

CLAIMS UNDER THE OIL POLLUTION ACT OF 1990

SUPPORTING STATEMENT FOR 1625-0067

A. JUSTIFICATION

This Information Collection Request application supports a renewal of the existing information collection authorized under OMB 1625-0067. The current Office of Management and Budget (OMB) authorization supports the efforts of the U.S. Coast Guard National Pollution Funds Center (NPFC) to adjudicate claims submitted by affected parties for reimbursement from the Oil Spill Liability Trust Fund (Fund), in accordance with provisions of the Oil Pollution Act of 1990 (OPA). Finally, this application revises burden estimates to be consistent with the burden estimation process outlined by OMB in the 1999 publication *The Paperwork Reduction Act of 1995: Implementing Guidance*. Below we provide supporting information consistent with OMB instructions for completing an 83-I form.

1. Circumstances Requiring Information Collection

The information collection requirements described in this supporting statement are necessary to implement the claims provisions of the Oil Pollution Act of 1990 (OPA). To ensure fair and reasonable payments to claimants and to protect the interests of the Federal Government, all claims must be fully substantiated and the procedures for advertising and presentation of claims must be followed, set out in OPA.¹ The Authority for this collection is 33 U.S.C. 2713 and 2714.

2. Purpose of Information Collection

This information collection request supports all claims adjudication activities undertaken by the NPFC. The NPFC will use the information collected under this request to determine whether claims submitted to the Fund are compensable from the Fund. For compensable claims, the information collected will also provide the basis for determining the appropriate reimbursement of removal costs or compensation for suffered/sustained damages from the Fund. If the information is not collected, NPFC will be unable to comply with the provisions of OPA that require that all claims must be fully substantiated.

3. Use of Electronic Collection

Electronic information collection is not practical for this information collection effort. Claims are one-time efforts that reflect a variety of circumstances, and may require supporting data that are unique to specific claims and may not exist in electronic form (e.g., financial statements).

¹ Per the paperwork Reduction Act FAQs, a respondent is defined as 10 or more respondents involved.

4. Duplication of Effort

Current regulations under OPA require claimants to submit claims to responsible parties (RPs) where these have been identified, prior to submitting claims to NPFC.² Claims not settled by the RPs within 90 days of submission may be filed with the NPFC for payment from the Fund. Claims to NPFC may require some duplication of effort for cases in which an RP is identified, to the extent that claimants must reassemble and resubmit materials.

5. Minimizing Burden on Small Entities

Because burden is determined by the complexity of the claim (e.g., the type and amount of costs/damages incurred) and not the size of the entity, it is not possible to systematically provide alternative information requirements for small entities without compromising the quality and consistency of the adjudication process.

6. Consequences of Less Frequent Collection

A claim represents a single, voluntary submission of information by each claimant after damage has occurred (i.e., following a spill). Reduced information collection would impair the ability of the Coast Guard to adjudicate claims as required by OPA.

7. Unusual ICR Requirements

Information will be collected in a manner consistent with 5 CFR 1320.6.

8. Public Comments

A 60-day Notice (See [USCG-2019-0261], May 28, 2019, 84 FR 25431) and 30-Day Notice (August 19, 2019, 84 FR 42941) were published in the *Federal Register* to obtain public comment on this collection. The Coast Guard has not received any comments on this information collection.

9. Payments or Gifts to Respondents

No payment or gift to respondents is provided.

10. Assurance of Confidentiality

There are no assurances of confidentiality provided to the respondents for this information collection. This information collection request is covered by the Pollution Response funding, Liability, and Compensation System Privacy Impact Assessment (PIA) and Accounts Payable and Accounts Receivable System of Records Notice (SORN). Links to the PIA and SORNs are provided below:

² State agencies are not required to make presentment to a responsible party but can instead come directly into the NPFC with a claim. See 33 CFR 136.103(b)(3).

- https://www.dhs.gov/sites/default/files/publications/privacy_pia_007_uscg_npfc_2009.pdf
- <https://www.regulations.gov/document?D=DHS-2018-0067-0001>
- <https://www.regulations.gov/document?D=DHS-2018-0026-0001>

11. Questions of a Sensitive Nature

The information collected for the NPFC claims process does not include questions of a sensitive nature.

12. Estimates of the Hour Burden

The NPFC claims process requires all claimants to read regulations, assemble materials, and submit claims. In addition, the process may require clarification of needed information, submission of supplementary information, and the effort required to submit a denied claim for reconsideration. Estimated claimant burden hours associated with all activities are based on review of claim files and instructions and consultation with Coast Guard staff. These hours do not include the effort of paid preparers (e.g., attorneys and accountants) or consultants (e.g., scientists and analysts); that effort is included in cost burden in Exhibits 3 and 4. The description and calculation of total hour burden is described below.

Activities Required by Claims Process

Burden associated with the claims regulations generally involves five separate activities, and is estimated based on *average* effort per claim. These five activities are: obtaining and reading regulations; claim preparation; supplemental/clarifying activities; reconsideration requests; and preparation of advertisements. The per-claim estimates do not describe actual burden associated with a specific claim. Actual claims range from very simple (e.g., a damaged fishing net) to very complex (e.g., lost business from declines in tourism following a spill), and the burden associated with these claims varies considerably. Average estimates of burden are based on expert opinion and review of claim files. This is based on the availability of historical determinations found on the web which account for the time savings. Burden hours are summarized below in Exhibit 1:

EXHIBIT 1				
BURDEN HOURS BY CLAIMS PROCESS ACTIVITY				
Category	Claims Process Activity			
	Obtain and Read Regulations	Claim Preparation	Supplemental / Clarifying Activities	Reconsideration Requests
Third Party Damage Claims <i>(includes Loss of Profits and Earnings, Loss of Government Revenue, Loss of Subsistence Use, Public Service, Loss of Real or Personal Property)</i>	2	16	8	16
Removal Cost Claims	2	16	8	16

Responsible Party Claims <i>(includes Affirmative Defense and Limit of Liability)</i>	10	80	60	40
		Preparation of Advertisement		
Advertising by Responsible Parties	10	15	n/a	n/a

Calculation of Total Hour Burden

The total hour burden estimate, in Exhibit 2 below, is based on the above hour estimates for each activity multiplied by the average number of claims requiring that activity. The total number of claims is based upon all claims received by claim type and then averaged for the calendar years 2015 through 2017. The number of claims submitted for reconsideration is based upon all claims received under reconsideration and then averaged for calendar years 2015-2017. The number of designated spills are based on historical claims from calendar years 2015 through 2017 and then are averaged over a three year period.³ Finally, the number of claims that require clarification is based on all claims that required additional information in order to complete adjudication of the claim by NPFC personnel from calendar years 2015-2017 and then averaged over that three year period.

Burden associated with initial review of regulations and claims filing applies to all claims. Burden associated with clarification and reconsideration efforts applies to the numbers of claims requiring these activities. Claims are sorted into three categories of claim type to reflect different frequencies of clarification and reconsideration. The burden associated with responsible party's advertising applies to all designated spills (regardless of whether or not there are any associated claims). The total estimated annual hour burden estimates for all NPFC claims adjudication activities (including both claimant burden and RP advertising) is 2620 hours. The anticipated number of cases, activities, and associated burden hours are summarized in Exhibit 2.

EXHIBIT 2				
NUMBER OF ANTICIPATED CLAIMS, DESIGNATIONS, AND RESULTING BURDEN HOURS (Annually)				
Claim Type	Initial Claims/ Designations	Number Requiring Clarification	Number Submitted for Reconsideration	Total Burden Hours**
Third Party Damage Claims* <i>(includes Loss of Profits and Earnings, Loss of Government Revenue, Loss of Subsistence Use, Public Service, Loss of Real or Personal Property)</i>	180	48	32	260
Removal Cost Claims*	1512	392	96	2000
Responsible Party Claims* <i>(includes Affirmative Defense and Limit of Liability)</i>	180	120	40	340
CLAIMS SUBTOTAL	1872	560	168	2600
ADVERTISING	10	n/a	n/a	20

³ The claims submission trend showed an overall downward trend, with the number of claims decreasing, while their complexity trend moved in the opposite direction.

TOTAL BURDEN HOURS	2620
<p>* Number of claims reflects average of claim submissions to NPFC from CY 2015 to CY 2017. ** Total burden hours for each claim type are calculated as follows: [(# of Claims) X (# of Hours for Reviewing the Regulations)] + [(# of Claims) X (# of Hours for Claim Preparation)] + [(# of Claims Requiring Clarification) X (# of Hours for Clarification Activities)] + [(# of Claims submitted for Reconsideration) X (# of Hours for a Reconsideration Request)] = Total Burden Hours ***Total Burden Hours value rounded to nearest 10 for simplicity</p>	

Total burden hours for the claimant, presented above in Exhibit 2, are calculated by multiplying the number of claims by the hours required for each of the four different activities, as set out in Exhibit 1. For example, using the information presented in Exhibits 1 and 2 and using 10 Third Party Damage Claims received as averaged from calendar years 2015-2017. The total Burden Hours for Third Party Damage Claimants are calculated as follows:

$$(10 \times 2) + (10 \times 16) + (6 \times 8) + (2 \times 16) = 260 \text{ Burden Hours}$$

Other Costs Associated with Compliance

In addition to burden hours, costs associated with compliance include:

1. Paid preparer expenses (i.e., accounting and legal assistance)
2. Other direct expenses (e.g., postage, copying, advertising costs)

Exhibit 3 summarizes the average estimated hours of paid preparers by process activity. Exhibit 4 summarizes the estimated cost burden on the public associated with compliance with the NPFC claims process.

EXHIBIT 3 ACTIVITIES REQUIRED BY CLAIMS PROCESS		
Claimant Activity	Hours per Claim	
	Third Party and Other Claims	RP Claims
	Paid Preparer*	Paid Preparer*
Obtain and read regulations	10	25
Claim Preparation	85	300
Supplemental/Clarifying Activities	20	100
Reconsideration Request	50	50
^a There are no estimated Paid Preparer hours for Removal Claims.		

Assumptions

Paid Preparer Expenses: For claims involving third party damages and for claims by responsible parties (i.e., for affirmative defense and limit of liability), paid preparer costs are estimated at \$200 per hour, based upon input from actual claimant documents.

Other Direct Expenses: Other direct expenses include postage, copying, and telephone expenses. These costs are estimated as follows:

1. Obtaining and reading regulations: \$5 per claim
2. Filing the initial claim: \$20 per claim
3. Providing supplementary or clarifying materials: \$20 per claim
4. Pursuing a reconsideration of the claim request: \$200 per claim
5. Responsible party advertising costs: \$6,840 per designation

Note that advertising costs reflect the requirement to advertise over a 30-day period. NPFC historical records of advertising costs show that costs vary from a few hundred dollars (e.g., to print posters and circulate letters in an area near a small spill) to advertisements in multiple metropolitan newspapers (costing thousands of dollars). \$24,667.00 represents a recent cost incurred and provided by an RP.⁴

EXHIBIT 4			
ANNUAL COST BURDEN ESTIMATES FOR CLAIM SUPPORT AND OTHER COSTS			
Claim Type (Reference Exhibit 2)	Paid Preparer Costs	Other Costs (including advertising)	Total*
Third-Party Damages	\$234,000	\$770	\$234,770
Removal Costs	\$ -	\$8537	\$8537
Responsible Party Claims	\$ 180,000	\$290	\$180,290
Advertising	\$ -	\$24,667	\$24,667
TOTAL	\$414,000	\$25,727	\$39,727**
<p>*Calculation for claim support for each claim types was calculated as follows and is explained in detail in Exhibit 5: [(# of Claims) X (# of Hours for Reviewing the Regulations) X (Hourly Wage for Paid Preparer)] + (# of Claims X Other Costs associated with Reading the Regulations) + [(# of Claims) X (# of Hours for Claim Preparation) X (Hourly Wage of Paid Preparer)] + (# of Claims X Other Costs associated with Claim Preparation) + [(# of Claims Requiring Clarification) X (# of Hours for Clarification Activities) X (Hourly Wage for Paid Preparer)] + (# of Claims Requiring Clarification X Other Costs associated with Claim Clarification Activities) + [(# of Claims Submitted for Reconsideration) X (# of Hours for a Reconsideration Request) X (Hourly Wage for Paid Preparer)] + (# of Claims Submitted for Reconsideration X Other Costs associated with Reconsideration Activities) = Total Cost of Claim Support</p> <p>**Total rounded to the nearest 10 for simplicity</p>			

Total cost burden estimates for claim support and other costs, presented above in Exhibit 4, are calculated by multiplying the number of claims, number of claims requiring clarification, and the number of claims submitted for reconsideration by the number of hours supplied for each activity by either a paid preparer or contractor and also with other costs associated with each activity. As an example, Exhibit 5 below shows how total cost burden for claim support and other costs are calculated for Responsible Party Claims.

⁴ The World Wide Web (internet) has been a facilitator for increasing potential claimant access to information on the OPA claims more quickly and effectively, whether directly from the RP or other sources, including the NPFC. For that reason, it is anticipated that these costs will likely remain constant and any increase be negligible.

EXHIBIT 5 EXAMPLE COST CALCULATION FROM EXHIBIT 4 RESPONSIBLE PARTY CLAIMS				
Paid Preparer Cost				
Activity	Number of Claims*	Paid Preparer Hours**	Paid Preparer Wage/ hr.	Total Cost by Activity
Obtain and read regulations	2	25	\$200.00	\$10,000
Claim Preparation	2	300	\$200.00	\$120,000
Clarifying Activities	2	100	\$200.00	\$40,000
Reconsideration Request	1	50	\$200.00	\$10,000
Total Paid Preparer Cost	\$180,000			
Other Costs				
Activity	Number of Claims*	Paid Preparer Hours**	Paid Preparer Wage/ hr.	Total Cost by Activity
Obtain and read regulations	2	n/a	\$5	\$10
Claim Preparation	2	n/a	\$20	\$40
Supplemental/ Clarifying Activities	2	n/a	\$20	\$40
Reconsideration Request	1	n/a	\$200	\$200
Total Other Costs	\$290			
TOTAL FOR CLAIM SUPPORT AND OTHER COSTS (RP)				\$180,290
* Information obtained from Exhibit 2				
** Information obtained from Exhibit 3				

Total Monetized Burden Estimate

OMB's guidance (i.e., in the 1999 *Information Collection Budget and The Paperwork Reduction Act of 1995: Implementing Guidance*) emphasizes the importance of monetizing hour burden estimates to provide single monetary estimates of total burden. Total monetized hour burden associated with the NPFC claims process is applied to the burden hours above, using the following values:

Claimant Costs (private sector): \$48.68 per hour

Because past claimants reflect a broad range of occupations and geographic locations, we use the 2017 national average salary for all occupations of \$24.34⁵ per hour to approximate claimant wages. We then adjust this rate to include a 100 percent overhead rate to allow for benefits and other costs included in standard overhead rates, resulting in a cost of \$48.68 per hour.⁶ In addition, advertising is estimated to consume approximately 2 hours of staff time per advertisement at the above wage rate.

Claimant Costs (public sector): \$90.00 per hour

To assess the cost of government effort, we use GS-13 level employee rates, based on the rates of reimbursement that the Coast Guard charges to RPs for adjudication activities. We assume that this rate of \$90.00⁷ per hour is fully loaded with overhead and applies to all government claimants (i.e., the government officials specifically involved in preparing claims).⁸

NPFC claims staff note that, in general, third party damage, removal cost, and RP claims are filed by private sector parties. Therefore, monetization of burden assumes that private sector claimant costs apply to third party damage, removal cost, and RP claims. Exhibit 6 summarizes total monetized burden associated with the NPFC claims process. Monetized Claimant Hour Burden (Exhibit 2) is calculated as follows:

Third Party Damage Claimants: (260 Hrs) X (\$48.68) = **\$12,656.80.**

Removal Cost Claimants: (2000 Hrs) X (\$48.68) = **\$97,360.00**

Responsible Party Claims: (340 Hrs) X (\$48.68) = **\$16,551.20**

Advertising: (20Hrs) X (\$48.64) = **\$972.80**

EXHIBIT 6				
TOTAL MONETIZED BURDEN ESTIMATE				
Claim Type	Claimant Hour Burden (Exhibit 2)	Monetized Claimant Hour Burden	Additional Cost Burden (including paid preparer, contractor, and other direct costs) (Exhibit 4)	Total Monetized Burden
Third-Party Damages	260	\$12,656.80	\$234,770	\$247,426.80
Removal Costs	2000	\$97,360	\$8537	\$105,897.00
Responsible Party Claims	340	\$16,551.20	\$180,290.00	\$196,841.20.
Advertising	20	\$972.80	\$24,667	\$25,639.80
TOTAL	2620	\$127,540.80	\$448,264.00	\$575,804.80

Conservative Assumptions

⁵ https://www.bls.gov/oes/current/oes_nat.htm

⁶ The Bureau of Labor Statistics assumes a standard overhead rate of 30 percent in order to capture the cost to employers of providing employee benefits. Because many of the parties filing claims are self-employed, we make the conservative assumption that the overhead rate would be higher.

⁷ Coast Guard Standard Rates Instruction, COMDTINST 7310.1R dated 29 Mar 2017

⁸ Note that in certain cases, other government employees (state, tribal and local) may be involved in claim preparations.

The burden estimates reported above are likely to represent upper limits of expected burden for two reasons:

1. The estimates do not assume that claimants have previously submitted the claim to an RP. For claims with an identified RP, the burden associated with submitting a claim to the Coast Guard is likely to be lower because all or a portion of the claim has already been prepared.
2. The estimates do not account for some expenses that have the potential to be reimbursed as part of the claim payment.

It is difficult to predict the number of claims that will be submitted to RPs and the requirements for these claims, and it is difficult to predict the portion of claim preparation that will be determined to be compensable. Therefore, the burden estimates are not adjusted to reflect these issues, and are likely to represent high-end estimates of actual burden.

13. Estimates of Cost Burden

There are no annualized capital and start-up costs.

14. Estimates of the Annualized Cost to the Federal Government

The annualized cost to the Federal Government of collecting information associated with claims is generally limited to advertising, initial processing of claims materials, and requests for clarifying or supplemental information. However, these activities have historically been tracked as part of the more general claims adjudication process and have sometimes been divided among Coast Guard and contractor staff. However, according to NPFC personnel, costs specific to information collection and management likely represent roughly five percent of the total claims adjudication cost.

The total annual cost associated with all claims adjudication activities includes the cost of 14 full-time equivalent (FTE) claims adjudication staff⁹, in addition to the total contractor budget associated with the claims division. Claims adjudicators are GS-13, with an estimated total cost of \$90 per hour (based on the rates of reimbursement that the Coast Guard charges to RPs for adjudication activities), and estimated to work an average of 2,000 hours annually. Estimated annual contracting costs of \$294,164.38 are based on the 2018 contract. Based on these assumptions, total government costs for claims adjudication are \$474,164.38, and costs specific to information collection and management represent roughly five percent of this cost, or \$23,708.22.

15. Reasons for Adjustments to Reporting in Paragraphs 14

The estimates reported in paragraph 14 differ from previous hour and cost burden estimates for NPFC activities under OMB # 1625-0067 for the following reasons:

⁹ Includes claim managers and claim assistant personnel from the NPFC Claims Adjudication Division.

1. **2015-2017 Time Period:** Data for the most recent 3 years were used in the calculation of average claims submissions and the most recent references for hourly rates was applied.

Decrease in the Monetized Burden: The monetized burden decreased since the last reporting period based upon the fewer number of claims received by the NPFC and the reduction in claims staff since the last reporting period.

16. Publication of Results

The information collected will not be published.

17. Display of OMB Date of Approval

OMB date of approval will be displayed.

18. Exceptions to Certification

No exceptions are requested.

B. COLLECTION OF INFORMATION USING STATISTICAL METHODS

This information collection effort addresses specific information supporting damage or removal cost claims by claimants. Statistical methods are not appropriate in this context.