and local government

employees who are performing construction work, custodial work, and automotive brake and clutch repair work. This final rule cross-references the OSHA Asbestos Standards for Construction and for General Industry, so that future amendments to these OSHA standards are directly and equally effective for employees covered by the WPR. EPA also amends the Asbestos-in-Schools Rule to provide coverage under the WPR for employees of public local education agencies who perform operations, maintenance, and repair activities. EPA is issuing this final rule under section 6 of the Toxic Substances Control Act (TSCA).

DATES: This final rule is effective December 15, 2000.

FOR FURTHER INFORMATION CONTACT: For general information contact: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408), Environmental Protection

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SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a State or local government entity whose employees work with or near asbestos-containing material. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Educational services	61	Public educational institutions, including school districts, not subject to an OSHA-approved State asbestos plan or a State asbestos worker protection plan that EPA has determined is exempt from the requirements of the WPR.
Public administration	92	State or local government employers not subject to an OSHA-approved State asbestos plan or a State asbestos worker protection plan that EPA has determined is exempt from the requirements of the WPR.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in 40 CFR 763.121. If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select

"Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

To access information about asbestos, go directly to the Asbestos Home Page for the Office of Pollution Prevention and Toxics at <http://www.epa.gov/asbestos/>.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS-62125B. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The record also contains any experience, as reflected in this preamble and the preamble to the proposed rule, that the Agency has

gained over the years in implementing the WPR and the Asbestos-in-Schools Rule. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B-607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260-7099.

II. Background

A. What is the Agency's Authority for Taking this Action?

Under TSCA section 6(a), if EPA finds that the manufacture, processing, distribution in commerce, use or disposal of a chemical substance or mixture, or any combination of these activities, presents, or will present, an unreasonable risk of injury to health or the environment, EPA shall by rule apply requirements to the substance or

mixture to the extent necessary to protect adequately against the risk. Asbestos is a chemical substance or mixture that falls within the scope of this authority. In deciding whether to promulgate this rule under TSCA section 6(a), EPA considered the health effects of asbestos; the magnitude of human exposure to asbestos; the environmental effects of asbestos and the magnitude of the exposure of the environment to asbestos; the benefits of asbestos for various uses and the availability of substitutes for those uses; the reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health; and the social impacts of the rule. See 15 U.S.C. 2601(c) and 2605(c)(1). EPA did not change its consideration of any of these factors based upon comments received on the proposed rule. The following is a summary of EPA's evaluation, and the Economic Analysis contains additional information on many of these factors (Ref. 5).

1. *Health effects of asbestos.* The primary route of human exposure is through the respiratory system, where asbestos fibers may cause carcinoma of the lung, malignant mesothelioma of the pleura and peritoneum, asbestosis, and other illnesses.

2. *Human exposure to asbestos.* Asbestos is found in building products such as insulation, ceiling and floor tiles, spackling tape for drywall, and roofing products. In general, asbestos-containing materials in good condition do not pose a risk of exposure, but, if the matrix of asbestos fibers is disturbed or deteriorates, fibers may be released into the air. Workers may be exposed to asbestos during new construction, asbestos abatement, renovation, building maintenance, custodial activities, and brake and clutch repair work. Building occupants, including school children, may be exposed to asbestos fibers as a result of activity taking place in their building. As a result of this regulation, EPA estimates that worker exposures during these activities will decrease by at least one order of magnitude, while building occupant exposures will decrease by 50%.

3. *Environmental effects of asbestos.* This rule is directed at risks posed by asbestos in the workplace, not in the ambient environment. EPA therefore did not consider the environmental effects of asbestos.

4. *The benefits of asbestos for various uses and the availability of substitutes for those uses.* This rule does not

require asbestos-containing building material to be removed and replaced with non-asbestos substitutes. Since this rule only applies once a decision has been made to disturb asbestos-containing material, EPA did not consider the benefits of asbestos for various uses and the availability of substitutes for those uses.

5. *Economic consequences of this rule.* The Economic Analysis for this final rule provides a detailed analysis of the economic benefits of the reduced incidence of cancer and other diseases among workers and building occupants attributable to this rule. EPA estimates that sixty-five years of exposure reduction under this rule will reduce the number of lung cancer and mesothelioma cases among exposed workers and building occupants by 71.58 cases. According to EPA's analysis, this rule will also result in approximately 65.65 avoided cases of cancer among individuals exposed as school children. EPA also found that this rule is likely to result in other benefits, such as asbestosis cases avoided among workers, avoided medical costs associated with non-fatal diseases, and reduced exposures to worker families from asbestos fibers brought home on clothing, but EPA was unable to reliably quantify these benefits.

The Economic Analysis also evaluates the incremental costs to State and local governments of complying with this rule. EPA estimates that this rule will impose first-year compliance costs of \$63.34 million. Over the 65-year time frame of exposure reduction, the present value of compliance costs is estimated to be \$1.12 billion.

6. *Other effects.* TSCA section 6(c)(1)(D) also requires EPA, when considering the economic consequences of the rule, to take other factors into account, including the effects on the national economy, small business, technological innovation, the environment, and public health. EPA has already summarized its evaluation of the effects on public health and the environment above. EPA's consideration of the effects on the national economy, small government entities, and technological innovation are discussed in Unit IV.

7. *Social and other qualitative effects.* TSCA section 2 requires EPA, when taking any action under TSCA, to consider the social as well as environmental and economic impacts of the action. One important social consequence of this rule is the elimination of inequitable legal protection for classes of persons based solely upon the identity and location of

their employers. This rule, by ensuring that all public and private sector workers are entitled to the same level of protection from asbestos exposures, serves important equity and environmental justice concerns. In addition, having a uniform set of standards for construction and brake and clutch repair employees will also ease implementation burdens, by allowing employers to use the excellent guidance materials developed by OSHA and reducing confusion and mistakes caused by two different standards.

Having considered these factors, EPA finds under TSCA section 6 that the current exposure to asbestos among unprotected State and local government employees during use or disposal in construction work, custodial work, and brake and clutch repair work presents an unreasonable risk of injury to human health, and that this rule is necessary to provide adequate protection against that risk.

B. What Action is the Agency Taking?

In 1985, EPA first determined that exposure to asbestos poses an unreasonable risk of harm to unprotected State and local government employees who conduct asbestos abatement projects. EPA's 1987 Asbestos Worker Protection Rule (WPR) requires certain work practices, personal protective equipment, and training for State and local government employees who perform asbestos abatement projects and who are not covered by a State Plan approved by the Occupational Safety and Health Administration (OSHA) (40 CFR part 763, subpart G). There are 27 States that do not have approved OSHA State Plans. On April 27, 2000, EPA published a proposal to amend the WPR to provide the same level of protection to State and local government employees not covered by an OSHA-approved State plan as non-government employees and State and local government employees covered by an OSHA-approved State plan. EPA proposed to provide this protection by incorporating OSHA's Asbestos Standards for Construction and for General Industry set out at 29 CFR 1926.1101 and 29 CFR 1910.1001 respectively in the WPR (Ref. 1, p. 24806).

By actually cross-referencing the OSHA Asbestos Standards in the WPR, future amendments to the OSHA General Industry or Construction Standard would also effect a change in the requirements under the WPR (Ref. 1, pp. 24808, 24822). EPA also proposed to expand the scope of the WPR from asbestos abatement projects to all

construction, custodial, and automotive brake and clutch repair work. Finally, EPA proposed to amend the Asbestos-in-Schools Rule, 40 CFR part 763, subpart E, to reflect the fact that public school employees performing operations and maintenance activities would now be covered by the WPR by modifying 40 CFR 763.91(b) and removing appendix B to subpart E (Ref. 1, p. 24814).

1. *What comments did EPA receive on the proposed rule?* EPA received comments on its proposal from the American Federation of State, County and Municipal Employees; the American Industrial Hygiene Association; the Laborers' International Union of North America; the Texas A & M University System; the Safe Buildings Alliance; the Asbestos Information Association; the Board of Certified Safety Professionals; the Resilient Floor Covering Institute; the Service Employees International Union; the American Society of Safety Engineers; and the International Brotherhood of Teamsters. With the exception of Texas A & M, all of the commenters generally supported the proposal and encouraged EPA to be as consistent as possible with the OSHA Asbestos Standards. The following discussion addresses all material issues raised by the commenters, EPA's response to those comments, and how these comments affected the outcome of this final rule. Comments raising each issue are identified in parentheses by docket control number.

Texas A & M expressed concern with the proposed extension of WPR coverage to building custodians (Docket #62125A, C-004). The University believes that it might have to survey all of its buildings for asbestos in order to comply with the requirements to determine the presence, location, and quantity of asbestos-containing material (ACM) and presumed asbestos-containing material (PACM) in custodial work sites, post signs at the entrances to mechanical rooms containing asbestos, and provide information and training to custodians who work in areas that contain asbestos. EPA recommends that employers conduct full building inspections, using accredited inspectors, to determine the presence, location, and quantity of asbestos in their buildings. However, as discussed in the preamble to the proposed amendments, State and local government employers may comply with these requirements merely by identifying three types of building materials (thermal system insulation, surfacing material, and resilient floor covering) and assuming that these materials contain asbestos, so long as there is no specific reason to suspect

that other materials in the work site or mechanical room contain asbestos (Ref. 1, p. 24810).

Texas A & M also believes that annual training for custodians, and the associated recordkeeping, is "excessive" and "cumbersome" for employers with large numbers of custodial employees. However, EPA believes that the annual educational requirements for custodians are minimal, consisting of at least 2 hours of awareness training on topics such as the health effects of asbestos, how to work around asbestos-containing materials safely, and where asbestos-containing materials are located in the building (Ref. 1, pp. 24813-24814). Texas A & M did not dispute EPA's incremental cost estimate of \$49.79 per full-time equivalent employee per year for custodial training, including the associated recordkeeping costs (Ref. 5, pp. 4-29). EPA continues to believe that the benefits of protecting custodians under this regulation, including the 58 estimated cancer cases avoided and consistency with OSHA, outweigh the expense.

Finally, Texas A & M does not believe that custodians should be considered "asbestos workers." EPA is unsure as to what Texas A & M intended by this comment, because the only place that EPA uses a similar term ("asbestos abatement workers") is in Unit I.B.1. of the Asbestos Model Accreditation Plan (MAP), 40 CFR part 763, subpart E, appendix C. The proposed amendments to the WPR did not suggest that custodians be required to complete the 4-day training course for workers under Unit I.B.1. of the MAP (Ref. 1, pp. 248137-24814). As discussed in this unit, this rule requires, at a minimum, 2 hours of awareness training for custodians.

The comments from the American Industrial Hygiene Association (AIHA) expressed strong support for consistency between EPA and OSHA rules and standards, and reminded EPA that OSHA permits Certified Industrial Hygienists to perform certain functions required by the regulations (Docket #62125A, C-002). AIHA indicated that OSHA permits CIHs to collect samples to rebut the presumption that surfacing materials and thermal system insulation contain asbestos. AIHA also indicated that OSHA permits CIHs to serve as competent persons under certain circumstances. EPA intends to be as consistent with the OSHA asbestos regulations as possible. However, for projects in schools or in public or commercial buildings, EPA's MAP requires persons who collect samples to be accredited as inspectors and persons who supervise asbestos response actions

to be accredited as supervisors. (TSCA section 206(a), Units I.A. and I.B. of the MAP). Thus, CIHs collecting samples in schools or in public or commercial buildings would also have to be MAP accredited inspectors, and CIHs supervising asbestos response actions in such buildings would have to be MAP accredited supervisors. Changes to the MAP are outside the scope of this rulemaking, but EPA will consider the issues raised by AIHA in any future actions to amend the MAP.

AIHA also noted in its comments that OSHA is more inclusive than EPA with respect to laboratory accreditation programs. OSHA requires laboratories that analyze bulk samples of presumed asbestos-containing material (surfacing materials and thermal system insulation) to participate in a nationally recognized testing program (Ref. 4, pp. 41062, 41141). The AIHA industrial hygiene laboratory accreditation program is one of the programs specifically mentioned by OSHA. EPA will also recognize AIHA laboratory accreditation for laboratories that analyze bulk samples under the WPR, unless those samples are collected in a school building that is regulated under the Asbestos Hazard Emergency Response Act (AHERA), Title II of TSCA, 15 U.S.C. 2641 *et seq.* (Ref. 1, p. 24810). TSCA section 206(d), within AHERA, requires laboratories that analyze samples collected from school buildings under the authority of a local education agency to be accredited by the National Institute of Standards and Technology (NIST). Therefore, EPA may not accept AIHA accreditation for laboratories that analyze samples collected from school buildings.

The American Society of Safety Engineers (ASSE) strongly endorsed EPA's proposal to protect State and local government employees from the health risks of exposure to asbestos to the same extent as private sector employees. ASSE and the Board of Certified Safety Professionals (BCSP), however, both commented that Certified Safety Professionals (CSPs), by virtue of their extensive training, should be permitted to perform the same tasks as CIHs (Docket #62125A, C-010 and C-007, respectively). Specifically, these commenters stated that the preamble to the proposal should have recognized CSPs as qualified to collect bulk samples of surfacing materials and thermal system insulation (Ref. 1, p. 24809) and to determine, in certain circumstances, when alternate control methods for Class I projects are adequate (Ref. 1, p. 24811). As indicated by ASSE, CSPs are recognized in OSHA Directive CPL 2-2.63 (Ref. 2), which

contains guidance for OSHA compliance inspectors on the asbestos standards. Appendix C, "Questions and Answers on the Occupational Exposure to Asbestos Standard," to CPL 2-2.63 says that an employer should not be cited for a violation of the asbestos standards if a CSP was used to evaluate alternate control methods for Class I work, so long as a review of the particular CSP's past work history and training indicates that the CSP possessed the skills, professional judgment, and background to perform the evaluation.

EPA intends to follow OSHA's lead in the interpretation and application of the WPR, so EPA will likewise allow properly qualified CSPs to evaluate alternate control methods for Class I projects. However, OSHA does not permit CSPs to collect bulk samples of thermal system insulation or surfacing material for the purpose of rebutting the presumption that these materials contain asbestos (Ref. 6). EPA will defer to OSHA's expertise in this matter, and maintain consistency by requiring samples to be taken by either a MAP-accredited inspector or a CIH.

The comments from the Resilient Floor Covering Institute (RFCI) expressed concern that, because EPA had not expressly adopted OSHA's interpretations of the Asbestos Standards as set out in OSHA Instruction CPL 2-2.63, EPA would not apply the WPR consistent with the OSHA asbestos standards, particularly with regard to removal and/or replacement of resilient floor covering materials (Docket #62125A, C-008). Specifically, RFCI pointed out that Appendix D to OSHA's CPL 2-2.63 includes the terms of a Settlement Agreement between the flooring industry and OSHA on the application of the OSHA asbestos standards to resilient floor covering. Although RFCI recommended that EPA specifically cite OSHA Instruction CPL 2-2.63 in the text of the WPR, EPA does not believe that this is appropriate, particularly since CPL 2-2.63 is not cited in the text of the OSHA asbestos standards. However, EPA will follow CPL 2-2.63, including all of the appendices and any possible future changes, in implementing the WPR, so long as the Directive is not contrary to other EPA statutes and regulations, such as TSCA, AHERA, the Asbestos-in-Schools Rule, and the MAP.

Finally, comments from the Asbestos Information Association (AIA) supported consistency between the OSHA and EPA asbestos regulations, but objected to the characterization of the risk to State and local government employees as "unreasonable" (Docket

#62125A, C-006). In support of this comment, AIA implied that workers would be exposed only to chrysotile asbestos and stated that EPA's (and OSHA's) asbestos risk assessments were outdated, and that the latest scientific findings indicate that the risk from products made with chrysotile asbestos is actually much lower than predicted by current EPA and OSHA risk assessments. However, AIA did not submit any additional information to support this claim. The issue of the risk from chrysotile asbestos has been raised and considered in previous EPA and OSHA rulemakings, and both Agencies have declined to distinguish between asbestos fiber types in performing risk assessments for regulatory purposes. See, for example, the discussion in the preamble to EPA's 1989 final Asbestos Ban and Phaseout Rule (Ref. 3, pp. 29470-29471) and the discussion in the preamble to the 1994 final OSHA Asbestos Standards (Ref. 4, pp. 40978, 40979). Furthermore, EPA reviewed the literature available in 1999 on asbestos hazards in order to assist in the preparation of the United States third-party submissions to a dispute resolution panel of the World Trade Organization regarding the French asbestos ban (Refs. 7-8). EPA found nothing during this literature review that persuasively contradicted the risk assessment approach followed by EPA and OSHA.

The balance of the comments expressed only support for the proposal and contained no substantive comments. These comments were received from the Laborers' International Union of North America, the International Brotherhood of Teamsters, the Safe Buildings Alliance, the Service Employees International Union, and the American Federation of State, County, and Municipal Employees.

No commenter requested an informal public hearing on the proposed rule.

2. *What does this final rule require?* This final rule makes the WPR consistent with the OSHA Asbestos Construction Standard, 29 CFR 1926.1101, including all revisions to that standard from 1994 through the present, and all future amendments. If you are a State or local government employer whose employees perform asbestos abatement activities, you must now comply with the OSHA Asbestos Construction Standard. This rule will effectively lower the permissible exposure limit (PEL) for these employees to 0.1 fibers per cubic centimeter (f/cc) and incorporate additional hazard communication and

respiratory protection program requirements.

In addition, this rule extends the requirements of the OSHA Asbestos Construction Standard to State and local government employees who perform any construction activities identified in 29 CFR 1926.1101(a), including demolition, alteration, repair, maintenance, renovation, installation of asbestos-containing products, and housekeeping. For general custodial activities not associated with construction projects, this rule requires State and local government employers to comply with the Asbestos General Industry Standard in 29 CFR 1910.1001.

This rule also applies the current requirements of the OSHA General Industry Standard, 29 CFR 1910.1001, to State and local government employers of employees engaged in automotive brake and clutch repair work. If your employees repair, clean, or replace asbestos-containing clutch plates and brake pads, shoes, and linings, or remove asbestos-containing residue from brake drums or clutch housings, you must comply with the OSHA standards in 29 CFR 1910.1001.

This rule amends the Asbestos-in-Schools Rule, 40 CFR part 763, subpart E, to remove the provisions in 40 CFR 763.91(b) that extend WPR protections to employees of public school systems when they are performing operations, maintenance and repair (O&M) activities. This rule also deletes appendix B to subpart E and the reference to appendix B in 40 CFR 763.92(a)(2)(iii). If you are a public local education agency employer in a State without an OSHA-approved State plan, and your employees perform O&M activities, you will need to follow the requirements of the WPR.

III. References

1. U.S. Environmental Protection Agency (USEPA), Office of Pollution Prevention and Toxics (OPPT). Asbestos Worker Protection; Proposed Rule. **Federal Register** (65 FR 24806, April 27, 2000) (FRL-6493-5).

2. U.S. Department of Labor (USDOL), Occupational Safety and Health Administration (OSHA). Instruction CPL 2-2.63 (November 3, 1995), revised and renamed Directive CPL 2-2.63 (January 9, 1996).

3. USEPA, OPPT. Asbestos Manufacture, Importation, Processing, and Distribution in Commerce Prohibitions; Final Rule. **Federal Register** (54 FR 29460, July 12, 1989).

4. USDOL, OSHA. Occupational Exposure to Asbestos; Final Rule. **Federal Register** (59 FR 40964, August 10, 1994).

5. USEPA, OPPT. Final Asbestos Worker Protection Rule Economic Analysis (September 25, 2000).

6. USDOL, OSHA. Letter to Richard L. Barcum re: procedures for demonstrating that presumed asbestos-containing material does not contain more than 1 percent asbestos (July 1, 1998).

7. U.S. Department of Commerce (USDOC), U.S. Trade Representative (USTR). Third Party Written Submission of the United States, European Communities—Measures Affecting Asbestos and Products Containing Asbestos (May 28, 1999).

8. USDOC, USTR. United States Responses to Questions Posed by the European Communities, European Communities—Measures Affecting Asbestos and Products Containing Asbestos (June 21, 1999).

9. USDOL, OSHA. Letter to the Honorable Jay Johnson re: Occupational Safety and Health Act applicability to tribal land workplaces and employers (March 12, 1998).

IV. Regulatory Assessment Requirements

A. Regulatory Planning and Review

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” subject to review by the Office of Management and Budget (OMB), because this action is not likely to result in a rule that meets any of the criteria for a “significant regulatory action” provided in section 3(f) of the Executive Order.

EPA has prepared an analysis of the potential impact of this action, which is estimated to cost \$63.34 million in the first year of the rule and then decline annually thereafter. The analysis is contained in a document entitled “Final Asbestos Worker Protection Rule Economic Analysis” (Ref. 5). This document is available as a part of the public version of the official record for this action (instructions for accessing this document are contained in Unit I.B.).

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, EPA hereby certifies that this final action will not have a significant economic impact on a substantial number of small entities. The factual basis for EPA’s determination is presented in the small entity impact

analysis prepared as part of the Economic Analysis for the rule (Ref. 5), and is briefly summarized here. For purposes of analyzing potential impact on small entities, EPA used the definition for small entities in RFA section 601. Under RFA section 601, “small entity” is defined as:

1. A small business that meets Small Business Administration size standards codified at 13 CFR 121.201.

2. A small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000.

3. A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Of the three categories of small entities, only small governmental jurisdictions are affected by this final rule. As such, EPA’s analysis of potential small entity impacts assesses the potential impacts on small governmental jurisdictions.

Based on the definition of “small governmental jurisdiction,” no State-level government covered by the asbestos WPR can be considered small. Therefore, the small government entities potentially impacted by the asbestos WPR are local governments (e.g., county, municipal, or towns) and school districts.

The amendments to the asbestos WPR may impact local governments in the 27 States without approved OSHA State plans by imposing incremental compliance costs for asbestos-related maintenance, renovation, and brake and clutch repair. There are 24,495 small governmental jurisdictions that are potentially impacted by the asbestos WPR. However, the estimated amounts of the impact are all extremely low. In each of the States, the impact for all small local governments is estimated to be less than 0.1% of revenues available for compliance. EPA estimated that the largest impact would occur for small local governments in Arkansas, Delaware, and West Virginia, where the upper bound estimate of compliance costs as a percent of available revenues is estimated to be 0.051%. For small local governments as a whole, compliance costs associated with the asbestos WPR are estimated to represent 0.023% of available revenues. Therefore, the Agency has concluded that the asbestos WPR will not have a significant impact on small government entities.

Small school districts are defined as school districts serving a resident population of less than 50,000. In the 27 covered States, there are 17,846 small school districts that are potentially

impacted by the asbestos WPR. The estimated impact of compliance costs on all small school districts is estimated to be less than 0.01% of available revenues. The largest impact is estimated for Mississippi where compliance costs as a percent of available revenues are estimated to equal 0.013%. The Agency has therefore concluded that the asbestos WPR will not have a significant effect on the revenues of small school districts.

Additional details regarding EPA’s basis for this certification are presented in the Final Economic Analysis (Ref. 5), which is included in the public version of the official record for this action. This information will also be provided to the Small Business Administration (SBA) Chief Counsel for Advocacy upon request.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to OMB for review and approval pursuant to the PRA and OMB implementing regulations at 5 CFR part 1320. The burden and costs related to the information collection requirements contained in this rule are described in an Information Collection Request (ICR). This ICR proposes to amend the existing ICR for the current WPR which is approved through September 30, 2001, under OMB No. 2070-0072 (EPA ICR No. 1246.06). A copy of this ICR, which is identified as EPA ICR No. 1246.08, is available electronically at <http://www.epa.gov/opperid1/icr.htm>, or by e-mailing a request to farmer.sandy@epa.gov. You may also request a copy by mail from Sandy Farmer, Collection Strategies Division, Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW., Washington, DC 20460, or by calling (202) 260-2740. The information requirements are not enforceable until OMB approves them.

This amendment to the WPR requires employers to collect, disseminate, and maintain information relating to employee asbestos exposures, respiratory protection, medical surveillance, and training. The records maintained as a result of this information collection will provide EPA with the data necessary for effective enforcement of the WPR.

The public reporting burden for this collection of information is estimated to average, on an annual basis, 17.24 hours per respondent, including the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. EPA estimates that 25,312 respondents would incur these

burdens, for a total annual respondent burden of 436,289 hours.

As defined by the PRA and 5 CFR 1230.3(b), "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. The OMB control number(s) for the information collection requirements in this rule will be listed in an amendment to 40 CFR part 9 in a subsequent **Federal Register** document after OMB approves the ICR.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, (UMRA), Public Law 104-4, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. As discussed in the Final Economic Analysis (Ref. 5), the rule will result in estimated expenditures of at most \$63.34 million in any 1 year. In addition, EPA has determined that this rule will not significantly or uniquely affect small governments. For small local governments as a whole, compliance costs associated with the WPR represent 0.023% of revenues assumed to be available for compliance. Moreover, the impact of compliance costs on small school districts as a whole would be less than 0.01% of available revenues. Thus, this final rule is not subject to the requirements of UMRA sections 202, 203, 204, and 205.

E. Federalism

Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure

"meaningful and timely input by State and local government officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local government officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local government officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (i.e., the rules will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing State and local government officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local government officials regarding the conflict between State law and federally protected interests within the agency's area of regulatory responsibility.

This final rule does not have federalism implications. This rule amends the existing WPR to cover additional asbestos-related activities and to conform the WPR to the OSHA Asbestos Standards. The changes do not result in a significant intergovernmental mandate under the UMRA, and thus, EPA concludes that the rule does not impose substantial direct compliance costs. Nor does the rule substantially affect the relationship between the national government and the States, or the distribution of power and

responsibilities among the various levels of government. Those relationships have already been established under the existing WPR, and these amendments do not alter them. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

This rule preempts State and local law in accordance with TSCA section 18(a)(2)(B). By publishing and inviting comment on the proposed rule, EPA provided State and local government officials notice and an opportunity for appropriate participation. Thus, EPA complied with the requirements of section 4 of the Executive Order.

F. Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. This rule does not significantly or uniquely affect the communities of Indian tribal governments, nor does it impose substantial direct compliance costs on such communities. Since the OSHA Asbestos Standards cover tribal governments and tribal employees, the WPR does not apply to these groups (Ref. 9). Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

G. Environmental Justice

Pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency considered environmental justice-related issues with regard to the potential impacts of this action on the environmental and health conditions in minority and low-income populations. Many of the employees who will benefit from the protections of this rule are members of minority and low-income populations. By providing protection for currently unprotected State and local government building maintenance and custodial employees and their families, this rule addresses the lesser levels of protection in the workplace provided under federal regulations to minority and low-income

populations among State and local government employees. In other words, the rule does not impose disproportionately high- and adverse-human health or environmental effects on minority or low-income populations, but actually decreases such effects.

As described in the proposal (Ref. 1, p. 24829), public participation is an important environmental justice concern. EPA received comments on the proposed rule from organizations representing State and local government employees, but no requests for an informal public hearing on the proposed rule. (See Unit II.A.1).

H. Children's Health

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), does not apply to this final rule because it is not "economically significant" as defined under Executive Order 12866. However, it is EPA's policy to consistently and explicitly consider risks to infants and children in all risk assessments generated during its decision making process, including the setting of standards to protect public health and the environment.

EPA has determined that children are physiologically more vulnerable to asbestos exposures than adults, and that this rule will prevent approximately 65.65 cancer cases among persons with childhood exposures to asbestos from school buildings. EPA also expects this rule to result in other benefits associated with lower asbestos exposures, such as a reduced incidence of non-cancerous health effects such as asbestosis, pleural plaques, and pleural effusion. EPA expects the rule to substantially benefit children by reducing the incidental exposures children face while attending affected schools and when at home from workers' clothing. By reducing ambient asbestos concentrations in school buildings, this rule will help protect children from the disproportionate asbestos exposure risk they face.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted

by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA described the applicability of the NTTAA to this rule in the proposal (Ref. 1, pp. 24829-24830). The Agency received no comments or suggestions regarding alternative approaches to technical standards. One of EPA's primary goals in finalizing these amendments to the WPR is to achieve consistency with the OSHA Asbestos Standards. EPA has determined that having different standards for public and private sector workers is inefficient and unfair, and that EPA should generally defer to OSHA's expertise in the matter of worker protection. Therefore, EPA finds that any voluntary consensus standard which is inconsistent with the applicable OSHA Standards is impractical under NTTAA section 12(d)(3).

J. Constitutionally Protected Property Rights

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order.

K. Civil Justice Reform

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in

the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 763

Environmental protection, Asbestos, Schools, Hazardous substances, Reporting and recordkeeping requirements, Worker protection.

Dated: November 3, 2000.

Carol M. Browner,
Administrator.

Therefore, 40 CFR chapter I, subchapter R, is amended as follows:

PART 763—[AMENDED]

1. The authority citation for part 763 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607(c), 2643, and 2646.

2. By revising § 763.91(b) to read as follows:

§ 763.91 Operations and maintenance.

* * * * *

(b) *Worker protection.* Local education agencies must comply with either the OSHA Asbestos Construction Standard at 29 CFR 1926.1101, or the Asbestos Worker Protection Rule at 40 CFR 763.120, whichever is applicable.

* * * * *

§ 763.92 [Amended]

3. By revising § 763.92(a)(2)(iii) to remove the phrase "Appendices A, B, C, D of this subpart E of this part" and add in its place the phrase "Appendices A, C, and D of this subpart E of this part."

Appendix B to Subpart E [Removed and reserved]

4. By removing and reserving Appendix B to subpart E.

5. By revising subpart G to read as follows:

Subpart G—Asbestos Worker Protection

Sec.

763.120 What is the purpose of this subpart?

763.121 Does this subpart apply to me?

763.122 What does this subpart require me to do?

763.123 May a State implement its own asbestos worker protection plan?

Subpart G—Asbestos Worker Protection

§ 763.120 What is the purpose of this subpart?

This subpart protects certain State and local government employees who are not protected by the Asbestos Standards of the Occupational Safety and Health Administration (OSHA). This subpart applies the OSHA Asbestos

Standards in 29 CFR 1910.1001 and 29 CFR 1926.1101 to these employees.

§ 763.121 Does this subpart apply to me?

If you are a State or local government employer and you are not subject to a State asbestos standard that OSHA has approved under section 18 of the Occupational Safety and Health Act or a State asbestos plan that EPA has exempted from the requirements of this subpart under § 763.123, you must follow the requirements of this subpart to protect your employees from occupational exposure to asbestos.

§ 763.122 What does this subpart require me to do?

If you are a State or local government employer whose employees perform:

(a) Construction activities identified in 29 CFR 1926.1101(a), you must:

(1) Comply with the OSHA standards in 29 CFR 1926.1101.

(2) Submit notifications required for alternative control methods to the Director, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

(b) Custodial activities not associated with the construction activities identified in 29 CFR 1926.1101(a), you must comply with the OSHA standards in 29 CFR 1910.1001.

(c) Repair, cleaning, or replacement of asbestos-containing clutch plates and brake pads, shoes, and linings, or removal of asbestos-containing residue from brake drums or clutch housings, you must comply with the OSHA standards in 29 CFR 1910.1001.

§ 763.123 May a State implement its own asbestos worker protection plan?

This section describes the process under which a State may be exempted from the requirements of this subpart.

(a) *States seeking an exemption.* If your State wishes to implement its own

asbestos worker protection plan, rather than complying with the requirements of this subpart, your State must apply for and receive an exemption from EPA.

(1) *What must my State do to apply for an exemption?* To apply for an exemption from the requirements of this subpart, your State must send to the Director of EPA's Office of Pollution Prevention and Toxics (OPPT) a copy of its asbestos worker protection regulations and a detailed explanation of how your State's asbestos worker protection plan meets the requirements of TSCA section 18 (15 U.S.C. 2617).

(2) *What action will EPA take on my State's application for an exemption?* EPA will review your State's application and make a preliminary determination whether your State's asbestos worker protection plan meets the requirements of TSCA section 18.

(i) If EPA's preliminary determination is that your State's plan does meet the requirements of TSCA section 18, EPA will initiate a rulemaking, including an opportunity for public comment, to exempt your State from the requirements of this subpart. After considering any comments, EPA will issue a final rule granting or denying the exemption.

(ii) If EPA's preliminary determination is that the State plan does not meet the requirements of TSCA section 18, EPA will notify your State in writing and will give your State a reasonable opportunity to respond to that determination.

(iii) If EPA does not grant your State an exemption, then the State and local government employers in your State are subject to the requirements of this subpart.

(b) *States that have been granted an exemption.* If EPA has exempted your State from the requirements of this subpart, your State must update its asbestos worker protection regulations as necessary to implement changes to

meet the requirements of this subpart, and must apply to EPA for an amendment to its exemption.

(1) *What must my State do to apply for an amendment to its exemption?* To apply for an amendment to its exemption, your State must send to the Director of OPPT a copy of its updated asbestos worker protection regulations and a detailed explanation of how your State's updated asbestos worker protection plan meets the requirements of TSCA section 18. Your State must submit its application for an amendment within 6 months of the effective date of any changes to the requirements of this subpart, or within a reasonable time agreed upon by your State and OPPT.

(2) *What action will EPA take on my State's application for an amendment?* EPA will review your State's application for an amendment and make a preliminary determination whether your State's updated asbestos worker protection plan meets the requirements of TSCA section 18.

(i) If EPA determines that the updated State plan does meet the requirements of TSCA section 18, EPA will issue your State an amended exemption.

(ii) If EPA determines that the updated State plan does not meet the requirements of TSCA section 18, EPA will notify your State in writing and will give your State a reasonable opportunity to respond to that determination.

(iii) If EPA does not grant your State an amended exemption, or if your State does not submit a timely request for amended exemption, then the State and local government employers in your State are subject to the requirements of this subpart.

[FR Doc. 00-29232 Filed 11-14-00; 8:45 am]

BILLING CODE 6560-50-S