

**RENEWAL OF INFORMATION COLLECTION REQUEST FOR THE IMPLEMENTATION  
OF THE OIL POLLUTION ACT FACILITY  
RESPONSE PLAN REQUIREMENTS (40 CFR PART 112)  
(EPA # 1630.11)**

**1. IDENTIFICATION OF THE INFORMATION COLLECTION**

**1(a) Title of the Information Collection**

Implementation of the Oil Pollution Act Facility Response Plan Requirements (40 CFR Part 112) (Renewal). EPA ICR #1630.10.

**1(b) Short Characterization**

This information collection request (ICR) renewal pertains to EPA's Facility Response Plan (FRP) requirements as codified in 40 CFR 112.20 and 112.21. This regulation implements requirements mandated by the Oil Pollution Act (OPA) of 1990.

The FRP rule incorporates requirements of Clean Water Act (CWA) section 311(j)(5), which was added by OPA section 4202. The regulation requires that owners and operators of facilities that could cause "substantial harm" to the environment by discharging oil into or on the navigable waters or adjoining shorelines prepare plans for responding, to the maximum extent practicable, to a worst case discharge of oil, and to a substantial threat of such a discharge. Each FRP must be submitted to EPA, and the Agency reviews the plans from facilities identified as having the potential to cause "substantial harm" to the environment from oil discharges. In accordance with OPA statutory requirements, EPA reviews and approves plans for certain FRP-regulated facilities that have the potential to cause "significant and substantial harm."

While EPA's FRP rule addresses preparedness requirements for non-transportation facilities, the U.S. Coast Guard (USCG) has authority to establish requirements to prevent and contain discharges of oil from vessels and marine transportation-related (MTR) facilities, and the Department of Transportation (DOT) Office of Pipeline Safety, which is part of the Pipeline and Hazardous Materials Safety Administration (PHMSA), regulates many onshore pipelines. Some facilities must meet the requirements of two or more federal agencies, because they engage in activities that fall under the jurisdiction of those agencies; these facilities are called "complexes."

Facilities regulated under the FRP rule represent a subset of facilities covered by the Spill Prevention, Control and Countermeasure (SPCC) regulation at 40 CFR part 112. EPA amended the SPCC rule on December 5, 2008 and November 13, 2009, but these amendments did not affect the FRP

rule. (see 73 FR 74236 and 74 FR 58784). Additionally, EPA finalized a rule on October 14, 2010 that required SPCC facilities subject to the FRP rule to amend existing plans, if necessary, to ensure compliance with the SPCC rule by November 10, 2010. For facilities subject to the SPCC rule that became operational between August 16, 2002 through November 10, 2010, these facilities were required to prepare and implement an SPCC plan by November 10, 2010. (see 75 FR 63093). This final rule did not affect the compliance dates in the FRP rule.

Since the last ICR, EPA has continued performed a review of information regarding facilities that have submitted an FRP to their EPA Regional Administrator (RA). The information was collected from each of EPA's ten regions and compiled into a national inventory of FRP-regulated facilities. The inventory was updated in April 2010 and reflects the number of planholders currently in operation at that time. For the last ICR renewal, the national inventory of FRP planholders compiled by EPA in April 2007 indicated that owners and operators of 4,132 facilities had developed and are maintaining FRPs. Information available about individual plan holders, however, shows that about 4.6 percent of active FRP facilities were owned and operated by the federal government (e.g., military installations). These federal facilities are excluded from the burden estimate analysis, given that they are not considered "persons" under the Paperwork Reduction Act. Consequently, the burden analysis uses 3,942 as the number of existing non-governmental facilities that are maintaining an FRP as of 2007. EPA projected that between 2007 and 2010, approximately 286 new facilities will become subject to FRP requirements over the three-year period, or approximately 95 new facilities each year. This estimate is based on annual industry-specific growth rates used to project the number of new SPCC facilities. These 95 new FRP facilities represent approximately 0.5 percent of new facilities subject to the SPCC regulation annually. The remaining 99.5 percent of the estimated number of new SPCC facilities (18,444 facilities) will only complete a certification form because they do not meet the "substantial harm" criteria. Based on the latest update to the FRP planholder universe dated April 2010, there are 4,341 active FRP facilities, which is within the projected growth range for this period. The universe of FRP facilities is not anticipated to change substantively for the next ICR renewal period. Thus, the burden estimates for this ICR renewal have not been adjusted.

The total burden on the entire FRP regulated community over a three-year period is estimated to be 1,297,880 hours (adjusted for burden attributable to compliance with other Federal regulations and burden that overlaps with State-level response planning requirements).<sup>1</sup> The total burden is estimated to result in approximately \$88,449 in capital costs and \$52,283,484 in total costs (including labor costs associated with facility and contractor personnel). EPA does not anticipate that FRP facilities will incur

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<sup>1</sup> See section 6(d) for further details.

operating and maintenance (O&M) costs since there are no anticipated costs associated with hard copy or electronic document storage.

## **2. NEED FOR AND USE OF THE COLLECTION**

### **2(a) Need/Authority for the Collection**

In 1990, Congress enacted the Oil Pollution Act (OPA, Pubic Law 101-380) to help prevent major oil spills and ensure efficient, effective responses to spills when they occur. OPA contained significant modifications to many provisions of section 311 of the Clean Water Act (CWA). OPA section 4202(a)(6) added CWA section 311(j)(5) to require the owner or operator of a facility to prepare and submit “a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil...” This requirement applied to any onshore facility that, “because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone.”<sup>2</sup> Certain offshore facilities are also affected by OPA.

EPA incorporated OPA facility response planning requirements into an existing regulation, 40 CFR part 112 as §§112.20 and 112.21 and Appendices C through F on July 1, 1994 (see 59 FR 34070) . Subparts A through C of the regulation establishes procedures for the preparation and implementation of SPCC Plans to help “minimize the potential for oil discharges.” Owners and operators of a subset of facilities that meet the FRP applicability criteria must also prepare FRPs. EPA amended the FRP rule on June 30, 2000, to modify the requirements for an owner or operator of a facility handling, storing, or transporting animal fat or vegetable oil (see 65 FR 40775).

The response plan requirements enhance EPA’s ability to protect navigable waters, adjoining shorelines, fish and wildlife, and sensitive environments when oil discharges occur and reduce the cost of oil discharges to the regulated community and society. Response planning efforts reduce such costs by ensuring that discharges are controlled and cleaned up swiftly and efficiently. Facilities that are prepared to respond to incidents are more likely to contain the spread of a spill before it reaches navigable waters and to mitigate the effects of a spill on the environment. A recent GAO report notes that the effectiveness of spill response can impact the cost of spill cleanup: “The longer it takes to assemble and conduct the

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<sup>2</sup> The President has delegated the authority to regulate non-transportation-related onshore facilities under sections 311(j)(1)(C) and 311(j)(5) of the CWA to EPA. (See Executive Order (E.O.) 12777, section 2(b)(1), 56 FR 54757 (October 22, 1991), superseding E.O. 11735, 38 FR 21243.) By this same E.O., the President has delegated similar authority over transportation-related onshore facilities, deepwater ports, and vessels to the U.S. Department of Transportation (DOT), and authority over other offshore facilities, including associated pipelines, to the U.S. Department of the Interior (DOI). A 1994 Memorandum of Understanding (MOU) among EPA, DOI, and DOT has redelegated the responsibility to regulate certain offshore facilities located in and along the Great Lakes, rivers, coastal wetlands, and the Gulf Coast barrier islands from DOI to EPA. Coast Guard vessels and marine transportation-related facility activities have been moved to the Department of Homeland Security (DHS).

spill response, the more likely it is that the oil will move with changing tides and currents and affect a greater area, which can increase costs. Some officials also stated that the level of experience of those involved in the incident command is critical to the effectiveness of spill response, and they can greatly affect spill costs. For example, poor decision making during a spill response could lead to the deployment of unnecessary response equipment, or worse, not enough equipment to respond to a spill."<sup>3</sup>

## **2(b) Practical Utility/Users of the Data**

The FRP facility owners and operators are the primary users of the data collected under this ICR. Facility-specific response plans help facility owners and operators develop a response organization and identify the necessary resources to adequately respond to an oil spill in a timely manner. Successful plans are scenario-based and developed through the preparation of risk analyses of the areas in question (a model format for the plan is presented in Appendix F to 40 CFR part 112). Specifically, FRPs must include: identification of small, medium and worst case discharge scenarios; development of strategies to respond to each scenario; and identification and provision of resources necessary to respond to each scenario per Appendix E of 40 CFR part 112. When FRP are implemented, they can aid in reducing the impact of oil spills.

EPA reviews all response plans submitted under 40 CFR part 112. Additionally, EPA reviews *and approves* response plans for those facilities whose discharges may cause “significant and substantial harm” to the environment, in order to ensure that facilities believed to pose the highest risk have adequate resources and procedures in place to respond to a spill. EPA also uses the facility-specific information provided in the response plans to update Area Contingency Plans (ACPs) as required by OPA. Certain plan information, such as provisions for adequate response capability to respond to a worst case discharge, helps EPA and other government agencies to better understand the distribution and capacity of the spill response industry to evaluate existing private-sector oil spill response capacity.

Regional, State, and local response authorities also benefit from information contained in FRPs. OPA requires that response plans be consistent with the requirements of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and ACPs. Area Committees, which are established by OPA section 4202, make use of the FRPs in preparing and updating ACPs. Local Emergency Planning Committees under the direction of the State Emergency Planning Committee also use facility-specific information to help develop local contingency plans required under SARA Title III Community Right-to-Know provisions. This information allows local and regional response authorities to better understand the potential hazards and response capabilities in their area, thus reducing risk to communities.

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<sup>3</sup> GAO report number GAO-07-1085: “Maritime Transportation: Major Oil Spills Occur Infrequently, but Risks to the Federal Oil Spill Fund Remain”, September 7, 2007, page 27.

### **3. NONDUPLICATION, CONSULTATIONS, AND OTHER COLLECTION CRITERIA**

#### **3(a) Nonduplication**

A substantial number of facilities that handle, store, or transport hazardous substances are subject to emergency planning requirements under the Solid Waste Disposal Act, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Occupational Safety and Health Act (OSHA), other Federal statutes, and state requirements. OPA response plans are intended to supplement, not duplicate, these other plans by specifically focusing on oil. EPA coordinated with the USCG, DOT, and DOI's Minerals Management Service (now renamed as the Bureau of Ocean Energy Management, Regulation and Enforcement [BOEMRE]) throughout the 1994 and 2000 rulemakings in order to promote consistency with response plan requirements mandated by other Federal agencies. Presently, EPA develops interagency contingency plans and then organizes interagency Area Planning Drills alongside Preparedness for Response Exercise Program (PREP) drills and exercises with other Federal, State and local agencies.

EPA is committed to minimizing regulatory overlap and allows facility owners and operators to build upon, or draw from, the format and content of other response plans to develop their FRPs under 40 CFR part 112. For example, facility owners and operators of onshore sites or installations that have both transportation-related and non-transportation-related components (i.e., complexes) are permitted to prepare one response plan with separate sections that address each component. Integrated Contingency Plans (ICPs) prepared in accordance with the notice published on June 5, 1996 provide an acceptable format for such consolidation (see 61 FR 28642). Owners or operators of facilities that are subject to more than one OPA jurisdiction, for example transportation-related and non-transportation related onshore facilities that are part of the same complex, may satisfy all requirements by submitting a copy of the ICP to each program in the agency that has review authority for specific regulations. In addition to related federal planning requirements, numerous States and the District of Columbia have their own regulations that require varying degrees of response planning. Because EPA is flexible on the format of the required response plans, owners or operators of certain facilities may be able to modify versions of their existing response plans to comply with the FRP rule. However, if another response plan is used, it must meet the requirements of the FRP rule, and must be cross-referenced to the response plan format included in Appendix F to 40 CFR part 112, and include a self-contained Emergency Response Action Plan (ERAP) section.

### **3(b) Public Notice Required to Prior Submission to OMB**

Pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), EPA notified the public in a *Federal Register* notice on February 3, 2011 (see 76 FR 6130) of this renewal ICR and solicited public comment concerning the burden estimates for respondents. EPA specifically requested comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques.

### **3(c) Consultations**

For a prior ICR renewal request, EPA consulted nine FRP facilities to verify that the burden assumption is reasonable. EPA contacted facilities of various sizes, geographical location, and industry sectors, including facilities involved in extraction and production of crude oil and facilities that handle non-petroleum oils. Facility respondents provided information regarding the facility's ICR burden, frequency and basis of plan amendments, format of FRP submittals to EPA, and overall comments and suggestions on the FRP program. The responses generally confirmed the reasonableness of the FRP ICR burden and unit costs estimates. For this ICR renewal, EPA consulted with a representative of a large company with upstream production and downstream bulk petroleum refining operations and marketing terminals. This consultation revealed that the current ICR ranges to prepare, update and maintain an FRP have not changed substantially since the last ICR renewal.

### **3(d) Effects of Less Frequent Collection**

Initial FRP preparation and submission is a one-time event. After FRPs are prepared and submitted to EPA, OPA section 4202 requires that they be reviewed periodically and be consistent with the applicable ACP and NCP. Additionally, a planholder must resubmit revised portions of the plan to EPA after each material change that could affect the response to a worst case discharge of oil. Material changes include changes in the amount or location of oil storage, changes in spill prevention equipment and capabilities, and other changes that could materially affect the implementation of the plan. Less frequent collection of this information would not meet statutory and regulatory requirements and could jeopardize a facility owner's or operator's ability to respond appropriately to a worst case discharge of oil.

### **3(e) General Guidelines**

The information collection activities discussed in this ICR comply with Paperwork Reduction Act regulatory guidelines (5 CFR 1320.6), with the exception that the retention period for records extends beyond three years. According to 40 CFR 112, Appendix F, Section 1.8.1, planholders are required to retain records of training, drills/exercises, and inspections for a period of 5 years, For facilities classified

as “significant and substantial harm” facilities, the EPA Regional Administrator (RA) reviews these plans periodically on a schedule established by the RA provided that the period between plan reviews does not exceed five years. Therefore, the records related to this information collection must be retained for at least five years.

In addition, some facilities must meet the response planning requirements of two or more federal agencies, because they engage in activities that fall under the jurisdiction of those agencies. If a facility owner or operator should file an ICP to fulfill both the FRP requirements and the requirements of another agency, that plan would be subject to the inspection requirements of both agencies. For example, a plan that fulfills both the EPA’s FRP requirements and the USCG’s response planning requirements would be subject to Coast Guard review. In an effort to maintain consistency with the USCG requirements, EPA plans periodic reviews on a schedule similar to the USCG’s five-year review. Therefore, as indicated above, the records related to this information collection must be retained for at least five years.

### **3(f) Confidentiality**

None of the information collected under the FRP rule is believed to be confidential. One of the criteria necessary for information to be classified as confidential (40 CFR 2.208) is that a business must show that it has previously taken reasonable measures to protect the confidentiality of the information and that it intends to continue to take such measures. EPA has provided no assurances of confidentiality to facility owners or operators when they file their FRPs.

### **3(g) Sensitive Questions**

The information collection activities discussed in this document do not involve any sensitive questions.

## **4. THE RESPONDENTS AND THE CHANGE IN INFORMATION REQUESTED**

### **4(a) Respondents/NAICS Codes**

The industries that are likely to be affected by the requirements in the FRP regulation fall into many North American Industry Classification System (NAICS) categories, including those associated with petroleum production, processing (refining), distribution and marketing, and consumption as well as animal fat and vegetable oil processing, distribution and marketing.

The FRP rule requires that all SPCC-regulated facility representatives conduct an initial screen using the flowchart (Attachment C-I) in Appendix C of 40 CFR part 112 as a guide to determine whether their facility is subject to the response plan requirements at §§ 112.20 and 112.21. EPA has found that only small percentages (approximately 0.5 percent) of the 18,540 new facilities that EPA estimates

become regulated under the SPCC rule each year meet the screening criteria and as a result must develop an FRP. The six industrial categories containing the greatest number of respondents required to develop and submit an FRP to EPA are presented in Exhibit 1. The estimate of the total number of facility representatives required to prepare response plans is presented in section 6(a).

**EXHIBIT 1**  
**Primary Industry Sectors and NAICS Codes**  
**Covered by the FRP Regulation**

CATEGORY	NAICS Codes
Petroleum and Petroleum Products Wholesalers	4227
Electric Power Generation, Transmission, and Distribution	2211
Petroleum and coal products manufacturing	3241
Other Commercial Facilities	miscellaneous
Heating Oil Dealers	454311
Manufacturing	31-33

**4(b) Information Requested**

*(i) Data Items, Including Recordkeeping Requirements*

Facilities that could cause “substantial harm” to the environment as a result of a discharge of oil must prepare and submit response plans. Representatives of newly regulated facilities that are subject to the Oil Pollution Prevention regulation are asked to refer to the flowchart shown in Appendix C of 40 CFR part 112 to determine whether they meet the “substantial harm” criteria. In addition, the RA has the authority to require the owner or operator of any facility subject to the Oil Pollution Prevention regulation to prepare a response plan. Under the FRP rule, facilities are screened as “substantial harm” if one or both of the following criteria are met:

- (1) The facility’s total oil storage capacity is greater than or equal to 1 million gallons, and any of the following is true:
  - The facility lacks adequate secondary containment for any aboveground storage tank area.
  - The facility is located at a distance (as calculated using the appropriate formula in Appendix C of 40 CFR part 112 or a comparable formula) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments, as described in Appendices I, II, and III of the Department of Commerce’s “Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments” (59 FR 14713, March 29, 1994) and the applicable Area Contingency Plan.



- The facility is located at a distance (as calculated using the appropriate formula in Appendix C of 40 CFR part 112 or a comparable formula) such that a discharge from the facility would shut down a public drinking water intake.
- The facility has experienced a reportable oil spill in an amount greater than or equal to 10,000 gallons within the last five years.

(2) The facility has a total oil storage capacity greater than or equal to 42,000 gallons and transfers oil over water to or from vessels.

Under the FRP rule, the Agency requires the preparation of facility-specific response plans by “substantial harm” facilities. As required by section 311(j)(5)(c) of the CWA, which was added by section 4202(a) of the OPA, the response plan shall:

- Be consistent with the requirements of the NCP and ACPs.
- Identify the qualified individual having full authority to implement removal actions, and require immediate communications with Federal officials and other response personnel.
- Identify, and ensure by contract or other means, private personnel and equipment necessary to remove, to the maximum extent practicable, a worst case discharge and to mitigate or prevent a substantial threat of such a discharge.
- Describe the training, equipment testing, periodic unannounced drills, and response actions of persons at the facility under the plan.
- Be updated periodically.

In order to fulfill the above requirements, the regulation requires that the response plan include the following elements:

- An emergency response action plan that consists of the information most pertinent to conducting an actual response, such as contact and equipment lists [§112.20(h)(1)].
- Information about the facility’s location, owner, operator, and qualified individual having full authority to implement removal actions [§112.20(h)(2)].
- Information about emergency response, including: notification procedures, equipment, personnel, evacuation plans, and duties of the qualified individual [§112.20(h)(3)].
- Evidence of availability of private personnel and equipment necessary to remove, to the maximum extent practicable, a worst case discharge and to mitigate or prevent a substantial threat of such a discharge [§112.20(h)(3)(i) and (ii)].
- An evaluation of potential oil spill hazards at the facility [§112.20(h)(4)].
- A discussion of specific oil spill scenarios and the steps facility personnel would follow to mitigate and respond to the spill described in each scenario [§112.20(h)(5)].

- Descriptions of the discharge detection systems, human or automated, in use at the facility [§112.20(h)(6)].
- Information on plan implementation, including: response actions to be carried out by facility or contracted personnel, disposal plans for contaminated cleanup materials, and measures to provide adequate containment and drainage of spilled oil [§112.20(h)(7)].
- Information on facility self-inspection, drills/exercises, and response training, including descriptions of training and drill/exercise programs and documentation of tank inspections, equipment inspections, training meetings, training sessions, and drills/exercises [§112.20(h)(8)].
- Diagrams, including the site plan and the drainage plan [§112.20(h)(9)].
- A description of facility security systems [§112.20(h)(10)].
- Response plan cover sheet with certification that submitted information is true, accurate and complete [§112.20(h)(11)].

EPA has included a model response plan in Appendix F to 40 CFR part 112. The model response plan was developed with the input of EPA’s On-Scene Coordinators (OSCs) and others actively engaged in oil spill response and covers elements judged critical to an effective response. The model response plan was based on Hazardous Materials Emergency Planning Guides NRT-1 and NRT-1A and the Handbook of Chemical Hazardous and Analysis Procedures. The model plan provides a depiction of the level of detail and organization for an effective response plan and provides sufficient flexibility to include certain items that are required by the CWA as amended by the OPA, the Oil Pollution Prevention regulation, and other Federal regulations. As noted, certain facilities may be regulated by more than one Federal agency (i.e., USCG and EPA). As discussed in section 3(a), owners or operators may avoid duplicating the work required under other regulations by preparing one response plan that covers the entire facility and referencing which sections meet the regulatory requirements of various agencies.

(ii) *Respondent Activities*

Owners or operators of all facilities affected by the Oil Pollution Prevention regulation must determine whether their facility meets the “substantial harm” criteria. EPA provides a flowchart included in Appendix C to 40 CFR part 112 (Attachment C-I) to assist in this determination.

According to 40 CFR part 112, Appendix C, Section 3.0, owners or operators of facilities that do not meet the “substantial harm” criteria must complete and maintain at the facility, the certification form, Attachment C-II provided in Appendix C to 40 CFR part 112.

Owners or operators of facilities that do meet the “substantial harm” criteria must prepare and submit a response plan, which involves the following steps:

- Understanding the rule by reading and interpreting the rule, as well as reviewing available guidance on preparing response plans;
- Collecting the required information, performing a hazard analysis, developing spill scenarios, and ensuring the capability to respond to a worst case discharge;
- Compiling site-specific information into a format consistent with the model plan included in Appendix F of 40 CFR part 112 to complete the response plan;
- Submitting the response plan to EPA;
- Implementing the response plan;
- Reviewing and updating the response plan periodically; and
- Maintaining records.

In preparing a response plan, facility personnel must gather background information such as the location, quantities, and types of material stored and a geographic description of the site (maps, schematic diagrams, and latitude and longitude). Much of this information should exist in the facility’s SPCC Plan. Such information will be used in the development of oil discharge hazard assessments and response strategies. The response plan also must include a discussion of oil discharge detection and notification procedures at the facility as well as a list of response equipment. A facility response coordinator will be chosen to meet the OPA requirement that the FRP designate a qualified individual (QI) who will have full authority to implement response actions. Roles and responsibilities of other members of the response team (both facility responders and outside parties) must also be clearly established. A facility owner or operator may wish to enter into an arrangement with an outside response contractor. If so, that contractor’s role during a spill response must be clearly defined.

The facility owner or operator must perform a hazard evaluation, which involves identifying potential hazards based on facility-specific information, determining the vulnerability of the surrounding area given the hazards, and assessing the risk of an oil discharge. The results of the hazard evaluation will then be used to develop oil discharge scenarios (small, medium and worst case scenarios) . For the worst case scenario, the facility owner or operator will calculate the volume of a worst case discharge in accordance with 40 CFR part 112, Appendix D and will identify means to implement an effective response this discharge planning level as well as the small and medium discharge planning levels. All aspects of an effective response must be included in the response plan, including containment, countermeasure, and mitigation procedures for different types of incidents, and the provision for proper cleanup and disposal of contaminated material. The response plan is typically a written document sent to

EPA and also kept at the facility. Once a plan is developed, it must be exercised on a regular basis through a facility program of self-inspections, drills or exercises, and personnel training that follows PREP or an equivalent approved by EPA [see §112.21(c)].

## **5. THE INFORMATION COLLECTED - AGENCY ACTIVITIES, COLLECTION METHODOLOGY, AND INFORMATION MANAGEMENT**

### **5(a) Agency Activities**

The Agency activities related to FRPs are as follows:

- Log submitted response plans into a tracking database, sends postcards, emails or letters acknowledging receipt, and stores these plans on file at Regional offices.
- Review substantial harm facility FRPs.
- Identify for review and approval the facility response plans of facilities that could cause “significant and substantial harm” and notify facilities of this determination.
- Review, approve, and maintain FRPs for significant and substantial harm facilities based on guidance developed by EPA.
- Notify facilities of approval.
- Provide a list of deficiencies to those facility owners and operators whose plans are not approved.
- Inspect or exercise these facilities periodically to verify compliance.

### **5(b) Collection Methodology and Management**

As noted, the primary beneficiaries of the facility response planning requirements are the facilities themselves. EPA estimates that representatives from 99.5 percent of SPCC-regulated facilities have determined that their facility could not “reasonably be expected to cause substantial harm” based on the criteria outlined in the flowchart in Attachment C-I of 40 CFR part 112. Consequently, the representatives of these facilities do not have to prepare response plans. On average, the owners or operators of an estimated 18,540 newly SPCC-regulated facilities will be required to perform the initial screening process using the flow chart in Appendix C of 40 CFR part 112 each year. Of these newly regulated facilities, approximately 95 (or approximately 0.5 percent of 18,450) facilities are expected to meet the substantial harm criteria and be required to prepare an FRP.

Response plans, submitted by the owners or operators who determined that their facilities meet the “substantial harm” criteria, are sent to the appropriate EPA Regional office for Agency review. A copy of the FRP is kept at the facility to be used in the event of an oil spill response or drill.

FRPs for facilities that meet the “significant and substantial harm” criteria must be reviewed and approved by the EPA Regional office. The response plan review and approval process is directed by EPA’s RA’s based on national criteria and local conditions and considerations. EPA regional offices notify each owner or operator directly of the status of the facility’s response plan (i.e., approved or deficient). For deficient response plans, a list of these deficiencies is typically sent to the facility to be addressed prior to EPA’s approval of the plan. The review and approval process is tracked by the EPA Regional office.

#### **5(c) Small Entity Flexibility**

Based on the Regulatory Flexibility Analysis presented in the Regulatory Impact Analysis to the 1994 FRP rule, small facilities generally do not meet the “substantial harm” criteria and, therefore, generally are not required to prepare response plans, except at the discretion of the RA [see §112.20(b) (1)].

#### **5(d) Collection Schedule**

The FRP regulation currently does not require a specific collection schedule. Development and submission of FRPs by owners or operators of facilities that have the potential to cause substantial harm is a one-time event. However, facility owners or operators are required to review and update their FRPs periodically to reflect changes at the facility. Certain plan revisions for facility changes that materially affect the response to a worst case discharge must be submitted to EPA for review and incorporation into the FRPs on file with the Agency. The Agency reviews all plans and plan revisions when they are submitted and periodically thereafter.

### **6. ESTIMATING THE BURDEN AND COST OF THE COLLECTION**

#### **6(a) Respondent Burden**

This section presents estimates of the burden respondents incur when they undertake the information collection activities contained in the FRP rule. The burden to regulated facilities is estimated in terms of the time (in hours) spent by facility personnel to review the FRP regulation and complete a certification form or to prepare an FRP and maintain the plan on an annual basis. Data from EPA regional offices were used to determine the number of facilities that are currently subject to the FRP requirements as well as estimates for facilities that are expected to meet the substantial harm screening criteria over the three-year ICR period.

As section 3(c) explains, the current ICR (approved March 31 2008) estimates the time it takes the owners or operators of facilities to complete the compliance activities based on consultations with

facility engineers familiar with Oil Pollution Prevention program compliance, EPA Regional staff involved in the implementation of the program, and owners and operators of FRP-regulated facilities. Interviews conducted to support the ICR approved in 2004, and again for 2008 ICR renewal request, revealed that burden estimates were comparable (within the same order of magnitude). These consultations conducted in 2004, 2007 and 2011 did not reveal any significant sources of new burden not captured in prior ICR renewal requests (such as unaccounted for recordkeeping costs or other time-consuming tasks associated with FRP regulatory compliance). EPA recognizes that the information from interviews with a limited number of individuals is not statistically representative of the burden experienced by all FRP facilities. Nevertheless, the results of the most recent consultations conducted in 2007 and in 2011 suggest that EPA's burden estimates appear to adequately capture industry practices. Therefore, this renewal ICR does not change the hour or capital cost burden estimates used in the prior ICR renewal request.

#### Classification of Respondent Facilities Subject to the Information Collection

FRP-regulated facilities are a subset of the SPCC facility universe. As described in the FRP rule, owners or operators of facilities are required to prepare and maintain FRPs if they can reasonably be expected to cause substantial harm to the environment by discharging oil into or on navigable waters or adjoining shorelines. Example characteristics of a facility that could cause it to be considered a "substantial harm" facility were previously outlined in Section 4(b). Because the costs of compliance activities associated with FRPs depend largely on the physical and operating characteristics of the facility, the 2007 FRP renewal ICR supporting statement included burden and cost estimates based on a representative facility approach that classifies facilities by size (storage capacity in gallons) and facility type. This ICR renewal supporting statement follows the same approach. Three FRP facility size categories were defined as follows:

- Facilities having total storage capacity greater than 1,320 gallons, but less than 42,000 gallons).
- Facilities having total storage capacity greater than or equal to 42,000 gallons, but less than one million gallons.
- Facilities having total storage capacity equal to or greater than one million gallons.

Because FRP regulations apply only to facilities with an oil storage capacity of one million gallons or greater, or 42,000 gallons or greater and the facility transfers oil over water to or from vessels, the FRP burden analysis only considers facilities in the second and third facility categories.

The FRP facility type categories were based on how oil is used at the facility. Facilities were classified as using oil in one of three ways:

- Storage/consumption facilities: consumption of oil as a raw material or end-use product
- Storage/distribution facilities: marketing and distribution of oil as a wholesale or retail
- Production facilities: extracting oil from the ground as part of exploration or production activities

Based on these size and type characteristics, a total of six FRP model facilities were defined.

For purposes of this analysis, the universe of regulated facilities is also divided into existing and new facilities, to reflect the differences in compliance activities among these two groups. Existing FRP-regulated facilities include facilities that initiated operations prior to the approval of this ICR revision. This analysis focuses on existing facilities for which owners or operators have prepared FRPs and are assumed to have incurred all burden and costs associated with the initially preparing their FRPs, but are expected to incur annual maintenance burden and costs including occasional major revisions.<sup>4</sup> New FRP facilities include those facilities that will initiate operations during the ICR approval period or prepare an FRP for the first time. New facility owners or operators are required to review the FRP rule, make a determination, and complete certification or prepare an FRP. New facility owners or operators required to prepare FRPs will incur first-year burden for plan preparation as well as subsequent-year burden for maintaining FRPs.

Periodic information collected from each of EPA's ten regional offices provides an inventory of facilities that have submitted and are currently maintaining an FRP. As of April 2010, there were approximately 4,341 such FRP facilities nationally, inclusive of governmental facilities. Information available about individual planholders shows that 81 FRP facilities were owned and operated by the federal government (e.g., military installations). These federal facilities are excluded from the burden estimate analysis, given that they are not considered "persons" under the Paperwork Reduction Act. Since the last ICR renewal, the anticipated FRP universe based on the annual growth rates was estimated to be 4,228 non-governmental facilities. Adding back the number of governmental facilities to the universe reveals a total of 4,309 FRP facilities at the end of 2009 (Year 3 of the last ICR renewal period). As reported, EPA's count of FRP planholders as of April 2010 was 4,341 planholders. Thus, the estimated growth rates in the prior ICR renewal were reasonable. For this ICR renewal, EPA assumed a similar level of growth for the covered period.

The burden analysis for this ICR renewal uses 4,228 as the number of existing non-governmental facilities that are maintaining an FRP as of 2010. This number represents less than 1 of the estimate of

<sup>4</sup> Note that facilities may downsize their oil storage capacity and effectively "drop-out" of the FRP regulations. EPA does not attempt to characterize the number of existing facilities that will downsize over this renewal ICR period.

facilities regulated under the SPCC rule (596,186 facilities).<sup>5</sup> Using annual industry-specific growth rates, EPA estimates that 18,438 new SPCC facilities (99.5 percent) per year are not subject to FRP requirements and will complete the Attachment C-II certification form indicating that they are not substantial harm facilities. In summary, EPA estimates the total number of respondents (as a three-year average) at 22,865, of which 4,427 (4,325 plus 102 from Exhibit 15) facilities are FRP-regulated and 18,438 facilities are not subject to FRP requirements. The Agency identified state and local government owned entities based on the facility description available for individual FRP holders. As a result, EPA estimates 22,800 private and 65 state/local respondents.

Exhibit 2 provides estimates of the number of existing and new facilities subject to FRP requirements over the three-year period covered by the ICR. Exhibit 3 presents the distribution of regulated facilities by category. The number of facilities in each cross-tabulated category reflects the estimated total number of existing facilities, apportioned to each category based on assumptions used in prior ICRs regarding the proportions of facilities within each industry sector and size category within the overall universe of facilities as well as facility-level data in the April 2010 FRP database. It should be noted that the estimate of FRP facilities in this supporting statement reflect a net decrease since the 2004 estimate because the 2007 and 2010 numbers are based on the actual number of FRPs submitted to EPA, rather than a fixed fraction of the SPCC universe, as was assumed in 2004.

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<sup>5</sup> EPA used data obtained from state agencies to estimate the number of SPCC-regulated oil storage facilities (e.g., manufacturing; retail trade; construction; wholesale trade; etc) and federal sources such as EIA and USDA to estimate the number oil production facilities and farms. For detail, see the Regulatory Impact Analysis for the 2006 Final SPCC Rule, November 2006.



**EXHIBIT 2**  
**Estimate of Existing and New Facilities Subject**  
**to the FRP Rule<sup>1</sup>**

Facility Type/ Year	FRP Facilities
<b>Year 1 (2010)</b>	
Existing Facilities	4,228
New Facilities <sup>2</sup>	97
<b>Year 2 (2011)</b>	
Existing Facilities	4,325
New Facilities <sup>2</sup>	102
<b>Year 3 (2012)</b>	
Existing Facilities	4,427
New Facilities <sup>2</sup>	108

<sup>1</sup> Numbers exclude facilities owned and operated by the Federal government.

<sup>2</sup> The number of new facilities subject to the FRP regulations includes facilities that have initiated operations over the period covered by the renewal supporting statement.

Source: EPA inventory of FRP facilities compiled from regional data.

**EXHIBIT 3**  
**Number of Facilities By Category Subject to the FRP Requirements**

MODEL FACILITY CATEGORY	FACILITY SIZE			TOTAL <sup>2</sup>
	SMALL <sup>1</sup>	MEDIUM	LARGE	
<b>Storage/Consumption</b>	0	137	1,530	1,667
<b>Storage/Distribution</b>	0	458	2,030	2,488
<b>Production</b>	0	128	42	170
<b>TOTAL<sup>3</sup></b>	<b>0</b>	<b>723</b>	<b>3,602</b>	<b>4,325</b>

<sup>1</sup> EPA assumes that no small facilities currently regulated under 40 CFR part 112 are affected by response planning requirements.

<sup>2</sup> The total includes facilities existing at the start of 2011 and facilities that become FRP-regulated over the course of the year (4,228 + 97 = 4,325 in Exhibit 2)

<sup>3</sup> The total number of facilities in this table may differ slightly in other tables due to rounding.

Source: EPA inventory of FRP facilities compiled from regional data.

Estimated Annual Burden per Respondent

The owners or operators of all SPCC-regulated facilities must determine whether they are subject to FRP requirements based on the substantial harm flowchart (Attachment C-I in Appendix C to 40 CFR part 112). EPA assumes that the owners or operators of all existing SPCC-regulated facilities have

completed the screening and that only new facilities will need to review the substantial harm flowchart. Owners or operators at facilities that meet the “substantial harm” criteria will need to prepare FRPs. In addition, facility owners or operators that already have prepared an FRP will be required to maintain their plan.

The total burden of the information collection on the regulated community is determined by combining average per-facility (“unit”) burden estimated for each facility category with the total number of affected facilities in that category. Unit burdens are based on estimates of the labor required to adequately perform the necessary activities. Unit burden estimates include facility personnel in the following labor categories: management, technical, clerical, foreman, and laborer.

As discussed previously, EPA assumes that the owners or operators of 99.5 percent of all new SPCC-regulated facilities will only review the “substantial harm” flowchart to determine and certify that they are not subject to the requirements of the FRP rule. Unit burden estimates for these new facilities are presented in Exhibit 4 for small, medium, and large facilities. Owners or operators of SPCC-regulated facilities that are not required to prepare a response plan will have a minimal rule familiarization burden since the information considered in the flowchart is readily available in the facility’s SPCC Plan. Owners or operators of facilities that fall below the two total oil storage capacity substantial harm thresholds (i.e., below 42,000 gallons, or below 1 million gallons) will need only to review the flowchart and prepare a certification form, requiring, on average, an estimated 15 minutes of management time.<sup>6</sup> The certification form will be retained at the facility with the SPCC Plan. Owners or operators of larger facilities that have either 42,000 gallons or more and transfer oil over water to and from a vessel or 1 million gallons or more in oil storage capacity will have to examine the criteria in greater detail to make the determination of whether they need to prepare an FRP, requiring an estimated 1.5 and 6.5 hours, respectively.

For other facilities, unit burden and cost estimates for preparing FRPs are based on a model-facility approach. The response plan requirements include both a first-year burden to prepare the plan and a smaller, subsequent year burden to maintain the plan. Response plans must ensure that facility owners or operators have the equipment, personnel, information, and procedures needed to respond to a worst-case discharge as well as spills of smaller quantities. Compliance activities to prepare the FRP consist mostly of personnel time to collect and organize information about the facility and its operations; develop scenarios and response strategies; and implement the measures described in the plan. In subsequent years for plan maintenance, owners or operators of facilities may update the response plan, including keeping logs of response training and exercises. EPA assumes that the owners or operators of existing facilities currently subject to FRP rule requirements have already developed FRPs (i.e., they have already incurred

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<sup>6</sup> EPA views this burden estimate, which was used in the 2007 renewal ICR supporting statement, to be conservative.

the initial burden of plan preparation) and are now maintaining those plans, since the majority of facilities were in existence prior to August 1994 (effective date of the FRP rule).

EPA estimates that owners and operators of 4,228 existing facilities will be required to maintain FRPs as of the start of 2010 (see Exhibit 2). EPA estimates that owners or operators of an additional 307 facilities will be required to develop and maintain plans over a three-year period. Unit burden and cost estimates for plan development and maintenance (unadjusted for overlap with other Federal and State requirements) are shown in Exhibits 5 and 6 for new and existing facilities, respectively.

The first-year burdens to a new “substantial harm” facility for rule familiarization and preparation of an FRP are shown in Exhibit 5 for facilities in each of the six model facility categories. EPA estimates that a consumption, distribution, or production facility with between 42,000 gallons and 1 million gallons in oil storage capacity (and which transfers oil over water to and from vessels) will need 165, 181, or 145 hours of labor (including facility and contractor labor), respectively, to prepare an FRP. EPA assumes that response planning for a consumption or distribution facility with 1 million gallons or more in total oil storage capacity (and that meets other substantial harm criteria) will require 341, 384, or 304 hours, respectively. EPA does not have an estimate of the preparation burden associated with large production facilities. Instead, this analysis assumes that half the number of large production facility owners or operators required to prepare an FRP for the first time are included in the estimate of new consumption facilities, and will therefore incur the consumption facility preparation burden. The other half will incur the distribution facility preparation burden.

The subsequent-year burdens to an existing “substantial harm” facility for plan maintenance are shown in Exhibit 6 for facilities in each of the five model facility categories (medium and large consumption and distribution facilities; medium production facilities). EPA estimates that consumption, distribution, or production facility with between 42,000 gallons and 1 million gallons in oil storage capacity will need 54, 55, or 54 hours of labor, respectively, to maintain an FRP. EPA assumes that response planning for a consumption or distribution facility with 1 million gallons or more in oil storage capacity will require 154, 171, or 154 hours, respectively. These labor-hour estimates include facility and contractor labor hours.

**EXHIBIT 4**

**Burdens and Costs of Rule Familiarization and Certification for SPCC Facilities Not Required to Prepare FRPs**

Size Category of Facility	Hours Required to Read Rule, Make Determination, and Complete Certification				Unit Cost	Number of Facilities				Total Burden (hours)	Total Cost
	Management	Technical	Clerical	Total		Year 1	Year 2	Year 3	3-Year Total		
<b>Small</b>	0.25	0	0	0.25	\$17	13,485	16,015	19,593	49,093	12,182	\$821,944
<b>Medium</b>	1	0	0.5	1.5	\$80	1,685	2,002	2,451	6,138	9,207	\$491,814
<b>Large</b>	2	4	0.5	6.5	\$361	11	25	46	82	532	\$29,588
<b>TOTAL</b>						<b>15,187</b>	<b>18,049</b>	<b>22,090</b>	<b>55,313</b>	<b>21,923</b>	<b>\$1,343,346</b>

Note: Annualized total burden of 22,012 hours = 7,307 hours (for Exhibit 15)

**EXHIBIT 5**

**Estimated Total Burden and Total Cost for New Facilities Required to Prepare FRPs**

Size	Model Facility Category	Unit Burden (hours)	Facility Labor Cost	O&M Costs	Capital Cost	Total Unit Cost	Number of Facilities			Total Burden (hours)	Total O&M Costs	Total Capital Cost	Total Cost
							Year 1	Year 2	Year 3				
Medium	Consumption	165	\$8237	\$0	\$245	\$8,482	3	3	3	1,519 <sup>1</sup>	\$0.00	\$2,252	\$77,984
	Distribution	181	\$9,141	\$0	\$250	\$9,391	10	10	10	5,556	\$0.00	\$7,685	\$288,669
	Production	145	\$7,181	\$0	\$240	\$7,421	5	7	9	3,021	\$0.00	\$4,992	\$154,372
Large	Consumption	341	\$16,132	\$0	\$452	\$16,584	34	34	35	35,049	\$0.00	\$46,458	\$1,704,553
	Distribution <sup>2</sup>	384	\$18,501	\$0	\$463	\$18,964	44	45	46	52,539	\$0.00	\$63,131	\$2,585,728
	Production <sup>2</sup>	304	\$14,183	\$0	\$443	\$14,625	1	2	3	2,106	\$0.00	\$3,070	\$101,406
<b>TOTAL</b>							<b>97</b>	<b>102</b>	<b>108</b>	<b>99,611</b>	<b>\$0.00</b>	<b>\$127,588</b>	<b>\$4,912,712</b>

<sup>1</sup> Values presented in this table and other tables of this document are calculated based on the estimated number of facilities and burden hours, before rounding. Values in the tables, however, show rounded results. Estimating the total burden using rounded values presented in the table may not correspond to the total reported. <sup>2</sup> This analysis assumes that half the number of large production facility owners or operators required to prepare an FRP for the first time are included in the estimate of new consumption facilities and will therefore incur the consumption facility preparation burden. The other half will incur the distribution facility preparation burden.

**EXHIBIT 6**

**Estimated Burden and Unit Cost for Existing Facilities Required to Maintain FRPs**

Size	Model Facility Category	Unit Burden (hours)	Facility Labor Cost	O&M Costs	Capital Cost	Total Unit Cost	Number of Facilities			Total Burden (hours)	Total O&M Costs	Total Capital Cost	Total Cost
							Year 1	Year 2	Year 3				
Medium	Consumption	54	\$2,358	\$0	\$0	\$2,358	134	137	140	22,178	\$0.00	\$0.00	\$968,453
	Distribution	55	\$2,412	\$0	\$0	\$2,412	448	458	468	75,529	\$0.00	\$0.00	\$3,311,615
	Production	54	\$2,358	\$0	\$0	\$2,358	123	128	135	20,814	\$0.00	\$0.00	\$908,876
Large	Consumption	154	\$6,228	\$0	\$0	\$6,228	1,497	1,530	1,565	707,097	\$0.00	\$0.00	\$28,596,728
	Distribution	171	\$7,111	\$0	\$0	\$7,111	1,986	2,030	2,075	1,041,589	\$0.00	\$0.00	\$43,311,576
	Production	154	\$6,228	\$0	\$0	\$6,228	41	43	45	19,786	\$0.00	\$0.00	\$800,202
<b>TOTAL</b>							<b>4,228</b>	<b>4,325</b>	<b>4,427</b>	<b>1,886,994</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$77,897,450</b>

## **6(b) Estimating Respondent Costs**

### *(i) Estimating Facility Labor Costs*

To determine the per-facility costs for typical new and existing respondents in each size category, the unit time estimates for compliance activities are multiplied by the hourly wage rates for the appropriate categories of labor conducting these activities. The labor wage rates for private industry were derived from the December 2010 U.S. Department of Labor's Employment Cost Indexes and Levels.<sup>7</sup> The 2010 wage rates include wages and salaries; benefit costs, including paid leave, supplemental pay, insurance, retirement and savings, legally required benefits, severance pay, and supplemental unemployment benefits. These wage rates reflect private industry averages, which were estimated by the Bureau of Labor Statistics (BLS) based on a survey of 35,600 occupations within 8,200 establishments in the private sector. These wage rates reflect industry averages, which may under- or overestimate the actual wages received by some FRP regulated facility personnel. EPA further adjusted these rates to reflect overhead costs of 17 percent.<sup>8</sup> Average wage rates could underestimate the actual wage rates received by some FRP-regulated facility personnel, but may overestimate the actual wage rate received by other facility personnel. The estimated wage rates used in this analysis are:

### *(ii) Facility Total Compensation Hourly Wage Rates*

Management:	\$66.97
Technical:	\$53.53
Clerical:	\$26.31
Foreman:	\$35.94
Laborer:	\$28.34

Multiplying these wage rates by the corresponding unit time estimates yields the total facility labor unit cost for each facility in each model category presented in Exhibits 4, 5, and 6.

The BLS data provides generally accepted information on industry base wage rates and fringe benefits. Overhead rates can be calculated using various formulas. The reasons for using a 17 percent overhead rate are described in footnote 8. EPA has also evaluated the impact of alternative overhead loading rate assumptions on the total costs of this ICR. Specifically, EPA considered recommendations in

<sup>7</sup> United States Department of Labor, Bureau of Labor Statistics, Employer Costs for Employee Compensation, March 9, 2011.

<sup>8</sup> Overhead costs were computed separately from BLS data and were assumed to be an additional 17 percent of the total wage rate, which is composed of direct wages and salaries and employee benefits, as reported by BLS.

an EPA document entitled *Estimating Costs for the Economic Benefits of RCRA Noncompliance* (September 1997). This document suggests that labor overhead and profit can be estimated at 50 to 100 percent of the base salary and fringe benefit costs. EPA estimated that raising the overhead rate to 50 percent would increase the wages listed above by 28 percent. If a 100-percent overhead rate were used, these wages would increase by 71 percent. The 50 percent and 100 percent alternatives may be high because the rates include profit as well as overhead. Nevertheless, EPA reports the impact of these alternative rates in section 6(d), under the discussion of total respondent costs.

(iii) *Estimating Costs of Operating and Maintenance (O&M)*

In prior ICR renewal requests, EPA assumed that O&M costs were negligible, as was confirmed by consultations with facility representatives in 2004, which indicated that planholders incurred no additional cost due to hard copy storage (e.g., in existing file cabinets) or electronic storage (e.g., on a facility's computer network). This renewal ICR assumes O&M costs continue to be negligible.

(iv) *Estimating Capital/Startup Costs*

In addition to labor costs, facilities are expected to incur additional capital costs and direct costs including expenses for telephone calls, postage, photocopying, and other direct costs for FRP preparation. These costs are one-time startup costs required to prepare and submit an FRP, and as such are included with capital costs. Costs vary by model facility category and are also presented in Exhibits 5 and 6. The estimated capital costs to maintain FRPs are negligible.

Adding O&M costs and capital costs to the labor costs for facility personnel yields the total annual compliance cost per model facility, as presented in Exhibits 5 and 6. Preparation of an FRP is expected to cost a consumption, distribution, or production facility having between 42,000 gallons and 1 million gallons in total oil storage capacity \$8,482, \$9,391, or \$7,421, respectively. EPA estimates that the total cost to a consumption/production or distribution/production facility having 1 million gallons or greater in total oil storage capacity will be \$16,584, \$18,964, or \$14,625, respectively.<sup>9</sup> As shown in Exhibit 6, EPA assumes that maintaining plans will cost the smaller capacity facilities \$2,358, \$2,412, or \$2,358 annually, respectively, and will cost the larger capacity facilities \$6,228, \$7,111, or \$6,228 annually, respectively.

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<sup>9</sup> These estimates include the burden of copying and submitting a plan to EPA. EPA estimated burden time required to reproduce the Plan and submit it to EPA at one-half hour of clerical and one-half hour of managerial time. Source: Regulatory Impact Analysis of proposed revisions to the Oil Pollution Prevention Regulation (40 CFR Part 112), February 1993. Additionally, EPA assumed that an owner/operator of an average medium size facility spends approximately \$50 on compiling, copying, and postage fees and that the owner/operator of an average large size facility spends about \$100. Source: Facility Response Plans: Information Collection Request Burden Study. December 2003.



### **6(c) Estimating Agency Burden and Costs**

This section summarizes the estimated burden and cost of the revised ICR to the Agency. Burden estimates are based on input from EPA regional staff involved directly with the implementation of 40 CFR part 112. EPA will incur burdens and costs to receive, process, review, and approve submitted response plans. The number of response plans for existing facilities at the end of the last ICR renewal period (2009) is estimated to be 4,228. Processing submitted FRPs includes entering information into EPA's tracking system, filing the plan for review or for use during an unannounced exercise, and review for required elements per Appendix F.. EPA must also approve plans from facilities which are deemed as of significant and substantial harm facilities per §112.20(f)(3).

Exhibit 7 shows the unit burden and labor cost to EPA for processing FRPs and for reviewing for approval response plans from certain facilities. Based on program experience, processing submitted plans is estimated to consist of approximately 20 minutes of technical time. A substantial amount of government resources is required to comprehensively evaluate the adequacy of each response plan submitted by a facility representative.<sup>10</sup> Program staff estimate that reviewing and approving a response plan, including a site visit when necessary, requires 38 hours of technical EPA staff time and 2 hours of management time.

For this revised ICR, Agency labor costs are based on the 2010 General Schedule (GS) pay schedule. EPA estimates an average hourly labor cost (labor plus overhead) of \$78.76 for managerial staff (GS-13, Step-5), and \$55.26 for technical staff (GS-11, Step-5). To derive hourly estimates, EPA divided annual compensation estimates by 2,080, which is the number of hours in the Federal work year. EPA then multiplied hourly rates by the standard government overhead factor of 1.6. Unit costs are unit time estimates multiplied by the hourly labor rates for EPA personnel. For example, the labor burden to EPA for review and approval of each FRP is estimated to require two hours of management time ( $2 \times \$78.76 = \$157.52$ ) and 38.3 hours of technical time ( $38.3 \times \$55.26 = \$2,116.46$ ) for a total of 40.3 hours per plan at a cost of approximately \$2,274 each.<sup>11</sup>

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<sup>10</sup> For previous ICRs, a survey of EPA regional offices was conducted to estimate the average burden (per plan) required to receive, process, review, and approve submitted response plans.

<sup>11</sup> A fraction of these plans will be judged inadequate and require revision before being approved. The estimated cost to EPA reflects this possibility.

**EXHIBIT 7**  
**Estimated Unit Burden and Cost to EPA (2010)**

ACTIVITY	UNIT BURDEN (hours)				UNIT COST
	Managerial	Technical	Clerical	Total	
<b>Process and Store Submitted Response Plans</b>	0	0.3	0	0.3	\$17
<b>Review and Approve Response Plans</b>	2	38	0	40	\$2,257

**6(d) Estimating the Respondent Universe and Total Burden and Costs**

*(i) Estimated Total Annual Burden and Costs for All Respondents*

The total burden of the information collection is the combined total burdens of rule familiarization, substantial harm certification, and development and submittal of the FRP. Total burden is calculated by multiplying unit burden estimates by the number of facilities affected. Total cost is derived in a similar manner.

The total burden and costs associated with the development of FRPs shown in Exhibits 5 and 6 must be adjusted to reflect both prior compliance with similar State regulations, since data collection efforts for compliance with similar State regulations may be useful in developing a facility response plan. Numerous States have regulations requiring varying degrees of response planning. To the extent that these response plan requirements overlap with EPA’s FRP rule provisions, facility owners or operators may use the information already prepared for the State in their FRPs. Consequently, facility owners or operators that already have prepared response plans under State regulations may not incur all costs and burdens estimated in Exhibits 5 and 6. State regulations vary significantly both in terms of the level of response planning required and the type of facilities covered. EPA evaluated the extent of commonality between State response planning requirements and those in the FRP rule to arrive at an estimated adjustment of 14 percent for State-related burden overlap.

In addition, certain facility owners or operators may be required to prepare response plans pursuant to the regulations of more than one Federal agency as a result of the nature of their facilities. The owners or operators of these jointly regulated facilities are likely to prepare one response plan that fulfills the requirements of all Federal response planning regulations affecting them. Certain response planning activities and sections of the plan will be the same under all regulations and therefore, the costs associated with these activities are appropriately considered shared costs that should not be attributed to any single regulation. For purposes of this ICR revision, the total burden and costs have been adjusted to reflect that only one-half of all shared costs are attributed to the FRP rule.

(ii) *Adjustment to Reflect Overlap with Other Federal Requirements*

It is estimated that based on the presence of other Federal requirements, the following percentages of response planning burdens, by model facility category, are not attributable to the FRP rule:

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FIRST YEAR

Medium consumption	0.0%
Medium distribution	18.4%
Medium production	12.5%
Large consumption/production	0.0%
Large distribution/production	23.4%

SUBSEQUENT YEARS

Medium consumption	0.0%
Medium distribution	44.5%
Medium production	24.9%
Large consumption	0.0%
Large distribution	32.6%

The burdens and costs to facility owners or operators that prepare and maintain FRPs (presented in Exhibits 5 and 6) were adjusted to reflect State or other Federal requirements to obtain the estimates presented in Exhibits 8 and 9. Percentage reductions were applied for prior State compliance and overlapping Federal regulations, as appropriate, for each model facility category. For example, the total burden to prepare FRPs for a production facility having between 42,000 gallons and 1 million gallons (medium category) in total oil storage capacity, which is 145.25 hours, was adjusted by 24.7 percent [ $1 - (1 - 0.14)(1 - 0.125)$ ] where (1-0.14) accounts for the state-related burden overlap of 14 percent discussed in Section 6(d)(i) and (1-0.125) accounts for the overlap with other federal requirements as listed above yielding an adjusted burden of 109.4 hours]. Adjustment factors for other model facility categories were similarly calculated using the 14 percent state-related burden overlap and the estimated burden overlap with other federal requirement listed above for each facility category.

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<sup>12</sup> The methodologies for determining the extent of overlap with other Federal regulations as well as the percentage of prior compliance with State regulations are described in more detail in Chapter 4 of the Regulatory Impact Analysis supporting the 1994 FRP final rule.

The total burden and O&M and capital costs to the entire regulated community are presented in Exhibit 10. The burdens and costs over three years are taken from Exhibits 4, 8, and 9. The total adjusted burden on the regulated community over three years is estimated to be 1,390,257 hours. The total adjusted O&M costs for the three year period is \$0 and the total adjusted capital cost is \$95,210 (see Exhibit 10).

**EXHIBIT 8**

**Adjusted Burden and Unit Cost for New Facilities Required to Prepare FRPs<sup>1</sup>**

Size	Model Facility Category	Adjusted Unit Burden (hours)	Facility Labor Cost	O&M Costs	Capital Cost	Total Unit Cost	Number of Facilities			Total Burden (hours)	Total O&M Costs	Total Capital Costs	Total Cost
							Year 1	Year 2	Year 3				
<b>Medium</b>	Consumption	142	\$7,084	\$0	\$211	\$7,295	3	3	3	1,307	\$0	\$1,937	\$67,076
	Distribution	127	\$6,417	\$0	\$176	\$6,592	10	10	10	3,901	\$0	\$5,395	\$202,646
	Production	109	\$5,408	\$0	\$181	\$5,588	5	7	9	2,275	\$0	\$3,759	\$116,242
<b>Large</b>	Consumption <sup>2</sup>	293	\$13,874	\$0	\$389	\$14,262	34	34	35	30,142	\$0	\$39,954	\$1,465,916
	Distribution	253	\$12,192	\$0	\$305	\$12,497	44	45	46	34,505	\$0	\$41,603	\$1,703,994
	Production <sup>2</sup>	220	\$10,258	\$0	\$320	\$10,578	1	3	5	1,523	\$0	\$2,221	\$73,346
<b>TOTAL</b>							<b>97</b>	<b>102</b>	<b>108</b>	<b>73,653</b>	<b>\$0</b>	<b>\$94,869</b>	<b>\$3,629,220</b>

Note: Annualized total burden of 73,653 hours = 24,551 hours (for Exhibit 15)

<sup>1</sup> Burdens and costs are adjusted to reflect prior compliance with State Regulations and overlapping Federal regulations (see Section 6(d)(ii)).

<sup>2</sup> This analysis assumes that half the number of large production facility owners or operators required to prepare an FRP for the first time are included in the estimate of new consumption facilities, and will therefore incur the consumption facility preparation burden. The other half will incur the distribution facility preparation burden.

**EXHIBIT 9**

**Adjusted Burden and Unit Cost for Existing Facilities Required to Maintain FRPs<sup>1</sup>**

Size	Model Facility Category	Adjusted Unit Burden (hours)	Facility Labor Cost	O&M Costs	Capital Cost	Total Unit Cost	Number of Facilities			Total Burden (hours)	Total O&M Costs	Total Capital Costs	Total Cost
							Year 1	Year 2	Year 3				
Medium	Consumption	46	\$2,028	\$0	\$0	\$2,028	134	137	140	19,073	\$0	\$0	\$832,869
	Distribution	26	\$1,150	\$0	\$0	\$1,150	448	458	468	36,027	\$0	\$0	\$1,579,640
	Production	35	\$1,523	\$0	\$0	\$1,523	123	128	135	13,446	\$0	\$0	\$587,134
Large	Consumption	132	\$5,356	\$0	\$0	\$5,356	1,497	1,530	1,565	608,104	\$0	\$0	\$24,593,186
	Distribution	99	\$4,124	\$0	\$0	\$4,124	1,986	2,030	2,075	604,122	\$0	\$0	\$25,120,714
	Production	108	\$4,379	\$0	\$0	\$4,379	40	42	44	13,912	\$0	\$0	\$562,642
<b>TOTAL</b>							<b>4,228</b>	<b>4,325</b>	<b>4,427</b>	<b>1,294,684</b>	<b>\$0</b>	<b>\$0</b>	<b>\$53,276,185</b>

Note: Annualized burden of 1,294,684 hours = 431,561 hours (for Exhibit 15)

<sup>1</sup> Burden and costs are adjusted to reflect prior compliance with State Regulations and overlapping Federal regulations. (See Section 6(d)(ii))

**EXHIBIT 10**

**Total Burden and Costs Over Three Years**

Activity	YEAR 1			YEAR 2			YEAR 3			TOTAL		
	Burden (hours)	O&M Cost	Capital Cost	Burden (hours)	O&M Cost	Capital Cost	Burden (hours)	O&M Cost	Capital Cost	Burden (hours)	O&M Cost	Capital Cost
Certification <sup>1</sup>	5,967	\$0	\$0	7,170	\$0	\$0	8,915	\$0	\$0	22,012	\$0	\$0
Preparation	23,514	\$0	\$30,161	24,668	\$0	\$31,789	23,784	\$0	\$33,259	73,886	\$0	\$95,209
Maintenance	421,752	\$0	\$0	431,340	\$0	\$0	411,512	\$0	\$0	1,294,359	\$0	\$0
<b>TOTAL</b>	<b>451,233</b>	<b>\$0</b>	<b>\$30,161</b>	<b>463,178</b>	<b>\$0</b>	<b>\$29,405</b>	<b>444,211</b>	<b>\$0</b>	<b>\$33,2596</b>	<b>1,390,257</b>	<b>\$0</b>	<b>\$95,210</b>

<sup>1</sup> According to 40 CFR 112(App. C)(3.0), owners or operators of facilities that do not meet the “substantial harm” criteria must complete and maintain at the facility the certification form provided in Appendix C to 40 CFR part 112, Attachment C-II.

EPA also calculated costs based on alternative overhead loading rates on wages. Exhibit 11 shows a comparison of the annualized total cost for the rule using the selected 17 percent overhead loading rate on wages and costs based on two alternative overhead loading rate assumptions: 50 percent (Alternative 1) and 100 percent (Alternative 2). Alternative 1 yields 28 percent higher total costs, while Alternative 2 increases total costs by 71 percent.

**EXHIBIT 11**  
**Alternative Total Cost Measures**

	<b>Labor</b>	<b>Capital</b>	<b>O&amp;M</b>	<b>Total</b>
<b>17% Overhead</b>	\$19,383,892	\$31,736	\$0	<b>\$19,415,628</b>
<b>50% Overhead</b>	\$24,811,382	\$31,736	\$0	<b>\$24,843,118</b>
<b>100% Overhead</b>	\$33,146,455	\$31,736	\$0	<b>\$33,178,191</b>

(iii) *Estimated Total Annual Burden and Cost to EPA*

The total annual burden and cost to EPA are presented in Exhibit 12. Total burden and costs are determined by multiplying the unit burden and cost to EPA for each activity (see Exhibit 7) by the number of plans processed, reviewed, and approved (shown in the second column in Exhibit 12). EPA assumes it will receive on average of approximately 97 new FRPs each year. EPA estimates that the burden and cost for processing new FRPs will be approximately 29 hours and \$1,614 in labor costs per year. EPA also estimates that the burden and cost of reviewing the new FRPs of substantial harm facilities, as well as reviewing and approving the new FRPs of significant and substantial harm facilities, will average approximately 4,091 hours and \$230,850 in labor costs per year.

EPA will also incur costs in subsequent years to review and approve response plans from facilities that undertake a major modification to their FRP.<sup>13</sup> For example, EPA estimates that of the 4,228 existing facilities with FRPs, approximately one-fifth, or about 845 planholders will amend their FRPs triggering the need for EPA review and approval.<sup>14</sup> The annualized burden and cost to review and approve existing response plans are estimated to be 34,613 hours and \$1,953,330 in labor costs.

Total cost to EPA for processing, reviewing, and approving new and existing plans are estimated at 116,204 hours and \$6,557,624 in labor costs over three years. There are no significant capital or O&M

<sup>13</sup> Actions such as personnel or title changes, phone number or contact address changes are not considered major modifications and do not require further EPA review.

<sup>14</sup> EPA believes this is a conservative estimate of the number of facilities in a region with a large number of facilities that undergo a major FRP modification. Some regional EPA personnel have stated that the owners or operators of as few as 5% of facilities in their region undertake a major FRP modification annually, while others in regions with fewer facilities or different types of facilities stated that approximately half of the FRP revisions over a seven month period could be considered major.



costs to the Agency for this ICR. The annualized burden and cost to EPA over three years are 38,735 hours and \$2,185,875.

**EXHIBIT 12**  
**Estimated Total Burdens and Costs to EPA**

ACTIVITY	YEAR ONE			YEAR TWO			YEAR THREE			TOTAL		
	Number of Plans	Burden (Hours)	Cost	Number of Plans	Burden (Hours)	Cost	Number of Plans	Burden (Hours)	Cost	Burden (Hours)	Cost	Annualized Cost
<b>Process and Store Newly Submitted Response Plans</b>	97	29	\$1,614	102	31	\$1,689	108	32	\$1,783	92	\$5,086	\$1,695
<b>Review and Approve New Response Plans</b>	97	3,894	\$219,757	102	4,076	\$229,993	108	4,302	\$242,799	12,272	\$692,549	\$230,850
<b>Review and Approve Existing Response Plans</b>	846	33,840	\$1,909,688	865	34,600	\$1,952,577	885	35,400	\$1,997,724	103,840	\$5,859,989	\$1,953,330 (on 34,613 hrs)
<b>Total</b>	N/A	37,763	\$2,131,059	N/A	38,707	\$2,184,259	N/A	39,734	\$2,242,306	116,204	\$6,557,624	\$2,185,875 (on 38,735 hrs)

Source: EPA regional personnel estimate.

**6(e) Bottom Line Burden and Cost Tables**

Exhibit 10 summarizes the total estimated burden hours and cost incurred by all respondents (existing and new facilities) to comply with the FRP information collection requirements. The estimated burden hour and costs incurred by EPA are summarized in Exhibit 12. Exhibit 13 below summarizes the total burden and cost incurred by both respondent facilities and government. The average annual burden to respondents is 463,419 hours, there are no annualized O&M costs, and the annualized capital cost is \$31,736.

**EXHIBIT 13  
Total Burden and Cost Estimates**

	Facilities			EPA		Total	
	Burden (hours)	Non-Labor Total Cost		Burden (hours)	Total Non-Labor Cost	Burden (hours)	Total Non-Labor Cost
		O&M Cost	Capital Cost				
<b>Year 1</b>	451,233	\$0.00	\$30,161	37,763	\$0.00	488,996	\$30,161
<b>Year 2</b>	463,178	\$0.00	\$31,789	38,706	\$0.00	501,884	\$31,789
<b>Year 3</b>	475,846	\$0.00	\$33,259	39,735	\$0.00	515,581	\$33,259
<b>Total</b>	<b>1,390,257</b>	<b>\$0</b>	<b>\$95,209</b>	<b>116,204</b>	<b>\$0.00</b>	<b>1,506,461</b>	<b>\$95,209</b>
<b>Annualized for respondents</b>	<b>463,419</b>		<b>31,736</b>				

**6(f) Reasons for the Change in Burden**

Differences in burden and costs from the previous ICR are attributed to *adjustment* changes. Adjustments are caused by updating information (e.g., number of affected facilities, burden estimates, and labor rates) in the absence of changes to the FRP regulatory requirements. *Program changes*, burden and cost effects directly associated with revisions to the FRP rule are not applicable to this renewal ICR.

The prior ICR renewal reflected a change in the number of affected facilities, due to the availability of more detailed inventory of planholders. This renewal ICR includes adjustments to the number of affected facilities, since the number of planholders has increased slightly since the last ICR approval. As background, in 2006, EPA initiated an effort to compile data from each of its ten regional offices on facilities that had submitted an FRP to update our knowledge of the FRP universe. The latest update to inform this ICR renewal was completed in April 2010 and contains the list of 4,341 active facilities that currently maintain an FRP, including 4,260 facilities not owned and operated by the Federal government. Thus, the FRP universe is lower than the 6,183 FRP facilities presented in the 2004 renewal

ICR as it was based on a fixed proportion of the estimated number of facilities subject to SPCC.<sup>15</sup> To estimate the number of new facilities that will develop an FRP during the three-year period of 2010 through 2012 of this ICR renewal, EPA used annual industry-specific growth rates. EPA estimates that 307 new facilities will prepare FRPs during the three-year period covered by this ICR.

In total, the burden hours presented in the last renewal ICR decreased relative to the current OMB inventory (see Exhibit 14). The burden estimate showed an annualized increase of 30,792 hours due to adjustments in the estimated number of affected facilities since the last ICR approval (March 31, 2008). EPA provided a projected growth rate of affected facilities in the last ICR renewal that resulted in an estimate of 4,228 non-governmental planholders alongside 81 governmental planholders for a total FRP planholder universe of 4,309 facilities at the end of the prior ICR renewal period. As of April 2010, EPA counted 4,341 planholders in our national inventory. As such, EPA maintained a similar growth rate of new non-governmental planholders for this ICR renewal period, which results in an increase in annualized burden of about 7% over the prior burden inventory.

**EXHIBIT 14**  
**Estimated Annualized Burden and Costs Comparison**

	<b>Annualized Burden (hours)</b>	<b>Annualized Capital and O&amp;M Costs</b>
<b>Prior OMB Burden Inventory</b>	432,627	\$29,483
<b>Change in Burden</b>	30,792	\$2,253
<b>Current Burden Estimate</b>	463,419	\$31,736

**6(g) Burden Statement**

The public reporting and recordkeeping burden to all respondents are presented in Exhibit 15. These burdens include the time required to review instructions, search existing data sources, gather and maintain the data needed, estimate the information required and complete and review the collection of information. The average public reporting and recordkeeping burdens to a newly regulated facility where the owners or operators are not required to prepare FRPs (i.e., facilities where the owner or operators certify that they do not meet the “substantial harm” criteria) are estimated at 0.4 hours per year. The average annual reporting and recordkeeping burdens to a newly regulated facility where the owners or operators are required to prepare FRPs (i.e., first-year costs for plan development) are estimated at 240.1 hours per year. The average annual reporting and recordkeeping burdens to a facility where the owners or

<sup>15</sup> In setting terms of clearance for the 2004 ICR request, the Office of Management and Budget (OMB) had requested that EPA provide a change worksheet, if applicable, updating the burden estimate for the FRP ICR to reflect revisions to the SPCC respondent universe. The current FRP burden estimate, however, considers the actual number of FRP planholders instead of a fixed proportion of SPCC respondents.

operators maintain FRPs (i.e., subsequent year costs for annual plan maintenance) are estimated at 99.7 hours.

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.

**EXHIBIT 15**  
**Recordkeeping and Reporting Burden for Affected Facilities**

	<b>Total Average Annual Burden (hours)</b>	<b>Number of Facilities per Year (Respondents)</b>	<b>Average Annual Burden per Respondent (hours)</b>
<b>Certification<sup>1</sup></b>	7,307	18,438	0.4
<b>Preparation</b>	24,551	102	240.1
<b>Maintenance</b>	431,561	4,325	99.7

<sup>1</sup> According to 40 CFR 112(App. C)(3.0), owners or operators of facilities that do not meet the “substantial harm” criteria must complete and maintain at the facility the certification form provided in Appendix C to 40 CFR part 112, Attachment C-II.

To receive comments 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 established a public docket for this ICR under Docket ID No. EPA-HQ-OPA-2010-0987, which is available for online viewing at [www.regulations.gov](http://www.regulations.gov), or in person viewing at the Office of Emergency Prevention, Preparedness, and Response Oil Program Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202-566-1744, and the telephone number for the Office of Emergency Prevention, Preparedness, and Response Oil Program Docket is 202-566-2426. Use [www.regulations.gov](http://www.regulations.gov) to obtain a copy of the draft collection of information, 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. Once in the system, select “search,” then key in the docket ID number identified above.