

## **Supporting Statement for Paperwork Reduction Act (PRA) Submissions**

### **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). 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.**

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. CSB will use the information to 1) conduct an initial assessment of CSB jurisdiction; 2) make a determination as to whether an investigation is mandatory for purposes of 42 U.S.C. § 7412(r)(6)(E); and 3) gather basic information regarding the nature of the accidental release to inform how to respond to any accidental release within its jurisdiction.

**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.**

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 (NRC) 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.

**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.**

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 NRC in order to avoid duplicative reporting.

In developing the final rule and information collection request, the CSB was able to determine that reports submitted to the NRC 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.

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, CSB requires owners and operators to report directly to CSB, either via email or by phone.

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 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.**

The CSB anticipates only a minimal impact on small businesses or other small entities. In addition, the CSB's rule provides a simplified method of reporting to CSB when a report has already been made to the NRC under CERCLA. 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 an 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 the 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:**

If the collection was not conducted, then CSB might not learn of certain accidental releases and/or would not be able to collect important information on releases that is important in enabling the CSB to making a deployment decision.

**Consequences—less frequent collection:**

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:**

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, and CSB provided flexibilities in reducing direct reporting to the Board in that instance. However, for other federal and state reporting requirements, even though similar, there are certain areas which differ. These differences in statutory authority and responsibility necessitate that CSB, in most instances of overlap, obtain information from reporting parties, even if this results in some potential duplication.

**Technical obstacle:**

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;**

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;**

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;**

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;**

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**

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.**

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.**

Exhibit 1 is a copy of the Final Rulemaking, which was published on February 21, 2020 (85 FR 10075). The attached final rule includes notice as required by 5 CFR 1320.8(d).

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

The CSB received one specific comment in response to the CSB's notice for comment on the proposed information collection. The comment argued that CSB's estimate of 200 reports was unrealistically low and should instead be in the range of 20,000-50,000 reports per year. The commenter argued that the estimate was low because the CSB's rule included a definition of "serious injury" that was so broad that many thousands of reports would be required. Other comments, though not specifically provided on the proposed information collection, also asserted that the annual estimate of 200 reports per year was low for similar reasons. For example, the Coalition for Responsible Waste Incineration commented:

[T]he 200 reports per year used in the economic impact/burden assessment for the rule and other discussions is based on the OSHA reportable definition (fatality and hospitalization). The proposed definition falls more in line with recordable injuries. If this definition is used, there will be thousands of reports per year, not 200.

Based in large part on these concerns, the CSB has revised the definition of serious injury in the final rule to read as follows: "Serious injury means any injury or illness that results in death or in patient hospitalization." The proposed definition of "serious injury" in the rule is now the same as the criteria used in developing the CSB's estimate in its RFA analysis.

This revision does not mean that the CSB agrees with comments that argued the original definition of "serious injury" would have resulted in thousands of additional accidental release reports each year. Those comments relied on either anecdotal information or on "lost workday" data from the Bureau of Labor

Statistics (BLS). The CSB believes that estimates based on the BLS information greatly exaggerated the potential burden of a broader definition of serious injury.

**Specifically address comments received on cost and hour burden.**

The specific PRA comment and other similar comments focused on the CSB's estimate of reports required, not on CSB's specific estimates of cost and hour burden for each report. CSB's response, as explained above, was to revise the definition of serious injury in the final rule.

**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.**

The CSB consulted with the NRC 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.**

Not applicable. This is a new collection of information.

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

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.**

The CSB cannot provide unconditional assurance of confidentiality of information that is submitted in response to the rule. However, the CSB included language in the rule which specifically addresses information disclosure issues.

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 was included in the 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.**

The 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 has estimated 200 reports per year. However, the total number made to CSB could be lower because some reports made to the NRC under 40 CFR 302.6 will satisfy the CSB’s requirements.

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. 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, for a total of 50 hours annually. 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 did not conduct a special survey.

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

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.**

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.<sup>1</sup>

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

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

**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.**

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

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<sup>1</sup> 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.

**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.**

The CSB estimated an annualized cost of \$9.30 for any firm required to submit an accidental release report.<sup>2</sup>

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.

**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	\$91,800	\$44.14

<sup>2</sup> 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.

	Engineers <sup>3</sup>		
17-1111	Health and Safety Engineers <sup>4</sup>	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.)**

The total annual cost burden to respondents is solely comprised of labor costs.

**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.**

**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.**

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.**

<sup>3</sup> Includes health and safety engineers.

<sup>4</sup> Except Mining Safety Engineers and Inspectors.

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.**

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.**

The CSB used the rule regulatory flexibility analysis in its final 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.**

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.<sup>5</sup> Agencies may also aggregate cost estimates from paragraphs 12, 13, and 14 in a single table.**

The CSB's cost estimate for this collection is approximately \$242,000. Specific costs are detailed in the table below.

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<sup>5</sup> 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.

Supporting Statement to OMB Form 83-I, Chemical Safety and Hazard Investigation Board  
12-11-19

Staff Compensation & Benefits	Grade/Step/[1]	Annual Pay	Hourly Rate	Estimated Hours	Benefits at 30%	Annualized Cost Including benefits[2]	Internal Reference only
Incident Investigator	GS 9-5,	\$65,176	\$31.33	1200	1.3	\$48,882	2080 hours/year
Investigative	GS 14-5	\$132,818	\$63.85	200	1.3	\$16,602	
Overtime, Call Back etc.	GS 9-5		\$61.10	200	1.3	\$15,886	
Admin Support	GS 9-5	\$65,176	\$31.33	40	1.3	\$1,629	
Legal	GS 14-5	\$132,818	\$63.85	40	1.3	\$3,320	
Financial	GS 14-5	\$132,818	\$63.85	40	1.3	\$3,320	
Procurement	GS 13-5	\$112,393	\$54.04	40	1.3	\$2,810	
Admin.	GS 12-5	\$94,520	\$45.44	40	1.3	\$2,363	
IT	GS 13-5	\$112,393	\$54.04	40	1.3	\$2,810	
FOIA	GS 13-5	\$112,393	\$54.04	40	1.3	\$2,810	
Records	GS 13-5	\$112,393	\$54.04	40	1.3	\$2,810	
Subtotal Compensation and Benefits						\$103,243	
<b>Support Services</b>						<b>Contract Costs</b>	
Media Surveillance Subscriptions						\$20,000	
NRC						\$5,000	
Outreach/Video Support Services						\$100,000	
WebSupport						\$5,000	
Subtotal Support Services						\$130,000	
<b>Equipment</b>							
Computer (2)						\$6,720	
Phone Service (2)						\$1,320	
Phone (2)						\$700	
Subtotal Equipment						\$8,740	
<b>Misc. Overhead-</b>							TBD
<b>Rent, etc.</b>							
<b>TOTAL</b>						<b>\$241,983</b>	

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.

**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**

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

**Line 14: Annualized Cost to Respondents**

This is a new collection.

**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.**

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.**

Not applicable 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.**

CSB notes concerning the following subsections of 5 CFR 1320.9:

(f): There is no record keeping requirement.

(g): 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.