

Supporting Statement for Paperwork Reduction Act (PRA) Submissions

General Response

Supporting Statement: The CSB's supporting statement for its PRA submission is provided in the pages that follow.

The text of notice required under 5 CFR 1320.5(a)(i)(iv): The text of this notice is included within the proposed rule. The proposed rule is attached hereto as Exhibit 1.

Estimated Date of Publication in the Federal Register: December 12, 2019.

Specific Information

A. Justification

1. Explain the circumstances that make the collection of information necessary.

CSB response: The CSB's enabling legislation necessitates and authorizes this collection of information. See 42 U.S.C. § 7412(r)(2)(A)-(C); 42 U.S.C. § 7412(r)(6)(C)(i)-(iii); 42 U.S.C. § 7412(r)(6)(E); 42 U.S.C. § 7412(r)(6)(L)-(O). The CSB has been ordered by a federal court to publish a final reporting rule by February 5, 2020. See *Air Alliance of Houston, et al. v. U.S. Chemical Safety and Hazard Investigation Board*, 365 F. Supp. 3d 118, (D. D.C. Feb. 4, 2019).

Identify any legal or administrative requirements that necessitate the collection.

CSB response: See the above response.

Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

CSB response: A copy of the CSB enabling legislation is attached as Exhibit 2. The enabling legislation includes all of the provisions cited above, including and

especially 42 U.S.C. 7412(r)(6)(C)(iii), which specifically authorizes/mandates the proposed rule and collection of information.

2. Indicate how, by whom, and for what purpose the information is to be used.

CSB Response: The purpose of the information is to notify the CSB of an accidental release within its investigatory jurisdiction and to provide the CSB with basic information concerning the accidental release. Such information is critical to the CSB for a number of reasons, including but not limited to the following: 1) an initial assessment of CSB jurisdiction; 2) a determination as to whether an investigation is mandatory for purposes of 42 U.S.C. § 7412(r)(6)(E); and 3) basic information regarding the nature of the accidental release. See subsection 1604.4 of the proposed rule.

Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

CSB Response: This is a new collection. No response required.

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

CSB Response: The proposed collection permits a reporting party to contact the CSB by telephone or by emailing a screen-fillable .pdf reporting form. If a party has reported an accidental release to the National Response Center pursuant to 40 CFR 302.6 (CERCLA), the reporting party is not required to submit a separate report to the CSB; the only information required is that the reporting party send the CSB an email with its NRC identification number. See subsection 1604.3 of the proposed rule.

Also describe any consideration of using information technology to reduce burden.

CSB Response: As noted above, a reporting party may file a report by email to the CSB, or by emailing a NRC identification number to the CSB. The CSB also utilizes internet search engines and media reporting services to identify accidental releases within its investigatory jurisdiction. As noted in the proposed rule, the CSB will use these tools, as needed, to remind an owner/operator of the need to report an accidental release if one is not filed in a timely manner.

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

CSB Response: The CSB has long sought to avoid duplicative reporting requirements by arguing that it had alternative methods for collecting the same information even in the absence of a rule. Specifically, the CSB has used internet search engines and media reporting services to identify accidental releases within its jurisdiction. Although the CSB deemed this method acceptable for many years, the CSB is now under court order to issue its own specific reporting requirement by February 5, 2020.

In its ANPRM, the CSB asked for comments on the following question: “Should an initial report be made to the CSB or the National Response Center?” The CSB received a number of comments that suggested that reports be submitted to the National Response Center (NRC) in order to avoid duplicative reporting.

In developing this proposed rule, the CSB also considered whether accidents reported to the NRC under other laws could satisfy the CSB’s reporting rule. CSB considered information provided in reports it already receives from the NRC, and

reviewed its own incident database to determine how many reports in the database, on average, are based on reports the CSB receives from the NRC.¹

The CSB determined that there is no simple method to ensure that reports filed with NRC under other laws would satisfy the requirements of a CSB reporting rule. The NRC collects information based on the type of event (i.e., storage tank accidents), not specific laws. Accordingly, there is no certain way to determine whether information reported to the NRC under a certain law will also satisfy CSB requirements. Some laws may seem to overlap with the CSB's requirements but include certain exceptions, i.e., threshold quantities. Under such laws, if the accidental release does not meet the threshold quantity, no report will be made to the NRC.

However, in conferring with the NRC, the CSB was able to determine that reports under 40 CFR 302.6 (although not labeled as such) could be reliably identified via a modified search algorithm. Accordingly, if an owner/operator knows that it has submitted a report to the NRC under 40 CFR 302.6, the owner/operator is not required to file a separate report with the CSB. Rather, the owner/operator is simply required to notify the CSB of the pertinent NRC identification number. The CSB would then use this number to ensure that its search algorithm is capturing all pertinent accidental releases reported to the NRC.

This approach is consistent with the CSB's legislative history, which provides in pertinent part, that the CSB's "reporting requirements may be coordinated with other reporting requirements established by the Agency [EPA] (for instance, under section 103 of CERCLA)." S. Rep. No. 101-228 at 236 (1989), reprinted in 1990 U.S.C.C.A.N. 3385, 3620.

¹ This analysis is not complete.

Moreover, the CSB's legislative history provides:

The regulations of the Board for accident reporting may provide that any person directed to make a report contact the National Response Center rather than the Board directly. This will assure coordination of such reports with responsibilities under the Comprehensive Environmental Response, Compensation and Liability Act, the Clean Water Act and the Hazardous Materials Transportation Act. If the National Response Center is to be the initial point of contact under such rules, then the Board shall assure that officials at the National Response Center promptly notify the Board or its officers whenever an accidental release requiring an investigation has occurred.

Id.

Other than reports submitted to the NRC under 40 CFR 302.6, the proposed rule requires that a report be made to the CSB directly. According to CSB estimates, the proposed rule will require approximately 200 reports per year. However, the total number made to CSB should be fewer because some reports made to the NRC under 40 CFR 302.6 will satisfy the CSB's requirements.

Aside from the NRC, reports of similar information may be made pursuant to other laws following an accidental release resulting in a fatality or serious injury or substantial property damage. However, this information is reported pursuant to different deadlines and requirements. Moreover, this information may not be available in sufficient time for the CSB to make a deployment decision.

For example, facilities that are subject to EPA's Risk Management Program (RMP) rule must report periodically on any accidental release of listed hazardous substances. While EPA shares such information with CSB, it does not include all accidental releases within the investigatory jurisdiction of the CSB. For example, reports under RMP are made only when the release exceeds a threshold limit. Moreover, RMP-required reports are submitted to EPA long after CSB must make a deployment decision.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.

CSB Response: The CSB anticipates only a minimal impact on small businesses or other small entities. There is a full discussion on this point in the regulatory flexibility analysis section of the proposed rule. See Exhibit 1.

In addition, the CSB's proposed rule provides a simplified method of reporting to CSB when a report has already been made to the NRC under CERCLA. See section 1604.3(b). The owner/operator may revise and/or update information reported to the NRC or CSB by sending a notification with revisions to the CSB within 30 days following the submission of accidental release report.

For one year following the effective date of the rule, the CSB will refrain from referring violations for enforcement, unless there is a knowing failure to report. This policy is required to allow adequate time for compliance education, especially to smaller firms.

In addition, for one year following the effective date of the rule, the CSB will contact any owner/operator who the CSB believes should have filed a report. If a report is filed immediately following notification, the CSB will not refer the failure to report under Part 1604.5.

Similarly, accidents involving small facilities with few employees require special consideration. In some cases, the owner/operator may not be able to report an accidental release within four hours, especially if ongoing response activities require attention. The CSB has encountered such cases in the past and has worked with owners and operators to accommodate exceptional circumstances. The grace period described above will resolve such issues in a reasonable fashion for at least one year following the date of adoption. The CSB will consider a longer-term

approach to these unique situations and propose appropriate compliance guidance and/or amendments to any final rule before the grace period has expired.

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

Consequences—not conducting:

CSB Response: The CSB is under a Court order to publish a final rule by February 5, 2020. *See Air Alliance of Houston, et al. v. U.S. Chemical Safety and Hazard Investigation Board*, 365 F. Supp. 3d 118, (D. D.C. Feb. 4, 2019). Thus, the failure of the CSB to implement the rule (collection) could result in Court sanctions against the CSB.

Consequences—less frequent collection:

CSB Response: The collection does not occur on a scheduled basis. Rather, an owner or operator of a stationary source is required to report an accidental release only if the accidental release results in a death, serious injury, or substantial property damages.

Legal obstacles/burden:

CSB Response: There are certain challenges to reducing burden, but the CSB would not describe these challenges as a legal obstacle. However, there is a limit to what the CSB can do to reduce burden based on its specific statutory responsibility.

The CSB is aware of a number of state and federal reporting requirements that may come into play when there is a catastrophic event within the CSB's jurisdiction. There is some overlap between these requirements, but there are also certain areas which differ. These differences in statutory authority/responsibility

necessitate that CSB obtain information from reporting parties, even if this results in some potential duplication.

Technical obstacle:

CSB Response: The CSB has not identified any specific technical obstacle to reducing burden. The CSB is using information technology and electronic communication to reduce burden to the extent possible. For example, the CSB will use media reporting and internet search engines to learn of accidental releases which may be within its jurisdiction. If the CSB does not receive a report from the owner/operator promptly, the CSB will contact the owner to make sure the owner/operator is aware of the requirement and to assist in compliance.

7. Explain any special circumstances that require the collection to be conducted in a manner:

a. requiring respondents to report information to the agency more often than quarterly;

CSB Response: Potential respondents (owner/operators) are required to report only if an accidental release causing death, serious injuries, or substantial property damage occurs. The proposed rule does not require regular reporting. Many potential respondents will likely never need to submit a report.

b. requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

CSB Response: Potential respondents (owner/operators) are required to report only if an accidental release causing death, serious injuries, or substantial property damage occurs. The proposed rule does not require regular reporting. Many potential respondents will likely never need to submit a report.

- c. requiring respondents to submit more than an original and two copies of any document;**

CSB Response. Not applicable. The CSB will not require an original and two copies be submitted.

- d. requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**

CSB Response: Not applicable. The collection does not include a recordkeeping component.

- e. in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study; and**

CSB Response: Not applicable. The collection is not part of a statistical survey.

- f. requiring the use of a statistical data classification that has not been reviewed and approved by OMB.**

CSB Response: Not applicable. The collection does not require the use of a statistical data classification.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB.

CSB Response: Exhibit 1 is a copy of the Notice of Proposed Rulemaking posted for public inspection today. The attached proposed rule includes notice as required by 5 CFR 1320.8(d). The Office of Federal Register has scheduled the proposed rule for publication on December 12, 2019.

Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments.

CSB Response: No comments received as of this date.

Specifically address comments received on cost and hour burden.

CSB Response: No comment received as of this date.

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

CSB response: The CSB consulted with the National Response Center on the CSB's rule to solicit feedback on most of the above topics.

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

CSB Response: The CSB interprets the above statement as a directive concerning the renewal of a prior request. The CSB acknowledges the need to consult with interested parties no longer than three years following the approval of this request.

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

CSB Response: Not applicable. The CSB will not provide any payment or gift to respondents. The reporting parties are under a legal duty to provide an accidental release report. Remuneration for complying with a mandatory requirement is not permissible.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

CSB Response: The CSB cannot provide unconditional assurance of confidentiality of information that is submitted in response to the rule. However, the CSB has

included language in the rule which specifically addresses information disclosure issues. Proposed section 1604.6 provides:

Accidental release records collected by the CSB under this rule may be obtained by making a request in accordance with 40 CFR 1601, the CSB's procedures for the disclosure of records under the Freedom of Information Act. The CSB will process and if appropriate, disclose such records, only in accordance with 40 CFR part 1601 and relevant federal information disclosure laws.

This subsection is included in the proposed rule to confirm that the procedure for seeking records obtained pursuant to the rule is governed by the Freedom of Information Act, 5 U.S.C. 552, (the FOIA), the CSB's procedural regulations for disclosure of records under the FOIA, 40 CFR part 1601, and any other pertinent federal disclosure laws.

Neither 42 U.S.C. 7612(r)(6)(C)(iii) nor 42 U.S.C. 7612(r)(6)(Q), alone or in combination, authorize the immediate disclosure of accidental release record information apart from the requirements of the FOIA. Importantly, neither of those two provisions, alone or in combination, authorize the immediate disclosure of accidental release report information in order to support emergency response and public safety operations. Such a reading would potentially conflict with the implementation of other existing public information and safety laws, such as EPCRA (see section 303), which are directly focused on emergency response, the protection of public health and safety, and the public release of information to mitigate risks to the public.

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

CSB Response: The proposed collection does not seek information typically considered to be related to personal privacy, such as “sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.”

**12. Provide estimates of the hour burden of the collection of information.
The statement should:**

a. Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated.

CSB Response:

Number of respondents: 200

Frequency of response: Most respondents will only submit a response if an accidental release within the scope of the rule occurs during a given year. For the vast majority of potential respondents, the frequency of responses will likely be “none” in a given year.

Annual Hour Burden: 50²

Explanation of Burden Calculation: CSB estimates that approximately 200 reports will be submitted each year, and that each report will take approximately 15 minutes for each respondent to complete and submit to the CSB. The CSB calculated the total annual reporting burden of 50 hours by multiplying the estimated number of annual reports by the estimated time to complete each report. A fuller discussion of the time burden calculation is included in the regulation flexibility analysis of the proposed rule. See Exhibit 1.

b. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates.

CSB Response: CSB did not conduct a special survey.

² This estimate does not include first year “familiarization” costs.

Consultation with a sample (fewer than 10) of potential respondents is desirable.

CSB Response: CSB did not consult with a sample. However, CSB did speak with NRC leadership in order to gain insight on the time burden on a party to submit a report by telephone. The NRC receives approximately 30,000 reports by phone each year.

The CSB examined standard internal NRC forms used to guide its operators in receiving information and taking reports on accidents. The reports were similar to reports that the CSB may receive. However, the NRC's data requests were more extensive than anything contemplated in the CSB's proposed rule. Although the NRC did not have official statistics to share, the NRC informed the CSB that the average time it took for a caller to provide a report by phone was approximately 8 minutes.

If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden and explain the reasons for the variance.

CSB Response: The time burden of respondents should not vary widely because of differences in activity, size, or complexity. Any owner/operator who must file a report is subject to the same requirements and burden.³

Generally, estimates should not include burden hours for customary and usual business practices.

CSB Response: The CSB did not include costs related to customary and usual business practices in its burden estimate.

³ If an owner/operator has already filed a report with the NRC under CERCLA, the time burden for reporting to the CSB will be shortened because an email notice is all that is required. However, this variance is not due to a difference in activity, size, or complexity. Rather, the lighter burden is based on having previously reported similar facts under a different law.

c. If the request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.

CSB Response: A response is not required because the CSB is seeking approval for one form only.

d. Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.

CSB Response: The CSB estimated an annualized cost of \$9.30 for any firm required to submit an accidental release report.⁴

As noted above, the CSB first determined an estimated time burden associated with submitting an accidental release report of 15 minutes. The CSB then estimated an hourly labor cost to translate the time requirement into a cost figure.

In order to determine an appropriate hourly rate, the CSB identified six relevant occupation codes, the annual mean wage, and the mean hourly wage for each, based on the Bureau of Labor Statistics' May 2018 National Occupational Employment and Wage Estimates, United States. The CSB next combined the average hourly rate for each of the six classifications and divided that total by six. This calculation produced an average hourly rate of \$37.20. This information is summarized in Table 1 below.

CSB then multiplied the average hourly wage (\$37.20) by the total time requirement (.25 hour) to arrive at an estimated annualized reporting cost per business of \$9.30.

⁴ This total does not include first-year familiarization costs. If first-year familiarizations costs were added, all potentially impacted firms would also expend \$16.74 learning about the rule.

Table 1- Occupational Classifications and Wages

Occupational Code	Occupation Title	Mean Annual Wage	Mean Hourly
13-1041	Compliance Officer	\$72,520	\$34.86
17-2081	Environmental Engineers	\$92,640	\$44.54
17-2110	Industrial Engineers ⁵	\$91,800	\$44.14
17-1111	Health and Safety Engineers ⁶	93,630	\$45.01
17-3025	Environmental Engineering Technicians	\$54,800	\$26.34
17-3026	Industrial Engineering Technicians	\$58,860	\$28.30
	Composite Average Hourly		\$37.20

13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14.)

CSB Response: The total annual cost burden to respondents is addressed in the response to question 12.

The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred.

⁵ Includes health and safety engineers.

⁶ Except Mining Safety Engineers and Inspectors.

Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.

CSB Response: The proposed rule will not require capital or start-up costs.

If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance.

CSB Response: The CSB does not anticipate that costs will vary depending on the respondent because the costs for each reporting party are the same.

The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate.

CSB Response: The CSB does not anticipate that any such cost would be incurred.

In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.

CSB Response: The CSB has included a regulatory flexibility analysis in its proposed rule and has relied on that analysis in preparing this response.

Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

CSB Response: The CSB estimate does not include purchases of equipment or services, or portions thereof, in any of the four listed categories. The CSB does not believe that any purchase of equipment or services is necessary.

14. Provide estimates of annualized cost to the Federal Government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment,

overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.⁷ Agencies may also aggregate cost estimates from paragraphs 12, 13, and 14 in a single table.

CSB Response: The CSB's preliminary cost estimate for this collection estimate is approximately \$242,000. See preliminary summary of costs attached as Exhibit 3.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

Line 13. Annual Reporting and Recordkeeping Burden

CSB Response: The addition of 50 hours is based on a new collection required by law.

Line 14: Annualized Cost to Respondents

CSB Response: Not applicable.

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

CSB Response: Not applicable. The collection is not for purposes of collecting information for publication.

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

CSB Response: A response is not required because the CSB is not seeking such approval from OMB.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

⁷ Exhibit 3 provides additional detail on the CSB estimate. The CSB notes that it already incurs certain expenses related to tracking accidental releases for purposes similar to those in the proposed rule. The CSB has included these ongoing expenses as part of its estimate.

CSB notes concerning the following subsections of 5 CFR 1320.9:

(f): There is no record keeping requirement.

(g): The CSB does not yet have an OMB control number and approved form. However, the CSB intends to inform potential respondents of the information called for under 5 CFR 1320.8(b)(3).

(h): The CSB, an agency with less than 40 employees, is under a Court order to publish a final rule by February 5, 2020. For several months, the CSB has focused in this primary task. The CSB has not completed its planning for implementation. However, CSB has prepared a preliminary cost estimate for this clearance and considered a number of issues in the development of the proposed rule related to the effective implementation of the rule. With the publication of the proposed rule, the CSB focus additional time on planning for and allocating resources for the effective and efficient management of use of the information to be collected.

(i): Not applicable.

B. Collection of Information for Statistical Purposes

CSB Response: This section is not applicable and therefore no response is provided. The collection of information is not for statistical purposes.