

**SUPPORTING STATEMENT FOR  
EPA INFORMATION COLLECTION REQUEST NUMBER 2382.05**

**REPORTING AND RECORDKEEPING REQUIREMENTS FOR THE 2011 FINAL  
RULE AND SUBSEQUENT AMENDMENTS ON THE IDENTIFICATION OF NON-  
HAZARDOUS SECONDARY MATERIALS THAT ARE SOLID WASTE**

April 2019



## **1. IDENTIFICATION OF THE INFORMATION COLLECTION**

### **1(a) Title and Number of the Information Collection**

This information Collection Request (ICR) is entitled “Identification of Non-Hazardous Secondary Materials That Are Solid Waste (Renewal),” EPA ICR Number 2382.05, OMB Number 2050-0205. This ICR is a description of the information collection requirements for combustion units that use non-hazardous secondary materials (NHSM) that are solid wastes and combines and harmonizes prior regulatory amendments into one ICR.

### **1(b) Short Characterization**

Section 112(d) of the Clean Air Act (CAA) requires the promulgation of regulations to control emissions of specific hazardous air pollutants from “major sources” within defined source categories.<sup>1,2</sup> One such regulation, promulgated in September 2004, is the National Emissions Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters (the “Boilers Rule”), which established Maximum Achievable Control Technology (MACT) standards for this source category.

Section 129 of the CAA directed EPA to promulgate regulations to control emissions of nine specified pollutants from “solid waste incineration units.” EPA did so in December 2000 with the publication of the final Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units (the “CISWI Rule”). Units regulated under Section 129 cannot be subject to any rule promulgated under Section 112.

In September 2005, in response to a subsequent petition for reconsideration, EPA amended the CISWI Rule when it promulgated revised definitions for “solid waste,” “commercial or industrial waste,” and “commercial and industrial solid waste incineration unit” (the “CISWI Definitions Rule”). As part of the CISWI Definitions Rule, EPA made a distinction between solid waste incinerators and boilers, characterizing the former as units that are designed and operated to discard materials through high temperature combustion. However, EPA excluded from the definition of a solid waste incinerator those units designed to recover energy for “useful purposes such as steam generation or process heating.”

In July 2007, the Court of Appeals for the District of Columbia Circuit vacated and remanded to EPA both the CISWI Definitions Rule and the Boilers Rule. In vacating the definitions rule, the Court noted that, despite the potential reasonableness of the functional distinction between boilers and incinerators, the CAA is unambiguous in its requirement that EPA regulate any commercial or industrial incinerator that combusts any solid waste material, as

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<sup>1</sup> A “major source” is any stationary source that emits or has the potential to emit considering controls, in the aggregate, at least 10 tons per year of any hazardous air pollutant or at least 25 tons per year of any combination of hazardous air pollutants.

<sup>2</sup> The Clean Air Act also requires EPA to identify and list the area source categories (sources that are not major sources) that represent 90 percent of the emissions of the 30 urban air toxics associated with area sources and subject them to standards under the Section 112(d) of the Act. EPA’s Urban Air Toxics Strategy is summarized in *Federal Register*, Vol 64, No. 137, 38706, July 19, 1999.

a solid waste incineration unit regardless of whether the waste is burned as a “fuel.” The Court also concluded that EPA erred in excluding from the CISWI Definitions Rule units that combust solid waste for the purposes of energy recovery and including these units in the Boilers Rule.

EPA’s response to the Court’s decision outlined regulatory procedures for determining which non-hazardous, “secondary materials”<sup>3</sup> constitute RCRA Subtitle D “solid waste” in order to clarify when the combustion of these materials would be regulated pursuant to CAA Section 129 (as opposed to potential regulation under Section 112 if a combustion unit burns materials that are not solid waste when combusted). Thus, on March 21, 2011, EPA promulgated the Final Rule for the identification of non-hazardous secondary materials (NHSM) that are solid waste. The final rule established a process for making non-waste determinations as well as a case-specific petition process for solid waste secondary materials that are not discarded and used as fuel in a combustion unit. While the process is voluntary, it requires the petitioner to provide information describing how the secondary materials satisfy the legitimacy criteria, along with consideration of certain market, human and environmental health, and other factors. The per-respondent and aggregate burden and cost estimates for the case-specific petition process, as provided for in 40 CFR 241.3(c), are presented in Exhibit 1 of this supporting statement. Exhibit 2 presents the estimated agency burden costs of the petition process.

Through the 2013 amendments to the March 21, 2011 Final Rule, the Agency recognized that selected secondary materials may be more conducive to a categorical non-waste determination process, rather than a case-specific determination process. Thus, under the amendments issued on February 7, 2013, the Agency finalized the process whereby persons may submit a rulemaking petition to the Administrator where they can identify and request that additional NHSMs be listed in 40 CFR 241.4. The per-respondent and aggregate burden and cost estimates for the categorical determination petition process, as provided for in 40 CFR 241.4, are also presented in Exhibit 1 of this supporting statement. Exhibit 2 presents the estimated agency burden costs of the petition process. Although the petition process and requirements for this categorical determination are more comprehensive than those of the case-specific process, considerably fewer petitions are likely to be submitted.

This ICR also includes the burden associated with the 2016 amendments to the Final Rule (81 FR 6688, February 8, 2016), which added three materials to the list of categorical non-waste fuels: (1) construction and demolition (C&D) wood processed from construction and demolition debris according to best management practices; (2) paper recycling residuals (PRRs) generated from the recycling of recovered paper, paperboard and corrugated containers and combusted by paper recycling mills whose boilers are designed to burn solid fuel; and (3) creosote-treated railroad ties that are processed and combusted in units designed to burn both biomass and fuel oil as part of normal operations and not solely as part of start-up or shut-down operations.<sup>4</sup>

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<sup>3</sup> A “secondary material” is any material that is not the primary product of a manufacturing or commercial process, and can include post-consumer material, off-specification commercial chemical products or manufacturing chemical intermediates, post-industrial material, and scrap.

<sup>4</sup> This also includes units at major source pulp and paper mills or power producers subject to 40 CFR 63 Subpart DDDDD that combust CTRTs and had been designed to burn biomass and fuel oil, but are modified (e.g. oil delivery mechanisms are removed) in order to use natural gas instead of fuel oil as part of normal operations. These units may also continue to combust CTRTs after the switch to natural gas from fuel oil, provided they meet certain

Finally, this ICR includes the burden associated with the 2018 amendments to the Final Rule (83 FR 5317, February 7, 2018), which added three types of other treated railroad ties (OTRTs) to the list of categorical non-waste fuels: (1) Creosote-borate treated railroad ties, and mixtures of creosote, borate and copper naphthenate treated railroad ties that are processed and combusted in units designed to burn both biomass and fuel oil;<sup>5</sup> (2) Copper naphthenate treated railroad ties that are processed and then combusted in units designed to burn biomass, biomass and fuel oil or biomass and coal; and (3) Copper naphthenate-borate treated railroad ties that are processed and then combusted in units designed to burn biomass, biomass and fuel oil or biomass and coal. These 2016 and 2018 additions to the list of categorical non-waste fuels were previously covered under ICR numbers 2382.04 and 2493.03 but have been merged into the current ICR.

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

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

The requirements covered in this ICR are necessary to identify NHSM that are solid waste for purposes of applying appropriate emission standards under Clean Air Act section 129 for solid waste incinerators or section 112 for control of hazardous air pollutants. The NHSM rules alone do not directly invoke any information collection requirements associated with implementation under the Clean Air Act standards including reporting and recordkeeping captured under those rules. EPA established these information collection requirements under the authority of Subtitle D of the Resource Conservation and Recovery Act (RCRA).

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

EPA will use the information collected pursuant to the 2011 Final Rule and subsequent amendments to determine whether the materials are wastes or non-waste, and the corresponding appropriate emission standards under Clean Air Act sections 112 or 129.

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

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

None of the information required by the 2011 Final Rule and subsequent amendments would duplicate information required by existing RCRA regulations.

### **3(b) Public Notice**

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conditions specified in the rule.

<sup>5</sup> This also includes units at major source pulp and paper mills or power producers subject to 40 CFR 63 Subpart DDDDD that combust OTRTs and had been designed to burn biomass and fuel oil, but are modified (e.g. oil delivery mechanisms are removed) in order to use natural gas instead of fuel oil as part of normal operations. The creosote-borate and mixed creosote, borate and copper naphthenate treated railroad ties may continue to be combusted as product fuel, provided they meet certain conditions specified in the rule.

An announcement of a public comment period for the renewal of this ICR was published in the *Federal Register* (83 FR 54345) on October 29, 2018. No comments were received.

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

The Agency has consulted industry experts and internal data sources to estimate the number of affected facilities and industry growth over the next three years. Industry trade association(s) and other interested parties were provided an opportunity to comment on the burden associated with the standard as it was being developed and the standard has been previously reviewed to determine the minimum information needed for compliance purposes.

In developing this ICR, EPA consulted and collected information from the following trade associations:

- Association of American Railroads (202-639-2100)
- Railway Tie Association (770-460-5553)
- Treated Wood Council (202-463-2045)
- Biomass Power Association (207-228-7376)

It is our policy to respond after a thorough review of comments received since the last ICR renewal as well as those submitted in response to the first *Federal Register* notice. In this case, no comments were received.

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

EPA has carefully considered the burden imposed upon the regulated community by the 2011 Final Rule and subsequent amendments. EPA is confident that those activities required of respondents are necessary, and to the extent possible, the Agency has attempted to minimize the burden imposed. EPA believes strongly that, if the minimum information collection requirements are not met, neither industry nor EPA will be able to determine waste/non-waste status of these materials nor appropriate emission standards when combusted.

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

The information collection does not include any information collection activities that exceed the Paperwork Reduction Act, OMB's General Guidelines and regulations under 5 CFR 1320.5(d)(2).

- Information is not collected more often than quarterly.
- Responses are not required in less than 30 days.
- Respondents are not required to submit more than one original and two copies of any document.
- The collection does not provide for remuneration of respondents.
- The collection does not require records to be kept for more than three years.
- The collection is not in conjunction with a statistical survey.

- Provisions for small businesses and other small entities are appropriate.
- Confidentiality is protected.

**3(f) Confidentiality**

Section 3007(b) of RCRA and 40 *CFR* Part 2, Subpart B, defines EPA’s general policy on public disclosure of information and claims of confidentiality. If such a claim is asserted, EPA must and will treat the information in accordance with the regulations cited above. EPA also will assure that this information collection complies with the Privacy Act of 1974 and OMB Circular 108.

**3(g) Sensitive Questions**

No questions of a sensitive nature are included in the information collection requirements associated with the 2011 Final Rule and subsequent amendments.

**4. THE RESPONDENTS AND THE INFORMATION REQUESTED**

**4(a) Respondents and NAICS Codes**

The following is a list of North American Industrial Classification System (NAICS) codes associated with the facilities most likely to be affected by the information collection requirements covered in this ICR.

**Generators and Potential Users<sup>a</sup> of the New Materials to be Added to the List of Categorical Non-Waste Fuels**

NAICS	NAICS Category <sup>b</sup>
111	Crop Production
113	Forestry and Logging
114	Fishing, Hunting, and Trapping
115	Support Activities for Agriculture and Forestry
211	Oil and Gas Extraction
212	Mining (Except Oil and Gas)
221	Utilities
236	Construction of Buildings
237	Heavy and Civil Engineering Construction
238	Site Preparation Contractors
311	Food Manufacturing
312	Beverage and Tobacco Product Manufacturing
313	Textile Mills
314	Textile Product Mills
316	Leather and Allied Product Manufacturing
321	Wood Product Manufacturing
321113	Sawmills
321114	Wood Preservation (includes crosstie creosote treating)
322	Pulp, Paper, and Paper Products
323	Printing and Related Support Activities

NAICS	NAICS Category <sup>b</sup>
324	Petroleum and Coal Products Manufacturing
325	Chemical Manufacturing
326	Plastics and Rubber Products Manufacturing
327	Nonmetallic Mineral Product Manufacturing
32731	Cement manufacturing
331	Primary Metal Manufacturing
332	Fabricated Metal Product Manufacturing
333	Machinery Manufacturing
334	Computer and Electronic Product Manufacturing
335	Electrical Equipment, Appliance and Component Manufacturing
336	Transportation Equipment Manufacturing
337	Furniture and Related Product Manufacturing
339	Miscellaneous Manufacturing
423	Merchant Wholesalers, Durable Goods
424	Nondurable Goods Merchant Wholesalers
441	Motor Vehicle and Parts Dealers
446	Health and Personal Care Stores
451	Sporting Good, Hobby, Book and Music Stores
481	Air Transportation
482	Rail Transportation
486	Pipeline Transportation
487110	Scenic and Sightseeing Transportation, Land (Includes: railroad, scenic and sightseeing)
488	Support Activities for Transportation
488310	Port and Harbor Operations (Used railroad ties)
493	Warehousing and Storage
522	Credit Intermediation and Related Activities
541	Professional, Scientific and Technical Services
561	Administrative and Support Services
561730	Landscaping Services
562	Waste Management and Remediation Services
562111	Solid Waste Collection
562212	Solid Waste Landfill
562213	Solid Waste Combustors and Incinerators
611	Educational Services
622	Hospitals
713930	Marinas
721	Accommodation
811	Repair and Maintenance
921	Public Administration
928	Public Administration

<sup>a</sup> Includes: Major Source Boilers, Area Source Boilers, and Solid Waste Incinerators

<sup>b</sup> NAICS - North American Industrial Classification System

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be impacted by this action.

#### **4(b) Information Requested**

This section describes information collection requirements applicable to entities that may be affected by the NHSM Final Rule and its subsequent amendments.



#### **40 CFR 241.3(c) Petition Process**

(i) Data items:

The 2011 Final Rule established a non-waste determination petition (*See* 40 CFR 241.3(c)) process. That process provides persons with administrative procedures for receiving a formal determination from the EPA Regional Administrator that NHSM that are burned as a fuel, have not been managed within the control of the generator, have not been discarded, and are indistinguishable in all relevant aspects from a fuel product, are not a solid waste when used as a legitimate fuel in a combustion unit. To receive consideration, a petitioner must request a case-specific non-waste determination. While the process is voluntary, it requires the petitioner to provide information describing how the secondary materials satisfy the legitimacy criteria, along with analysis of certain market, human and environmental health, and other factors.

(ii) Respondent activities:

In order for EPA to grant the non-waste determination, a petitioner must show that the material in question was not initially abandoned or thrown away by the generator. After demonstrating that the NHSM has not been discarded in the first instance, the petitioner must then demonstrate that the material is indistinguishable in all relevant aspects from a fuel product by showing that it satisfies all of the following five criteria: (1) whether market participants handle the non-hazardous secondary material as a fuel rather than a waste; (2) whether the chemical and physical identity of the non-hazardous secondary material is comparable to a commercial fuel; (3) whether the capacity of the market would use the non-hazardous secondary material in a reasonable time frame; (4) whether the constituents in the non-hazardous secondary material are released to the air, water or land from the point of generation to the point just prior to combustion of the non-hazardous secondary material at levels comparable to what would otherwise be released from traditional fuels; and (5) other relevant factors.

#### **40 CFR 241.4 Petition Process**

(i) Data items:

The EPA recognized that there may be NHSMs that can be considered non-wastes when used as fuels in combustion units when balancing the legitimacy criteria and other relevant factors. Thus, under the February 2013 amendments, the Agency finalized the process whereby persons can submit a rulemaking petition to the Administrator where they can identify and request that additional NHSMs be listed in 40 CFR 241.4. Facilities burning these categorical non-wastes for energy recovery will not need to demonstrate that the NHSM meets legitimacy criteria on a site-by-site basis.

(ii) Respondents activities:

In the context of a rulemaking petition under 40 CFR 241.4(b), any person can petition the Administrator for a regulatory amendment to identify and request that additional NHSMs be included on the list of materials in 40 CFR 241.4(a) that are not solid wastes when used as a fuel in a combustion unit. To be successful, the petitioner needs to demonstrate to the satisfaction

of the Administrator that the proposed regulatory amendment involves a NHSM that has not been previously discarded (i.e., was not initially abandoned or thrown away), or if discarded, has been sufficiently processed into a legitimate fuel. The petitioner must also demonstrate that the material is used as a non-waste fuel in a combustion unit because it either meets the legitimacy criteria, or, after balancing the legitimacy criteria with other relevant factors, such as NHSM(s) is not a solid waste when used as a fuel in a combustion unit.

### **Rule Familiarization (Reading the Regulations)**

(i) Data items:

None.

(ii) Respondent activities:

It is expected that entities potentially affected by the 2011 Final Rule and subsequent amendments will read it to assess how it may affect their operations. This is considered a one-time burden, and we have assumed that 90 percent of potentially-affected facilities have already read the regulations prior to this ICR renewal period. The remaining 10 percent are accounted for among the respondents for this ICR.

### **C&D Wood Processing Facilities Certification**

**(i)** Data Items

Construction and demolition (C&D) wood processing facilities would incur a burden associated with the preparation of the certification statement (outlined in the 2016 amendments) and associated recordkeeping requirements necessary to assure the NHSM combustors that the C&D wood received from such processing facilities is clean and has been processed according to best management practices.

(ii) Respondent activities

Best management practices include sorting by trained operators that excludes or removes non-wood materials (e.g. PVC plastics, drywall, concrete) and treated wood through positive sorting (picking out desirable material) or negative sorting (picking out undesirable materials). The certification statement is provided to combustor owner/operators as record that the material is a NHSM fuel to meet air regulatory recordkeeping requirements. This certification statement and associated recordkeeping for the processors are a requirement established by the 2016 Final Rule amendments. We have assumed this certification statement is a one-time burden and that two thirds of facilities already incurred this burden under ICR 2493.03.

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

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

As discussed above, EPA has promulgated a self-implementing approach that requires facilities to determine whether a given material meets EPA's non-waste criteria. The burden of recordkeeping that the material is a fuel under the NHSM rule is borne by the combustor unit through their air regulation recordkeeping requirements, which presumably are reflected in the facility's air permit. The Agency also established petition processes under which facilities may seek clarity on whether the materials that they burn are considered categorical non-wastes. Therefore, under the 2013 amendments, EPA will process and review the petitions of facilities seeking non-waste determinations and decide whether the information provided in each petition warrants a non-waste determination.

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

All information received through the voluntary 40 CFR 241.3(c) petitions and 241.4 petitions are managed under the Agency's Confidential Business Information protocol as appropriate. Information received is reviewed by the Agency and revised by the petitioner as throughout the process.

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

The self-implementing approach for non-waste determinations finalized by EPA provided small entities with flexibility to minimize any burden associated with the Final Rule. Under this approach, entities are not required to submit any paperwork to EPA or state agencies due to the NHSM rule requirements and have the flexibility to develop their own individualized approaches for determining whether the materials that they burn meet the non-waste criteria included in the 2013 amendments.

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

There are four burden categories associated with this action that are required: reading and understanding the rules, certification statements for affected C&D processing facilities that are submitted to the combustor, and petition submittals under 40 CFR 241.3(c) and 40 CFR 241.1 that are submitted to the Agency. Reading and understanding the rule is a one-time burden, and we have assumed that 90 percent of affected facilities already read the regulations prior to this ICR renewal period. The schedule for preparation and submission of certification statements and preparation and submittal of petitions will occur based on each facility's needs and production schedule.

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

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

In Exhibit 1, EPA estimates the respondent burden associated with the paperwork requirements in the 2011 Final Rule and amendments. As shown in the Exhibit, EPA estimates that the total one-time respondent burden for the new requirements in the rule varies between 1

hour (per respondent) and approximately 149 hours (per respondent), depending on whether the facility incurs solely rule familiarization costs, or whether it also incurs petition process costs. EPA estimates that C&D wood processors would need approximately 4.1 hours to prepare the certification statement and provide to purchasers (combustors) of the C&D wood.

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

Exhibit 1 summarizes the total costs of the information collection activities associated with the 2013 Final Rule and 2016 and 2018 amendments. As indicated in the exhibit, these range from \$89 per respondent for rule familiarization to \$23,524 for the petition process for non-waste determinations under 40 CFR 241.4.

### **Labor Costs**

For purposes of this analysis, EPA estimates an average hourly respondent labor cost of \$97.67 for managerial staff, \$80.77 for technical staff, and \$38.54 for clerical staff. These hourly labor costs were obtained from the United States Department of Labor, Bureau of Labor Statistics, June 2018, “Table 2. Civilian Workers, by occupational and industry group.”<sup>6</sup> The rates are from column 2, “Wages and salaries.” The rates have been increased by 110 percent to account for the benefit packages available to those employed by private industry.

### **Capital and Operation & Maintenance Costs**

EPA anticipates that fulfilling the requirements of this ICR can be accomplished using the same capital stock that respondents would already have in place to carry out normal business. No additional capital investments or costs will be required.

O&M costs are those costs associated with materials and services procured for the information collection requirements included in the ICR. For this ICR, O&M costs may include material testing for the petition processes, as well as the costs of supplies used in the preparation of each petition (e.g., photocopies). We estimate that facilities will incur O&M costs of \$293 per material for testing.<sup>7</sup> Based on data compiled in support of EPA’s Boiler MACT and CISWI rulemakings, we estimate that each facility seeking a non-waste determination through the 40 CFR 241.3(c) petition process will, on average, petition for non-waste determinations for 1.38 materials.<sup>8</sup> Applying this to the testing cost of \$293 per material, we estimate per facility O&M costs of \$403 for testing. For categorical non-waste determinations made through the 40 CFR 241.4 petition process, double the \$293 per material testing cost (\$586) is assumed per respondent, to enable generation of a more robust contaminant database for categorical non-waste determinations. O&M costs may also include the costs of supplies used in the preparation

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<sup>6</sup> Available at <http://www.bls.gov/news.release/ecec.t02.htm>

<sup>7</sup> Estimate derived from RACER 2005 Cost Estimating Software.

<sup>8</sup> U.S. EPA, Office of Air Quality Planning and Standards, Draft combustor database in support of the proposed CISWI Rule, April 14, 2009 and U.S. EPA, Office of Air Quality Planning and Standards, Draft combustor database in support of the proposed major source Boilers Rule, March 20, 2009.

of each C&D wood certification statement (e.g., paper, photocopies, postage). These O&M costs are believed to be negligible (less than \$1 per certification) and have not been incorporated into Exhibit 1.

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

Exhibit 2 below presents the estimated Agency burden and costs associated with the requirements covered in this ICR. We estimate that EPA would incur a one-time cost of approximately \$7,568 per respondent for the 40 CFR 241.3(c) non-waste petition process and approximately \$10,640 for the 40 CFR 241.4 categorical non-waste determination petition process. This cost is based on the average hourly labor rates of \$65.71 for managerial staff, \$48.75 for technical staff, and \$26.38 for clerical staff. These rates are from the Office of Personnel Management (OPM), 2018 General Schedule, which excludes locality rates of pay. The rates have been increased by 60 percent to account for the benefit packages available to government employees.

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

#### **Respondent Universe**

The number of affected entities varies by information collection activity, as summarized below:

*Rule Familiarization:* EPA estimates that 146 facilities will incur rule familiarization costs under the Final Rule and subsequent amendments. This estimate is based upon information compiled by EPA on the NHSM burned by individual combustion units potentially affected by either of the following rulemakings: (1) the Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration (CISWI) Units (the CISWI Rule); and (2) the National Emission Standards for Hazardous Air Pollutants for Industrial/Commercial/Institutional Boilers and Process Heaters (the major source Boilers Rule).<sup>9,10</sup> EPA originally estimated that 1,461 facilities would incur a one-time rule familiarization cost for the 2011 Final Rule. EPA has estimated that, by now, approximately 90 percent of those respondents will have already read and understood the rule. Therefore, for the current ICR renewal, EPA has decreased its estimated number of respondents from 1,461 to 146.

*Petition Processes:* For the previous ICR, EPA assumed that facilities currently burning secondary materials considered to be waste under the 2011 Final Rule would undergo the petition process for non-waste determination if the material is not burned within the

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<sup>9</sup> U.S. EPA, Office of Air Quality Planning and Standards, Draft combustor database in support of the proposed CISWI Rule, April 14, 2009 and U.S. EPA, Office of Air Quality Planning and Standards, Draft combustor database in support of the proposed major source Boilers Rule, March 20, 2009.

<sup>10</sup> EPA is also issuing National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers (the area source Boilers Rule). The vast majority of such units, however, are not designed to burn secondary materials and will therefore not be affected by the Final NHSM Rule.

control of the generator. Based on the unit-level information compiled by EPA for the CISWI Rule and the Major Source Boilers Rule, the Agency had originally estimated that a total of 168 facilities would submit petitions to the Agency.<sup>11</sup> However, only two petitions were submitted over the first ICR renewal period. The number of petitions anticipated to be filed over the next three year period was therefore reduced to 10, which EPA believed was still a conservative estimate. EPA is retaining the 10 petition estimate for the current ICR renewal period.

*Certification Statement:* We estimate that there may be approximately 167 C&D wood processing facilities that may need to prepare the certification statement required to be submitted to combustion unit owner/operators as a result of the 2016 Final Rule amendments.

### **Respondent Burden and Cost**

Based on the universe data presented above, EPA estimates the respondent burden associated with all of the new information collection requirements covered in this ICR in Exhibit 1. A discussion of the assumptions used in developing these burden estimates follows.

#### ***Rule Familiarization***

As shown in Exhibit 1, EPA estimates that 146 potentially affected facilities will read the rule. Based on the ICR for another recent RCRA rulemaking, we estimate that the per-facility burden for rule familiarization is one hour. Based on the labor rates noted above, the cost per facility for rule familiarization is estimated at \$89.

#### ***Petition Process***

As shown in Exhibit 1, EPA estimates that 10 potentially affected facilities will file petitions for non-waste determinations and one facility or trade organization will submit a categorical non-waste determination petition. Similar to reading the regulations, it is assumed that this represents a one-time cost per facility.

We estimate the burden and cost of the petition process based on similar rulemaking procedures and experiences to date with non-waste determination petitions, both facility-specific and categorical. In addition, testing costs are assumed to require two hours of field technical labor per material petitioned plus an additional \$293 in O&M costs per material petitioned. The estimated per facility burden of this petition process is approximately 149 hours and the estimated cost per facility is \$12,235.

#### ***Certification Statement ?***

As shown in Exhibit 1, EPA estimates that 167 potentially affected facilities will incur one-time costs associated with preparing and providing certification statements. The estimated per facility burden for each certification statement is approximately 4.1 hours, and the estimated cost per facility is \$348.

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<sup>11</sup> U.S. EPA, Office of Air Quality Planning and Standards, *op cit.*.

## **6(e) Bottom Line Burden Hours and Costs Respondent Burden and Costs**

In Exhibit 1, EPA presents the total respondent burden and cost for each of the four paperwork requirements associated with the 2011 Final Rule and 2013, 2016 and 2018 Final Rule amendments (i.e., rule familiarization, petition process for non-waste determinations, categorical non-waste determination petition process, and C&D waste certification). As described above, these paperwork requirements apply to units and facilities that process and, in certain situations, burn NHSM. The total respondent burden and costs for these requirements are as follows:

### ***Rule Familiarization***

EPA estimates that only a small portion (146) of potentially affected facilities will need to spend time carrying-out rule familiarization in the next three-year period. Total burden is anticipated to be 49 hours corresponding to labor costs of \$4,342.

### ***Petition Process***

EPA estimates that 10 facilities may petitioning for a non-waste determination in the next three-year period under the 40 CFR 241.3(c) process. This activity is expected to produce 496 hours of burden and \$40,782 of mixed labor and non-labor costs. For the categorical non-waste determination process specified under 40 CFR 241.4, we estimate one petition over the next three years. This activity is expected to produce 95 hours of burden and \$7,841 of mixed labor and non-labor costs.

### ***Certification Statement***

Affected C&D wood processing facilities are expected to incur one-time costs associated with preparing and providing certification statements. In total, these facilities are expected to produce 228 hours of burden and \$19,330 in associated labor costs annually.

### **Agency Burden and Costs**

Exhibit 2 summarizes the total Agency burden and cost associated with the paperwork requirements for the 2011 Final Rule and subsequent amendments. As indicated in the exhibit, the Agency's burden and costs relate to the petition process for non-waste determinations included in the 2013 Final Rule. The one-time burden realized by the Agency for the 40 CFR 241.3(c) petition process included in the 2011 Final Rule is approximately 1,570 hours. EPA estimates that the cost incurred by the Agency under the petition process is approximately \$75,675. Therefore, the annual cost to federal government is estimated at \$25,225. For categorical non-waste determination petitions under 40 CFR 241.4, the one-time (i.e., one petition every three years) is approximately 208 hours at a cost to the federal government of \$10,640.

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

For this ICR renewal, there is a decrease of in annual estimated burden, compared to the combined annual burdens of ICR numbers 2382.04 and 2493.03. This decrease is due to the following:

- The total number of respondents estimated for rule familiarization decreased by 90%, as it was assumed most respondents will have already met this one-time requirement. The 605 respondents estimated to require rule familiarization under ICR 2493.03 (2016 amendments) were considered a subset of the 1,461 respondents expected to incur the rule familiarization burden under ICR 2382.04 and were therefore not added separately.
- The estimated number of certification statements required has dropped from 500 to 167, assuming that two thirds of the 500 facilities affected under the 2016 rule have already met this requirement. Furthermore, this cost was previously considered an annual requirement, but it is more accurate to consider this a one-time burden for affected facilities. For the purposes of this ICR, it is assumed 167 facilities will need to meet this requirement one time over the course of this 3-year renewal period.

## **6(g) Burden Statement**

The total annual public reporting and recordkeeping burden for this collection of information is estimated to average 868 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.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this ICR under Docket ID Number EPA-HQ-OLEM-2018-0693, which is available for online viewing at [www.regulations.gov](http://www.regulations.gov), or in person viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW, Washington, D.C. The EPA Docket Center 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 RCRA Docket is (202) 566-0270. An electronic version of the public docket is available at [www.regulations.gov](http://www.regulations.gov). This site can be used to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the Docket ID Number identified above. Also, you can send comments to



the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, D.C. 20503, Attention: Desk Officer for EPA. Please include the EPA Docket ID Number EPA-HQ-OLEM-2018-0693 and OMB Control Number 2050-0205 in any correspondence.

Exhibit 1 - Estimated Respondent Burden and Cost												
Hours <sup>1</sup> and Costs per Respondent										Total Hours and Costs		
INFORMATION COLLECTION ACTIVITY	Mgr. \$97.67/Hr	Tech. \$80.77/Hr	Cler. \$38.54/Hr	Respondent Hours	Labor Cost <sup>1</sup>	Capital/Startup Cost	O&M Cost	Cost per Respondent	Number of Responses (total)	Over 3-yr Renewal Period		Average Annual Cost
										Total Hours	Total Cost	
<b>RULE FAMILIARIZATION – Read the rule (one-time burden<sup>2</sup> and cost)</b>												
Affected Facilities	0.5	0.5	0.0	1.0	\$89	\$0	\$0	\$89	146	146	\$13,026	\$4,342
<b>PETITION PROCESS (40 CFR 241.3(c) one-time)<sup>3</sup></b>												
Affected Facilities	8	133 <sup>5</sup>	8	149	\$11,832 <sup>3</sup>	\$0	\$403 <sup>3</sup>	\$12,235	10 <sup>5</sup>	1,490	\$122,345	\$40,782
<b>PETITION PROCESS (40 CFR 241.4 one-time)<sup>4</sup></b>												
Affected Facilities	60	200	24	284	\$22,938	\$0	\$586 <sup>4</sup>	\$23,524	1 <sup>5</sup>	284	\$23,524	\$7,841
<b>CERTIFICATION STATEMENT (one-time)<sup>6</sup></b>												
Affected Facilities	2.5	1.25	0.35	4.1	\$348	\$0	\$0	\$348	167	683	\$57,989	\$19,330

<sup>1</sup> *Hourly Wages*: United States Department of Labor, Bureau of Labor Statistics, June 2018, “Table 2. Civilian Workers, by occupational and industry group.” The rates are from column 2, “Wages and salaries.” <http://www.bls.gov/news.release/ecec.t02.htm>. The rates have been increased by 110 percent to account for the benefit packages available to those employed by private industry.

<sup>2</sup> *Hours for Rule Familiarization*: U.S. EPA, Supporting Statement for EPA Information Collection Request Number 2324.01 Reporting and Recordkeeping Requirements for the Final Rule in Adding Pharmaceuticals to the Universal Waste Rule (Final Rule), September 2008, Exhibit 1.

<sup>3</sup> *Petition Process Costs*: Derived from U.S. EPA, Supporting Statement for EPA Information Collection Request Number 2310.01: Revisions to the RCRA Definition of Solid Waste (Final Rule), October 28, 2008. Hours estimate for technical labor also reflects an assumed 2 hours of testing per material petitioned. In addition, the estimated O&M cost reflects a testing cost of \$293 per material tested, based on data from the RACER 2005 cost estimating software. Based on the combustion unit databases developed by EPA for the Major Source Boiler MACT and the CISWI rule, we estimate that, on average, 1.38 materials will be tested per petitioner. Assume similar analytical cost for a categorical determination petition.

<sup>4</sup> *40 CFR 241.4 Petition Process Costs*: Estimated based on submittals, meetings and processes of making a categorical determination based on petitions conducted to date. Assumes double the \$293 per material testing cost of a 40 CFR 241.3(c) petition to enable generation of a more robust contaminant database.

<sup>5</sup> *Uncertainty Regarding Number of Respondents for the Petition Process*: As described in previous sections of this document, EPA assumes that facilities potentially affected by the CISWI rule and the major source Boilers Rule will submit petitions to EPA for a non-waste determination if they burn materials considered to be a solid waste under the Final Rule and if the material is burned outside the control of the generator. Based on these conditions and on EPA’s experiences over the past three year

period, the Agency estimates that 10 facilities will submit petitions and one categorical determination petition will be submitted by a facility or trade organization. In reality, the number of petitions that will be submitted is uncertain and dependent on several factors that EPA is unable to assess (e.g., the operational characteristics of individual facilities).

<sup>6</sup> Certification Statement Assumptions: EPA (August 24, 2009) estimates there are 3,300 C&D materials recycling facilities operating nationwide. This includes approximately 3,000 concrete and asphalt recyclers, which leaves about 300 mixed debris (including wood processing) facilities. Franklin Associates (June 1998) estimates there were about **500** wood waste processing facilities operating in the U.S. in the late 1990's. This was assumed to be a one-time burden over the 3 year period of ICR.2493.03, from 2016 to 2019. We therefore estimate two thirds of the 500 affected facilities have already completed their certification requirements and use estimate of 167 remaining facilities in this ICR.

Exhibit 2 - Estimated Agency Burden and Cost											
Hours and Costs per Respondent								Total Hours and Costs			
INFORMATION COLLECTION ACTIVITY	Mgr. \$65.71/Hr	Tech. \$48.75/Hr	Cler. \$26.38/Hr	Agency Hours	Labor Cost <sup>1</sup>	Capital/Startup Cost	O & M Cost	Total Cost per Respondent	Number of Respondents	Total Hours	Total Cost
<b>PETITION PROCESS (40 CFR 241.3(c) one-time burden and cost)<sup>2</sup></b>											
Agency	16	125	16	157	\$7,568	\$0	\$0	\$7,568	10 <sup>4</sup>	1,570	\$75,675
<b>PETITION PROCESS (40 CFR 241.4 one-time)<sup>3</sup></b>											
Agency	40	160	8	208	\$10,640	\$0	\$0	\$10,688	1 <sup>4</sup>	208	\$10,640

<sup>1</sup> Hourly Wages: These rates are from the Office of Personnel Management (OPM), 2018 General Schedule, which excludes locality rates of pay. [https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2018/GS\\_h.pdf](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2018/GS_h.pdf). The rates have been increased by 60 percent to account for the benefit packages available to government employees.

<sup>2</sup> Petition Process Costs: Derived from U.S. EPA, Supporting Statement for EPA Information Collection Request Number 2310.01: Revisions to the RCRA Definition of Solid Waste (Final Rule), October 28, 2008.

<sup>3</sup> 40 CFR 241.4 Petition Process Costs: Estimated based on submittals, reviews, stakeholder meetings and conducting the processes of making a categorical determination based on petitions conducted to date.

<sup>4</sup> Uncertainty Regarding Number of Respondents for the Petition Process: As described in previous sections of this document, EPA assumes that facilities potentially affected by the CISWI rule and the Major Source Boilers Rule will submit petitions to EPA for a non-waste determination if they burn materials considered to be a solid waste under the Final Rule and if the material is burned outside the control of the generator. Based on these conditions and on EPA's experiences over the past three year period, the Agency estimates that 10 facilities will submit petitions and one categorical determination petition will be submitted by a facility or trade organization. In reality, the number of petitions that will be submitted is uncertain and dependent on several factors that EPA is unable to assess (e.g., the operational characteristics of individual facilities).