

SUPPORTING STATEMENT

Title: Clean Water Act Hazardous Substance Facility Response Plan Regulations (OMB Control Number 2050-0228; EPA ICR No. 2710.02).

1. Necessity of Collection

On March 21, 2019, the Natural Resources Defense Council, Clean Water Action, and the Environmental Justice Health Alliance for Chemical Policy Reform filed suit in the United States District Court for the Southern District of New York alleging violations of the CWA section 311(j)(5)(A)(i) and the Administrative Procedures Act (APA) (Env'tl Justice Health Alliance for Chem. Policy Reform v. EPA, 2019). The plaintiffs and the U.S. Environmental Protection Agency (EPA) entered into a consent decree on March 12, 2020, which resolved the claims of the suit (Env'tl Justice Health Alliance. for Chem. Policy Reform v. EPA, 2016). The consent decree requires that within two years (24 months) of entry into the consent decree, or by March 12, 2022, EPA will sign a notice of proposed rulemaking pertaining to the issuance of the CWA Hazardous Substance Worst Case Discharge Planning Regulations for non-transportation-related onshore facilities. The consent decree further requires EPA to sign a notice taking final action within an additional 2 ½ years, or 30 months after publication of the proposal. On March 28, 2022, EPA proposed to require planning for worst case discharges of CWA hazardous substances to navigable waters for onshore non-transportation-related facilities. This final rule satisfies EPA's second obligation under the consent decree.

The final action to which this information collection applies specifies that those onshore non-transportation-related facilities (hereafter, facilities or facility) that could reasonably be expected to cause substantial harm to the environment, based on their location, are required to prepare facility response plans (FRPs) for worst case discharges for CWA hazardous substances to navigable waters and submit them to the EPA. The final applicability criteria include meeting or exceeding the CWA hazardous substance threshold quantity based on 1,000 times the CWA hazardous substance reportable quantity (RQ) and being within one-half mile of navigable waters or a conveyance to navigable water, and on meeting one of the following substantial harm criteria: ability to cause injury to fish, wildlife, or sensitive environments; ability to adversely impact public water systems; ability to cause injury to public receptors; and reportable discharge history. Once a facility determines that it is subject to the action, the owner or operator must prepare and submit to EPA a plan for responding, to the maximum extent practicable, to a worst-case discharge, and to a substantial threat of such a discharge of a CWA hazardous substance to navigable water, based on CWA section 311(j)(5). If a facility meets the threshold quantity and distance to navigable water criteria, but not the substantial harm criteria, the facility owner or operator must still submit to EPA a Substantial Harm Certification Form.

This final rule is authorized by section 311(j)(5) and 501(a) of the CWA, (33 U.S.C. 1321(j)(5), 1361(a)).

2. How, By Whom, and For What Information is Collected

Under § 118.4(c) of the final rule, regulated facilities will be required only to prepare and submit information to the Agency based on which final rule applicability criteria apply to the facility. The information collected by the Agency will also be shared with state and local officials who could use the information to develop or modify emergency response plans for their communities.

Under § 118.4(c) of the final rule, the owner or operator must prepare and submit a Substantial Harm Certification Form (final rule Appendix A) if a facility meets the rule applicability criteria in § 118.3(a) and (b), but not § 118.3(c).

Other facilities that determine a CWA hazardous substance release or a discharge of oil could cause substantial harm to the environment, must prepare and submit FRPs under the final regulation. The FRPs are required to:

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

A complete list of data items that are required in the FRPs under the final regulation can be found in Appendix B.

3. Electronic Submission

Owners or operators who determine that their facility meets the substantial harm criteria will send their plan to the appropriate EPA Regional office for Agency review. The FRP review and approval process will be directed by Regional Administrator (RA) based on national criteria and local conditions and considerations. EPA Regional offices will notify each owner or operator directly of the status of the FRP (i.e., approved or deficient). A list of the deficiencies to be addressed will be sent to the facility owner or operator. The status of all plans will be tracked by each EPA Regional office.

The initial preparation and submission of certification forms and FRPs by owners or operators of subject facilities is a one-time event. However, facility owners or operators are required to review and update their plans periodically to reflect changes at the facility. Certain facility changes that materially affect the response to a worst-case discharge require revisions to the FRP and resubmittal of the affected sections to EPA for review and incorporation into the FRP on file

with the Agency. The Agency reviews all FRPs and plan revisions when they are submitted and periodically reviews FRPs for significant and substantial harm facilities.

4. Non-duplication, Consultations, and Other Collection Criteria

EPA's analysis found limited federal programs that comprehensively cover all the CWA section 311(j)(5)(D) requirements for all CWA hazardous substances that pose a reasonable risk of worst-case discharge to navigable water in all circumstances, and has exempted facilities covered under those regulations, discussed below. While CWA hazardous substance facilities subject to the Oil Pollution Prevention Program FRP or RMP regulations, among others, will have some overlap for the required program elements, those programs do not cover all of the requirements in CWA section 311(j)(5)(D). EPA also recognizes that industry guidance and voluntary programs are valuable resources for ensuring safe, protective practices. However, those practices are not enforceable nor required and do not fulfill the statutory requirements of this action. EPA acknowledges state programs may be comprehensive for CWA hazardous substance worst case discharge planning. As such, a regulated facility owner or operator is welcome to augment an existing plan with the requirements of this rule or use an Integrated Contingency Plan (i.e., One Plan model), which will reduce their administrative burden. However, a facility owner or operator may not assume they are compliant with this regulation due to their compliance under other programs (e.g., the Oil Pollution Prevention FRP regulation, RMP regulations). See the Response to Comments document in the associated docket for this action for specific responses to each program. The Agency agrees with commenters who stated that duplicative requirements should be avoided and refers the commenters to the Technical Background Document in the associated docket for this action for more information and analysis.

EPA identified limited existing national programs covering all required program elements. EPA has added an exemption at section 118.8(b)(2)(vii) for the storage and accumulation of hazardous waste subject to the Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF), 40 CFR Part 264 and Part 265 and Standards Applicable to Generators of Hazardous Waste, 40 CFR Part 262, subpart M. For facilities subject to the TSDF requirements under 40 CFR Part 264 and Part 265, these regulations comprehensively address the program elements required under CWA Section 311(j)(5)(D). For hazardous waste generators covered under 40 CFR Part 262, EPA is exempting those generators subject to subpart M (i.e., large quantity generators) for the same reason; the contingency plan and emergency procedures requirements therein comprehensively address the program elements required under CWA Section 311(j)(5)(D). Additionally, EPA excepts tanks already regulated under the UST program at 40 CFR 280. EPA also does not intend to regulate substances present as oil at facilities because those are regulated under 40 CR 112.

The burden estimates in this Information Collection Request (ICR) accounts for the overlap with these existing regulations by including only the incremental burden imposed by this information collection.

5. Impact on Small Businesses

The final rule does not include any specific small entity flexibility and small entities must follow the same requirements. EPA's RIA for the final rule estimates that approximately 28 percent of affected entities are small, based on SBA size standards. EPA considers the relative burden for small facilities to be similar to those for large facilities because of the reduced number of chemicals onsite at smaller facilities. Based on the Regulatory Flexibility Analysis presented in the RIA for the final action, EPA did not find a significant impact on a substantial number of small entities (SISNOSE).

6. Consequences of Non-Collection or Less Frequent Collection

EPA is finalizing requirements for regulated facilities that meet applicability criteria or are notified by the RA that they meet the criteria for substantial harm, to prepare and submit a Substantial Harm Certification Form, and if applicable, a CWA hazardous substance FRP within 36 months of the effective date of the final rule. Additionally, EPA is requiring that newly constructed facilities (facilities that come into existence after the effective date of the final rule) that meet the applicability criteria must prepare and submit an FRP in accordance with the final rule prior to the start of operations. EPA is also requiring that plans be updated and in place prior to the implementation of planned change in design, construction, operation, or maintenance at the facility that mean the facility now meets the applicability criteria. Because collection is not periodic, less frequent collection is not possible.

7. Special Reporting Requirements

The information collection is consistent with the guidelines set forth in 5 CFR 1320.5(d)(2) of the Paperwork Reduction Act Guidelines. There are no known special circumstances that would require reporting on an alternative timeline or methodology.

8. 60-Day FR Notice and Efforts to Consult with Grantees

On March 28, 2022, EPA published a proposed rule in the *Federal Register* (40 CFR Parts 118 and 300). The public comment period ended on July 26, 2022. The Agency received 220 public comment submissions from industry, academia, state/local governments, environmental groups and individuals. The Agency has responded to the comments in the Response to Comments document in the associated docket for this rule. A copy of the proposed rule can be found in the EPA Docket ID EPA-HQ-OLEM-2021-0585-0162.

Consultations: EPA considered public comments it received on the proposed rule and the associated burden requirements documented in the proposed rule Regulatory Impact Analysis (RIA), "Clean Water Act Hazardous Substance Facility Response Plan Regulations" (FDMS Docket No. EPA-HQ-OLEM-2021-0585).

EPA also consulted with Tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing this regulation to enable them to have meaningful and timely input into its development. A summary of that consultation is provided in Regulatory Impact Analysis for the final rule, which is available in the docket for the final action.

9. Payment or Gift to Respondents

No payment or gift is given to respondents.

10. Assurance of Confidentiality

All information submitted to the agency in response to the ICR will be managed in accordance with applicable laws and EPA's regulations governing treatment of confidential business information at 40 CFR Part 2, Subpart B. Any information determined to constitute a trade secret will be protected under 18 U.S.C. § 1905.

11. Questions of Sensitive Nature

Sensitive questions are not associated with the information collection activities performed under Public Law 107-118.

12. Hour Burden

Total Annual Responses: 4,206 average annual responses (12,618 total responses over 3 years).

Total Annual Burden: 984,891 average annual burden hours (2,954,673 total burden hours over 3 years).

Methodology:

The burden to regulated facilities is estimated in terms of the time (in hours) and operation and maintenance (O&M) cost incurred by facilities to familiarize with the final regulation, prepare Substantial Harm Certification Forms, and if applicable, prepare, submit, and implement an FRP in accordance with the final rule.

The Agency's RIA for the final rule documents the Agency's methodology for estimating the number of facilities subject to the requirements and the associated compliance burden. In summary, EPA used the list of designated CWA hazardous substances in 40 CFR 116 along with EPCRA Tier II reporting data to identify facilities known to have at least one CWA hazardous substance onsite, by industry, for a sample of states with available data. EPA then compared the maximum daily onsite quantity reported with the final rule threshold quantities and conducted a screening analysis to estimate the distance of facilities to navigable waters. Lastly, EPA aggregated and extrapolated these data to the entire United States.

The statute governing both oil and CWA hazardous substance worst case discharges specifies that those facilities that could reasonably be expected to cause substantial harm to the environment, based on their location, are required to prepare and submit FRPs for worst case discharges to navigable water to the EPA. The final regulation is applicable to all regulated facilities that meet the applicability criteria in the associated final rule.

The industries that are likely to be affected by the requirements in the regulation fall into numerous North American Industry Classification System (NAICS) categories. About 72 percent

of facilities are in the following major NAICS groups at the three-digit level that may be subject to the final regulation: Utilities (221), Chemical Manufacturing (325), and Merchant Wholesalers, Nondurable Goods (424). Other facilities may be covered by these regulations in other NAICS categories. A complete list of NAICS categories with covered facilities is included in Appendix A of this supporting statement.

EPA estimated that 12,618 facilities are subject to the requirements. Of these, EPA estimated that 5,354 facilities will be subject to final rule requirements, and that 7,264 facilities (12,618 – 5,354) will be required to only prepare Substantial Harm Certification Forms (see Section 2 of the final rule RIA for additional detail on the facility universe).

The Agency’s schedule for rule implementation determines when facilities will take action to comply with the final rule. The effective date of the final rule will be during 2024, which is specified as year one of the final rule. Respondent activities captured by this ICR period include:

- Burden for rule familiarization.
- Burden for facilities to submit Substantial Harm Certification Forms, and if applicable, FRPs, which occurs in year three, in accordance with the final rule requirement to submit within 36-months of the rule’s effective date.
- O&M cost for to private personnel and equipment necessary to remove to the maximum extent practicable a worst-case discharge of a CWA hazardous substance, and to mitigate a substantial threat of a worst-case discharge.

Respondent activities that fall outside of this ICR period include:

- Burden for activities required to implement and maintain the FRP, including drills and exercised, training, LEPC coordination, and emergency response action plan (ERAP) maintenance. These activities are estimated to begin in year four, the first year following facilities’ development of their FRPs.
- Burden for submission of FRP amendments begins annually in year four after the existing FRPs have been submitted to the Agency.
- Burden for new facility submission of FRPs begins in year six and continues annually.

Exhibit 1 summarizes the number of facilities subject to the final rule over the three-year period of this ICR.

EXHIBIT 1
Number of Facilities Subject to the CWA HS Final Rule

Facility Type	Year 1	Year 2	Year 3	3-Year Total	3-Year Annual Average
Rule Familiarization	12,618	0	12,618	12,618	4,206
Sub. Harm Certification-Only Facilities	7,264	0	0	7,264	2,421
FRP Facilities	5,354	0	0	5,354	1,785
Sub. Harm Certification Forms Submitted	0	0	7,264	7,264	2,421
FRPs Submitted	0	0	5,354	5,354	1,785

The total burden of the information collection on the regulated community is calculated by combining average per-facility (“unit”) burden estimated for each facility with the total number of affected facilities. Unit burdens are based on estimates of the labor required to adequately perform the required activities. Unit burden estimates include facility personnel in the following labor categories: general and operations manager, environmental engineer, and administrative assistant.

Unit burden estimates for rule familiarization are presented in Exhibit 2.

**EXHIBIT 2
Respondent Burden for Rule Familiarization**

Facility Type	Hours Required for Rule Familiarization	Number of Facilities		3-Year Annual Average Burden (hours)	3-Year Total Burden (hours)
		Year 1	3-Year Total		
Total	6	12,618	12,618	25,285	75,854
Sub Harm Certification Form-Only Facilities	6	7,264	7,264	14,556	43,669
FRP Facilities	6	5,354	5,354	10,728	32,185

For facilities submitting Substantial Harm Certification Forms and/or developing FRPs the requirements include both a first-year burden to prepare the plan and a subsequent-year burden to maintain the plan. FRPs must ensure that facility owners or operators have the equipment, personnel, information, and procedures needed to respond to a worst-case discharge. In subsequent years, as part of plan maintenance, owners or operators may need to update the FRP to reflect changes at the facility and are required to keep records of response training and exercises, and other records.

The unit and total labor burden for facilities submitting Substantial Harm Certification Forms and FRPs are shown in Exhibit 3.

**EXHIBIT 3
Respondent Burden for Facilities Required to Submit Substantial Harm Certification Forms and Facility Response Plans**

Rule Requirement	Sub. Harm Form & Plan Development (one-time burden)	Plan Implementation (recurring burden)*	Number of Facilities				3-Year Average Annual Burden (hours)	3-Year Total Burden (hours)
			Yr 1	Yr 2	Yr 3	3-Year Total		
Substantial Harm Certification Form Facilities								
Substantial Harm Determination	122	0	0	0	7,264	7,264	295,834	887,503
FRP Facilities								

Rule Requirement	Sub. Harm Form & Plan 122	Plan Implementation 0	Number of Facilities				3-Year Average Annual	3-Year Total Burden
			0	0	5,354	5,354		
Substantial Harm Determination			0	0	5,354	5,354	218,055	654,104
Facility and Owner Information	5	0	0	0	5,354	5,354	8,778	26,333
Emergency Response	85	0	0	0	5,354	5,354	151,170	453,511
Hazard Evaluation	55	0	0	0	5,354	5,354	98,886	296,657
Discharge Detection	5	0	0	0	5,354	5,354	8,778	26,333
Response Actions, Disposal, and Containment	24	0	0	0	5,354	5,354	42,913	128,739
Drills & Exercises	54	79	0	0	5,354	5,354	95,579	286,736
LEPC Coordination	8	15	0	0	5,354	5,354	13,654	40,962
Training	7	1	0	0	5,354	5,354	11,704	35,111
FRP Amendments	0	14	0	0	5,354	5,354	-	0
ERAP	8	4	0	0	5,354	5,354	14,277	42,831
Total	372**	113**	0	0	12,618	12,618	959,607	2,878,820

*As described previously in this Section, recurring labor burden to implement FRPs falls outside of this ICR period and is not included in the 3-year total and average values.

**Total burden for FRP facilities.

To calculate per-facility compliance costs, EPA multiplied the unit labor burden estimates for compliance activities by hourly labor rates for private industry obtained from the Bureau of Labor Statistics (BLS) Occupational Employment & Wage Statistics (OEWS) survey.¹ EPA obtained NAICS-specific wage rates from the BLS data for occupations that align with the compliance burden labor categories noted above: Management, Technical/Engineering, General, and Administrative. Exhibit 4 presents the occupations used for each labor category.

EXHIBIT 4 Labor Burden Occupations

Compliance Labor Category	OEWS Occupation	OEWS Occupation No.
Management	General and Operations Managers	11-1020
Technical/Engineering	Environmental Engineers	17-2080
General	All Occupations	00-0000
Administrative	Administrative Assistants	43-6010
<i>Source: BLS (2022)</i>		

EPA obtained the hourly wage for each of the above occupations, by NAICS code, from the BLS OEWS. EPA then adjusted the hourly wage for the cost of fringe benefits and overhead using BLS' Employee Cost of Compensation (ECC) survey.² EPA used the ECC value for all civilian

¹ U.S. Bureau of Labor Statistics (BLS) (2022). Occupational Employment and Wage Statistics (OEWS) Survey, May 2021. <https://www.bls.gov/oes/tables.htm>

² U.S. Bureau of Labor Statistics (BLS) (2023). Employer Costs for Employee Compensation Data Series, Table 1. Employer Costs for Employee Compensation by ownership. December 2022. <https://www.bls.gov/news.release/ecec.toc.htm>

workers, which shows that wages comprise 69 percent of total hourly labor cost; therefore, the EPA inflated the raw BLS wages by 1/.69 to estimate the fully loaded labor rate. EPA also adjusted the wages from 2021 to 2022 dollars using the U.S. BEA implicit price deflator for Gross Domestic Product (GDP).³

Exhibit 5 presents the average hourly wage rate for each occupation category, where the average is weighted by the number of in-scope facilities in each NAICS industry (see Error: Reference source not found of the final rule RIA for NAICS-specific labor rates).

EXHIBIT 5
Average Hourly Labor Rates, by Industry and Occupation (\$2022)

Labor Category	Fully Loaded Labor Rate (\$/hr)
All Occupations	\$45.59
General & Operations Managers	\$93.50
Environmental Engineers	\$70.84
Administrative Assistants	\$34.96
<i>Source: BLS (2022), BLS (2023)</i>	

Exhibits 6 and 7 present respondent labor costs based on the labor burden and labor rates presented previously.

EXHIBIT 6
Respondent Labor Cost for Rule Familiarization

Facility Type	Unit Cost	Number of Facilities		3-Year Average Cost	3-Year Total
		Year 1	3-Year Total		
Sub. Harm Certification-Only Facilities	\$421	7,264	7,264	\$1,018,655	\$3,055,966
FRP Facilities	\$421	5,354	5,354	\$750,765	\$2,252,296
Total		12,618	12,618	\$1,769,421	\$5,308,262

EXHIBIT 7
Respondent Labor Cost for Facilities Required to Submit Substantial Harm Certification Forms and Facility Response Plans

Rule Requirement	One-Time Unit Cost	Number of Facilities				3-Year Average Annual Cost	3-Year Total Cost
		Yr 1	Yr 2	Yr 3	3-Year Total		
Substantial Harm Certification Form Facilities							
Substantial Harm Determination	\$8,791	0	0	7,264	7,264	\$21,286,617	\$63,859,851
FRP Facilities							
Substantial Harm	\$8,791	0	0	5,354	5,354	\$15,688,580	\$47,065,741

³ U.S. Bureau of Economic Analysis (BEA) (2023). U.S. Table 1.1.9. Implicit Price Deflators for Gross Domestic Product. <https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=3&isuri=1&1921=survey&1903=13#reqid=19&step=3&isuri=1&1921=survey&1903=13>

Rule Requirement	One-Time Unit Cost	Number of Facilities				3-Year	3-Year Total
						Average Annual Cost	Cost
Determination of Facility and Other Information	\$282	0	0	5,354	5,354	\$503,950	\$1,511,851
Emergency Response	\$6,103	0	0	5,354	5,354	\$10,892,131	\$32,676,393
Hazard Evaluation	\$3,874	0	0	5,354	5,354	\$6,912,995	\$20,738,986
Discharge Detection	\$333	0	0	5,354	5,354	\$594,661	\$1,783,984
Response Actions, Disposal, and Containment	\$1,695	0	0	5,354	5,354	\$3,024,822	\$9,074,465
Drills & Exercises	\$3,755	0	0	5,354	5,354	\$6,701,374	\$20,104,122
LEPC Coordination	\$488	0	0	5,354	5,354	\$871,503	\$2,614,509
Training	\$450	0	0	5,354	5,354	\$803,304	\$2,409,912
FRP Amendments	\$0	0	0	5,354	5,354	\$0	\$0
ERAP	\$359	0	0	5,354	5,354	\$641,134	\$1,923,401
Total	\$26,131**	0	0	12,618	12,618	\$67,921,071	\$203,763,214

**Total burden for FRP facilities

13. Estimate for total annual cost burden (not including hour burden)

Total Annual (non-Labor) Cost Burden Estimate: \$18,014,830 average annual O&M cost (\$54,044,490 total O&M cost over 3 years).

As documented in the RIA for the final rule, the emergency response information section of the FRP includes identifying private personnel and equipment necessary to remove to the maximum extent practicable a worst-case discharge of a CWA hazardous substance, and to mitigate a substantial threat of a worst-case discharge into or on the navigable waters or a conveyance to navigable water. The rule also requires that the facility provide evidence of contracts or other approved means for ensuring the availability of such personnel and equipment. Facilities are assumed to contract for response capability sufficient to respond to their worst-case discharge. Based on the Oil Pollution Prevention FRP regulation's RIA estimates of \$10,000 per year in 1993⁴, EPA estimated an annual response contractor fee of \$18,471 per year in 2022 dollars, with an incremental cost of \$10,095 in 2022 dollars after accounting for baseline compliance (see Section 5.1, *Baseline*, of the final rule RIA). Exhibit 8 presents respondent O&M costs for the period of this ICR.

EXHIBIT 8

Respondent O&M Cost for Facilities Required to Prepare Facility Response Plans

Rule Requirement	Annual Facility	Number of Facilities				3-Year Average	3-Year Total O&M
		Yr 1	Yr 2	Yr 3	3-Year		

⁴ U.S. Environmental Protection Agency (U.S. EPA). 1994. Regulatory Impact Analysis of Revisions to the Oil Pollution Prevention Regulation (40 CFR 112) to Implement the Facility Response Planning Requirements of the Oil Pollution Act of 1990. Emergency Response Division, Office of Emergency and Remedial Response, June 1994. EPA-HQ-OPA-1993-0001-0061

Rule Requirement	Annual	Number of Facilities				3-Year	3-Year
	Facility O&M Cost				Total	Average Annual O&M Cost	Total O&M Cost
Emergency Response Contractor	\$10,095	0	0	5,354	5,354	\$18,014,830	\$54,044,490

The total burden of the information collection is the combined total burdens of rule familiarization, completion of the substantial harm determination, and development, implementation, and submittal of the FRP. Total burden is calculated by multiplying unit burden estimates by the number of facilities affected. Total cost is derived in a similar manner. The total burden and costs associated with the development of FRPs were shown previously in Section 6(a) and 6(b). The total number of plans per year is presented previously in Exhibit 1.

The total burden and cost to facility owners or operators is presented in Exhibit 9.

EXHIBIT 9
Total Burden and Cost for Responding Facilities, 3-Year Total and Average Annual

Facility Type	Total Labor Burden (hours)		Labor Cost		O&M Costs		Total Cost	
	3-Year Total	3-Year Average	3-Year Total	3-Year Average	3-Year Total	3-Year Average	3-Year Total	3-Year Average
Substantial Harm Certification Form Facilities								
Rule Familiarization	43,669	14,556	\$3,055,966	\$1,018,655	\$0	\$0	\$3,055,966	\$1,018,655
Substantial Harm Determination	887,503	295,834	\$63,859,851	\$21,286,617	\$0	\$0	\$63,859,851	\$21,286,617
FRP Compliance Facilities								
Rule Familiarization	32,185	10,728	\$2,252,296	\$750,765	\$0	\$0	\$2,252,296	\$750,765
Substantial Harm Determination	654,104	218,035	\$47,065,741	\$15,688,580	\$0	\$0	\$47,065,741	\$15,688,580
Facility and Owner Information	26,333	8,778	\$1,511,851	\$503,950	\$0	\$0	\$1,511,851	\$503,950
Emergency Response	453,511	151,170	\$32,676,393	\$10,892,131	\$54,044,490	\$18,014,830	\$86,720,883	\$28,906,961
Hazard Evaluation	296,657	98,886	\$20,738,986	\$6,912,995	\$0	\$0	\$20,738,986	\$6,912,995
Discharge Detection	26,333	8,778	\$1,783,984	\$594,661	\$0	\$0	\$1,783,984	\$594,661
Response Actions, Disposal, and Containment	128,739	42,913	\$9,074,465	\$3,024,822	\$0	\$0	\$9,074,465	\$3,024,822
Drills & Exercises	286,736	95,579	\$20,104,122	\$6,701,374	\$0	\$0	\$20,104,122	\$6,701,374
LEPC Coordination	40,962	13,654	\$2,614,509	\$871,503	\$0	\$0	\$2,614,509	\$871,503
Training	35,111	11,704	\$2,409,912	\$803,304	\$0	\$0	\$2,409,912	\$803,304
FRP Amendments	0	0	\$0	\$0	\$0	\$0	\$0	\$0
ERAP	42,831	14,277	\$1,923,401	\$641,134	\$0	\$0	\$1,923,401	\$641,134
Total	2,954,673	984,891	\$209,071,476	\$69,690,492	\$54,044,490	\$18,014,830	\$263,115,965	\$87,705,322

14. Annualized Costs to the Federal Government

Total Annualized Federal Government Cost Burden Estimate: \$2,816,144 (3% discount rate) and \$2,726,188 (7% discount rate).

Methodology:

Under the final rule, EPA will incur burden to receive, process, review, and approve submitted FRPs. This analysis also accounts for the Agency's compliance assistance and data management costs to implement the rule, including additional costs such as regulated community outreach efforts and resources required for IT systems integration for data collection. The Agency's schedule for rule implementation determines when facilities will take action to comply and when the Agency incurs burden to implement the program. The effective date of the final rule will be during 2024, which is specified as year one in the analysis. Agency activities captured by this ICR period include:

- Agency burden for reviewing existing facility FRPs, which occurs over the period of years 3 – 5; therefore, this ICR period covers a portion of the Agency's burden for reviewing and processing existing facility plans.
- Agency burden compliance assistance and data management to implement the rule, which begins in year two.

EPA will also incur burden to perform government initiated unannounced exercises (GIUEs) and inspections; review amended FRPs that may be submitted under § 118.4(b); and, to receive, but not review, and Substantial Harm Certification Forms and FRPs re-certified by facility owners or operators every five years. However, the burden for these activities falls outside of the current ICR period and are not included here. Agency activities that fall outside of this ICR period include:

- Agency burden for reviewing FRP amendments begins annually in year 4, after the existing FRPs have been submitted to the Agency.
- Agency burden to perform government initiated unannounced exercises (GIUEs) and inspections, which begin in year four.
- Agency burden for reviewing new FRP submissions, beginning begins in year six and continuing annually.

EPA estimated that the average labor burden to process and review an FRP is 37 hours per plan, including 12 hours for EPA Headquarters and 25 hours for EPA Regional staff. EPA estimated that facilities incur the above burden for review and approval of 1/3 of the 5,354 in-scope plans (1,785 plans) during year three of the regulatory program. The other 2/3 of plans are anticipated to be reviewed during years four and five of the program, and therefore fall outside of this ICR period (Exhibit 10).

EXHIBIT 10
Agency Burden for Program Existing Facility Response Plan Review and Approval (3-Yr ICR Period)

Agency	Hrs. per Plan	Number of FRPs Reviewed and Processed					Burden Hours				
		Year 1	Year 2	Year 3	3-Year Avg.	3-Year Total	Year 1	Year 2	Year 3	3-Year Avg.	3-Year Total
EPA HQ	12	0	0	1,785	595	1,785	0	0	21,415	7,138	21,415
EPA Regions	25	0	0	1,785	595	1,785	0	0	44,615	14,872	44,615
Total	37	0	0	1,785	595	1,785	0	0	66,031	22,010	66,031

Agency burden and cost estimates also includes IT systems integration cost of \$1.5 million initially and \$800,000 annually thereafter, along with an annual cost of \$75,000 for regulatory Helpdesk support (Exhibit 11).

EXHIBIT 11
Agency Cost for Compliance Assistance and Data Management

Program Implementation	One-Time Cost	Annual Cost	Equivalent Burden Hours				
			Year 1	Year 2	Year 3	3-Year Avg.	3-Year Total
Regulatory/Policy Helpdesk		\$75,000	0	0	835	278	835
IT Systems Integration/Data Collection	\$1,500,000	\$800,000	0	15,761	8,406	8,055	24,166
Total	\$1,500,000	\$875,000	0	15,761	9,241	8,334	25,001

Owners or operators who determine that their facility meets the substantial harm criteria will send their plan to the appropriate EPA Regional office for Agency review and approval. The FRP review and approval process will be directed by EPA's RAs based on national criteria and local conditions and considerations.

Agency labor costs are calculated based on the 2022 General Schedule (GS) pay schedule for the Washington, DC area. EPA estimated an average hourly labor cost (labor plus overhead) of \$116.52 for managerial staff (GS-14, Step-7) and \$89.84 for technical staff (GS-12, Step-10). To derive hourly estimates, EPA divided annual compensation estimates by 2,080, which is the number of hours in the federal work year. EPA then multiplied hourly rates by the standard government overhead factor of 1.6. EPA estimated Agency costs by multiplying the hourly labor rates for EPA personnel by the quantity of labor hours for each labor category (Exhibit 12). To the extent that salaries are lower for EPA Regional staff outside Washington, DC, the fully loaded wage rate will be an overestimate of Agency costs.

**EXHIBIT 12
Hourly Labor Rates for Agency Staff (\$2022)**

Labor Category	Annual Salary	Hourly Wage	Overhead Factor	Fully Loaded Wage Rate
Managerial (GS-14, Step-7)	\$151,479	\$72.83	1.6	\$116.52
Technical (GS-12, Step-10)	\$116,788	\$56.15	1.6	\$89.84

Source: <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2022/GS.pdf>

Exhibit 13 presents the total burden and cost to the Agency during the ICR period.

**EXHIBIT 13
Total Burden and Cost for the Agency to Develop and Implement the Final Regulatory Program, by 3-Year Total and Annual Average**

Agency Activity	Total Labor Burden (hours)		Labor Cost		O&M Costs (Travel)		Total Cost	
	3-Year Total	3-Year Average	3-Year Total	3-Year Average	3-Year Total	3-Year Average	3-Year Total	3-Year Average
Review Existing Facility Plans	66,031	22,010	\$6,284,420	\$2,094,807	\$0	\$0	\$6,284,420	\$2,094,807
IT/Data Management	25,001	8,334	\$2,375,000	\$791,667	\$0	\$0	\$2,375,000	\$791,667
Total	91,032	30,344	\$8,659,420	\$2,886,474	0	0	\$8,659,420	\$2,886,474

15. Reasons for Program Changes or Adjustments on Burden Worksheet

This is a new information collection request, therefore there is no change in burden.

16. Published Results

Results from this ICR are not published formally. They are used to calculate agency-level accomplishments and site-specific impacts on publicly available EPA websites.

17. Approval for not displaying OMB Expiration Date

The Agency plans to display the expiration date for OMB approval of the information collection on all instruments.

18. Exceptions to the “Certification for Paperwork Reduction Act Submissions”

This information collection complies with all provisions of the Certification for Paperwork Reduction Act Submissions.

APPENDIX A

The industrial categories containing facilities required to develop and submit a FRP to EPA are presented in Exhibit A-1.

EXHIBIT A-1

Industry Sectors and NAICS Codes Covered by the CWA Hazardous Substance Facility Response Plan Regulation

NAICS Code	NAICS Description
11111	Soybean Farming
11115	Corn Farming
11119	Other Grain Farming
11131	Orange Groves
11233	Turkey Production
11234	Poultry Hatcheries
11511	Support Activities for Crop Production
11521	Support Activities for Animal Production
21111	Oil and Gas Extraction
21222	Gold Ore and Silver Ore Mining
21223	Copper, Nickel, Lead, and Zinc Mining
21229	Other Metal Ore Mining
21232	Sand, Gravel, Clay, and Ceramic and Refractory Minerals Mining and Quarrying
21311	Support Activities for Mining
22111	Electric Power Generation
22112	Electric Power Transmission, Control, and Distribution
22131	Water Supply and Irrigation Systems
22132	Sewage Treatment Facilities
23622	Commercial and Institutional Building Construction
23731	Highway, Street, and Bridge Construction
23799	Other Heavy and Civil Engineering Construction
23899	All Other Specialty Trade Contractors
31111	Animal Food Manufacturing
31122	Starch and Vegetable Fats and Oils Manufacturing
31131	Sugar Manufacturing
31142	Fruit and Vegetable Canning, Pickling, and Drying
31161	Animal Slaughtering and Processing
31193	Flavoring Syrup and Concentrate Manufacturing
31212	Breweries
31323	Nonwoven Fabric Mills
31331	Textile and Fabric Finishing Mills
31332	Fabric Coating Mills

NAICS Code	NAICS Description
31411	Carpet and Rug Mills
32111	Sawmills and Wood Preservation
32121	Veneer, Plywood, and Engineered Wood Product Manufacturing
32191	Millwork
32211	Pulp Mills
32212	Paper Mills
32213	Paperboard Mills
32222	Paper Bag and Coated and Treated Paper Manufacturing
32229	Other Converted Paper Product Manufacturing
32311	Printing
32411	Petroleum Refineries
32419	Other Petroleum and Coal Products Manufacturing
32511	Petrochemical Manufacturing
32512	Industrial Gas Manufacturing
32513	Synthetic Dye and Pigment Manufacturing
32518	Other Basic Inorganic Chemical Manufacturing
32519	Other Basic Organic Chemical Manufacturing
32521	Resin and Synthetic Rubber Manufacturing
32522	Artificial and Synthetic Fibers and Filaments Manufacturing
32531	Fertilizer Manufacturing
32532	Pesticide and Other Agricultural Chemical Manufacturing
32541	Pharmaceutical and Medicine Manufacturing
32551	Paint and Coating Manufacturing
32552	Adhesive Manufacturing
32561	Soap and Cleaning Compound Manufacturing
32591	Printing Ink Manufacturing
32592	Explosives Manufacturing
32599	All Other Chemical Product and Preparation Manufacturing
32612	Plastics Pipe, Pipe Fitting, and Unlaminated Profile Shape Manufacturing
32613	Laminated Plastics Plate, Sheet (except Packaging), and Shape Manufacturing
32619	Other Plastics Product Manufacturing
32621	Tire Manufacturing
32622	Rubber and Plastics Hoses and Belting Manufacturing
32629	Other Rubber Product Manufacturing
32721	Glass and Glass Product Manufacturing
32732	Ready-Mix Concrete Manufacturing
32799	All Other Nonmetallic Mineral Product Manufacturing
33111	Iron and Steel Mills and Ferroalloy Manufacturing
33121	Iron and Steel Pipe and Tube Manufacturing from Purchased Steel
33122	Rolling and Drawing of Purchased Steel
33131	Alumina and Aluminum Production and Processing

NAICS Code	NAICS Description
33141	Nonferrous Metal (except Aluminum) Smelting and Refining
33149	Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing, Extruding, and Alloying
33211	Forging and Stamping
33231	Plate Work and Fabricated Structural Product Manufacturing
33232	Ornamental and Architectural Metal Products Manufacturing
33241	Power Boiler and Heat Exchanger Manufacturing
33243	Metal Can, Box, and Other Metal Container (Light Gauge) Manufacturing
33261	Spring and Wire Product Manufacturing
33281	Coating, Engraving, Heat Treating, and Allied Activities
33299	All Other Fabricated Metal Product Manufacturing
33311	Agricultural Implement Manufacturing
33331	Commercial and Service Industry Machinery Manufacturing
33361	Engine, Turbine, and Power Transmission Equipment Manufacturing
33441	Semiconductor and Other Electronic Component Manufacturing
33522	Major Appliance Manufacturing
33531	Electrical Equipment Manufacturing
33591	Battery Manufacturing
33599	All Other Electrical Equipment and Component Manufacturing
33611	Automobile and Light Duty Motor Vehicle Manufacturing
33621	Motor Vehicle Body and Trailer Manufacturing
33631	Motor Vehicle Gasoline Engine and Engine Parts Manufacturing
33633	Motor Vehicle Steering and Suspension Components (except Spring) Manufacturing
33641	Aerospace Product and Parts Manufacturing
33661	Ship and Boat Building
33999	All Other Miscellaneous Manufacturing
42372	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers
42383	Industrial Machinery and Equipment Merchant Wholesalers
42391	Sporting and Recreational Goods and Supplies Merchant Wholesalers
42393	Recyclable Material Merchant Wholesalers
42399	Other Miscellaneous Durable Goods Merchant Wholesalers
42451	Grain and Field Bean Merchant Wholesalers
42469	Other Chemical and Allied Products Merchant Wholesalers
42471	Petroleum Bulk Stations and Terminals
42491	Farm Supplies Merchant Wholesalers
44112	Used Car Dealers
44422	Nursery, Garden Center, and Farm Supply Stores
44711	Gasoline Stations with Convenience Stores
44719	Other Gasoline Stations
45399	All Other Miscellaneous Store Retailers
48111	Scheduled Air Transportation
48621	Pipeline Transportation of Natural Gas

NAICS Code	NAICS Description
48691	Pipeline Transportation of Refined Petroleum Products
48811	Airport Operations
48819	Other Support Activities for Air Transportation
48831	Port and Harbor Operations
48832	Marine Cargo Handling
49311	General Warehousing and Storage
49312	Refrigerated Warehousing and Storage
49319	Other Warehousing and Storage
51111	Newspaper Publishers
51119	Other Publishers
51821	Data Processing, Hosting, and Related Services
52232	Financial Transactions Processing, Reserve, and Clearinghouse Activities
53131	Real Estate Property Managers
54171	Research and Development in the Physical, Engineering, and Life Sciences
56171	Exterminating and Pest Control Services
56191	Packaging and Labeling Services
56211	Waste Collection
56221	Waste Treatment and Disposal
61131	Colleges, Universities, and Professional Schools
62211	General Medical and Surgical Hospitals
62431	Vocational Rehabilitation Services
71211	Museums
71311	Amusement and Theme Parks
81111	Automotive Mechanical and Electrical Repair and Maintenance
81112	Automotive Body, Paint, Interior, and Glass Repair
81131	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance
81292	Photofinishing
92111	Executive Offices
92112	Legislative Bodies
92114	Executive and Legislative Offices, Combined
92119	Other General Government Support
92411	Administration of Air and Water Resource and Solid Waste Management Programs
92613	Regulation and Administration of Communications, Electric, Gas, and Other Utilities
92811	National Security

APPENDIX B

To fulfill the FRP requirements, the regulation requires that the FRP include, among other information, the following elements:

- Information about the facility's qualified individual (QI) having full authority to implement removal actions.
- Information about emergency response, including notification procedures, equipment, personnel, evacuation plans, and duties of the qualified individual.
- Evidence of availability, by contracts or other approved means, of personnel and equipment necessary to remove, to the maximum extent practicable, a worst case discharge and to mitigate or prevent a substantial threat of such a discharge.
- Information on the training, equipment testing, periodic unannounced drills, and response actions of persons on the vessel or at the facility, to be carried out under the plan to ensure facility safety and to mitigate or prevent the discharge, or the substantial threat of a discharge.
- Information about the facility's location, owner, and operator.
- A hazard evaluation for worst case discharge and risk-based decision support system.
- A record of the facilities discharge history.
- A description of information to pass to response personnel in the event of a reportable discharge.
- A description of response personnel capabilities, including the duties of persons at the facility during a response action and their response times and qualifications.
- A description of the facility's response equipment, the location of the equipment, and equipment testing.
- Plans for evacuation of the facility including a diagram, and a reference to community evacuation plans, as appropriate.
- A description of the procedures and equipment used to detect discharges.
- A description of response actions to be carried out by facility personnel or contracted personnel under the FRP to ensure the safety of the facility and to mitigate or prevent discharges or the substantial threat of such discharges, including immediate response actions.
- A description of plans to dispose of contaminated cleanup materials, if appropriate to the material, as well as to provide adequate containment and drainage of discharged CWA hazardous substances.
- A description of training and exercise procedures, and self-inspections.
- An Emergency Response Action Plan.