

1SUPPORTING STATEMENT A FOR PAPERWORK REDUCTION ACT SUBMISSION

Natural Resource Damage Assessments (43 CFR Part 11) OMB Control Number 1091-0002

Terms of Clearance: This is a request for a new OMB control number in conjunction with the clearance of new information collections in 43 CFR Part 11 contained in our proposed rule under RIN 1090-AB26, “Natural Resource Damages for Hazardous Substances.” Many of the information collections predate the Paperwork Reduction Act (43 CFR 3501 *et seq.*) and were not previously cleared by OMB. **Changes to this document since OMB’s approval at the proposed rule stage are highlighted in yellow.**

Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.

The U.S. Department of the Interior’s (Interior) Office of Restoration and Damage Assessment (ORDA) oversees the Natural Resource Damage Assessment and Restoration (NRDAR) Program, the mission of which is to restore natural resources injured as a result of oil spills or hazardous substance releases into the environment. In partnership with affected State, Tribal, and Federal Trustee agencies, damage assessments are conducted as the first step toward resource restoration, and are used to provide the basis for determining restoration needs that address the public’s loss and use of natural resources.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA; 42 U.S.C. 9601, 9607), as amended, 42 U.S.C. 9601 *et seq.*, and the Clean Water Act (CWA; 33 U.S.C. 1251-1376), provide that natural resource trustees may assess damages to natural resources resulting from a discharge of oil or a release of a hazardous substance covered under CERCLA or the CWA and may seek to recover those damages. This part supplements the procedures established under the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, for the identification, investigation, study, and response to a discharge of oil or release of a hazardous substance, and it provides a procedure by which a natural resource trustee can determine compensation for injuries to natural resources that have not been, nor are expected to be, addressed by response actions conducted pursuant to the NCP. The assessment procedures set forth in Part 11 are not mandatory. However, they must be used by Federal or State natural resource trustees in order to obtain the rebuttable presumption contained in section 107(f)(2)(C) of CERCLA.

This information collection is “reporting” in nature to establish compliance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ([CERCLA](#)). CERCLA allows assessment of injuries from hazardous substance releases to natural resources, and identification of appropriate restoration projects in contemplation of negotiated settlements or legal actions with potentially responsible parties (PRPs). Monetary or in-kind project recoveries from the PRPs (damages) are then used to finance or implement the restoration of the injured resources, pursuant to a publicly reviewed restoration plan. The NRDAR process includes multiple types of documentation.

Congress authorizes States, Tribes, and Federal resource management agencies to act on behalf of the public as “trustees” for the purpose of bringing a claim to recover damages necessary to restore or replace injured public resources managed or controlled by the respective States, Tribes, or Federal agency (i.e., Natural Resource Trustees).

Interior’s regulations implementing CERCLA NRDAR activities conducted for releases of hazardous substances ([43 CFR 11](#)) include two types of assessment procedures conducted by the Natural Resource Trustees:

1. Type A procedures are simplified procedures that require minimal field observation. [Subpart D](#) describes the Type A procedures.
2. Type B procedures require more extensive field observation than the Type A procedures. [Subpart E](#) describes the Type B procedures.

The NRDAR regulations are discretionary. That is, Trustees are not required to conduct NRDAR, nor are they explicitly required to follow the regulations. However, CERCLA grants Trustees a “rebuttable presumption” in any judicial proceeding if the assessment was conducted in accordance with [43 CFR Part 11](#). This means that if Trustees follow the regulations, a judge will presume the results of the assessment are correct, and the burden of proof would be on the PRP to disprove the findings. ORDA policy and guidance adopted these regulatory requirements for Interior’s bureaus seeking NRDAR funding support to help ensure efficient and effective use of taxpayers’ dollars. As such, NRDAR with Interior’s involvement will typically follow the regulations, which affects co-Trustees, consultants, and the PRPs. This submission addresses both the existing Type B procedures and the proposed revised Type A procedures.

Our final regulations (RIN 1090-AB26) revises the simplified Type A procedures in the regulations for conducting natural resource damage assessments for hazardous substance releases. Additionally, this final rule includes several conforming changes and corrections intended to fix citations, provide for consistent use of terminology, and remove outdated or duplicative rule provisions and definitions. The Department of the Interior (Interior) is removing provisions that it believes are no longer applicable, clarifying other provisions by incorporating language that would implement existing Interior regulatory interpretations, and making other changes and corrections. These revisions also allow for the regulations to meet information collection requirements mandated by the Office of Management and Budget.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection. Be specific. If this collection is a form or a questionnaire, every question needs to be justified.

The information collection burden in NRDAR is on Trustees and their consultants to produce the documents in Table 2.1. Again, NRDAR is discretionary and the goal is restoration. The pursuit of settlement with reasonable assessment costs means not all of these documents may be produced, or some will be combined. The PRP burden depends on the extent they decide to engage cooperatively or conduct independent review and comment. Trustees must invite the PRPs to participate in NRDAR and offer the opportunity for cooperative assessment ([43 CFR 11.32\(2\)\(iii\)](#)).

The Trustees and their consultants conduct the information collection and documentation described in this supporting statement. This ICR is necessary to obtain a rebuttable

presumption under CERCLA and the NRDAR regulations ([43 CFR Part 11](#)). Although ORDA offers Trustees a number of examples and checklists for producing information, there are no one-size-fits-all templates in NRDAR. The information collected and documented in NRDAR by Trustees, as authorized by CERCLA, is summarized in Table 2.1.

The information collection requirements (described below) contained in 43 CFR Part 11 applicable to State and Tribal respondents include (labeled as either modified or existing in rulemaking):

TYPE A REPORT § 11.41 - § 11.43

If a Type A is used, the report already must include the information specified in subpart D (43 CFR 11.90(b)). This rulemaking seeks to clarify the content of the Type A Report based on the proposed changes. The Type A report must be made available to the public and provide for a comment period of at least 30 days.

Information in Type A Report

- (a) The Type A Report is a document to provide the public with notice of, and an opportunity to comment on, the use of the Type A Procedure.
- (b) The Type A Report must:
 - (1) State that the Trustee is following this rule and provide a citation to the rule;
 - (2) Explain the basis for concluding that conditions for pursuing an assessment were met;
 - (3) Describe any agreements among Co-Trustees and potentially responsible parties;
 - (4) Identify ongoing or planned response activities that could affect the natural resources being assessed;
 - (5) Explain how conditions for using a Type A Procedure listed in 11.34 of this part are met;
 - (6) Identify and describe the model(s) selected to determine damages to fund restoration activities, including the following:
 - (i) Data inputs and the assumptions used for the model(s);
 - (ii) Possible existing restoration alternatives that make these model assumptions valid for the purpose of restoration;
 - (iii) Results of the modeling exercise;
 - (7) Note the establishment of an administrative record for the assessment and explain how to gain access to that record;
 - (8) Explain how to submit comments and state the deadline for comments; and
 - (9) Identify a contact person.

Administrative Record for Type A Report includes:

- (a) Evidence of efforts to coordinate with response agencies (this need not include any evidence of the substance of discussions, nor documentation of every contact);
- (b) Evidence of efforts to consult with other Co-trustees (this need not include any evidence of the substance of discussions, nor documentation of every contact) and documentation of any agreements among Co-trustees;
- (c) The invitation to potentially responsible parties inviting them to participate in the Type A Procedure and documentation of any agreements reached with potentially responsible parties.
- (d) Information considered when developing data inputs and assumptions for modeling, including complete citations to any literature used;

- (e) A printout of the model(s) sufficient for reproducibility (or a copy of the file used to generate the model(s));
- (f) Documentation of any assessment costs incurred, if Trustees plan to seek reimbursement of such costs.
- (g) Copy of the final Type A Report and each published version of the Type A Report.

Revising Type A Report

- (a) If the Trustees decide after their review to select different model(s), or substantially change the model data inputs or assumptions to conduct the Type A Procedure, the Trustees must prepare a revised Type A Report that reflects the changes, provides any new information about the modified data inputs and assumptions, and substantively responds to significant comments received during the comment period. Minor changes require a statement of explanation of the changes, explanation of why they are not considered substantial, and discussion of any effects on results to be appended to the original Type A Report.

Revision to Existing IC in Proposed Rulemaking: The information to be included in the modified and/or revised Type A Report will allow for a wider range of models to be used as opposed to the ones currently listed which focus on Coastal and Marine Environments and the Great Lakes Environments exclusively. These changes will allow Trustees to use a variety of models and include their results in the Type A Report.

TYPE B REPORT OF ASSESSMENT § 11.60(c)&(d), and § 11.90

The completion of an assessment is documented in the ROA, which consists of the Preliminary Assessment Screen (PAS), Preliminary Estimate of Damages (PED), Assessment Plan (AP), Restoration and Compensation Determination Plan (RCDP), Restoration Plan (RP; when prepared for settlement), and response to public comments.

- The PAS is a rapid review of readily available information to make a determination as to whether an NRDAR will be carried out (43 CFR 11.23, 11.24 and 11.25).
- The purpose of the PED is to inform the Assessment Plan to ensure that the choice of the scientific, cost estimating, and valuation methodologies expected to be used in the NRDAR are reasonable cost. The PED typically relies on available information (43 CFR 11.38).
- The AP must identify and document the use of all of the Type A and/or Type B procedures that will be performed, including any proposed injury studies, as well as potential studies to identify early restoration opportunities and potential effectiveness. The AP is published for public comment (43 CFR Part 11 Subpart C).
- The RCDP provides a reasonable number of possible restoration alternatives, identifies the preferred one and the actions required for implementation, and describes the methods and results of the injury determination, injury quantification, and damages determination (monetary or in-kind projects). The RCDP uses literature, site data, and study data, and Trustees' decision making; it is published for public comment (43 CFR 11.81).
- Although the RP is identified as part of a post-assessment activity, ORDA addressed Departmental and Congressional interest in timely restoration through policy by defining a "restoration-based settlement" to include a legally binding Consent Decree and concurrent final Restoration Plan. Therefore, the RP may be produced before or after settlement, and is published for public comment. The level of effort on a post-settlement RP is assumed to be the same as for settlement. For purposes of this ICR, the RP is

considered to be part of the Type B ROA (43 CFR 11.93; ORDA Restoration Policy)

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. Also describe any consideration of using information technology to reduce burden and specifically how this collection meets GPEA requirements.

The NRDAR regulations and ORDA's supporting policy do not include the use of forms or surveys for information collection. ORDA does provide a Damage Assessment and Restoration Tracking System (DARTS), which can be used to cost-effectively house NRDAR Administrative Records (i.e., public documents on the Trustees' decision-making process, which can include the documents identified in Table 2.1). NRDAR practitioners currently upload case documents to this system as part of their case record. This system is currently being modernized and the new version of the system is set to launch in May 2027, subject to receiving the "Authority to Operate" from the Department.

NRDAR typically includes public meetings and requests for public input that are not subject to the PRA.

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.

No other entity provides the information required in Table 2.1. Trustees rely extensively on publicly available information and have a Congressional mandate to ensure all assessment, including the information collection and documentation, is produced at reasonable cost ([43 CFR 11.14\(ee\)](#)).

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

The stated purpose of the PAS is to "ensure there is a reasonable probability of making a successful claim before monies and efforts are expended in carrying out an assessment" ([43 CFR 11.23 \(b\)](#)). This means Trustees cannot spend more on information collection and documentation than can be reasonably expected in settlement of the liability. Further, NRDAR damages are compensatory for ecological restoration, not punitive. Trustees cannot seek to impact small businesses adversely or disproportionately. The Department of Justice provides an administrative settlement process for smaller settlements, which can include small businesses.

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.

If the collection is not conducted or is conducted less frequently, Natural Resource Trustees may not be able to receive a rebuttable presumption following CERCLA and ORDA's NRDAR regulations.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:
- * requiring respondents to report information to the agency more often than quarterly;
 - * requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
 - * requiring respondents to submit more than an original and two copies of any document;
 - * requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;
 - * 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;
 - * requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
 - * that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
 - * requiring respondents to submit proprietary trade secrets, or other confidential information, unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

There are no circumstances that require NRDAR Trustees, consultants, or PRPs to collect information in a manner inconsistent with OMB guidelines.

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. Summarize public comments received in response to that notice and in response to the PRA statement associated with the collection over the past three years, and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

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.

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

On January 5, 2024, we published in the *Federal Register* (89 FR 733) a proposed rule (RIN 1090-AB26) to solicit comments and suggestions from State, Tribal, and Federal natural resource co-trustees, other affected parties, and the interested public on revising the simplified Type A procedures in the regulations for conducting natural resource damage assessment and restoration for hazardous substance releases. In that proposed rule, we solicited comments for

60 days on the information collections in this submission, ending on March 5, 2024.

On February 13, 2024, we published in the *Federal Register* (89 FR 10019) an extension of the public comment period for our proposed rule (RIN 1090-AB26). This extension did not change the information collection comment period. We did not receive any comments addressing the information collection requirements in response to our proposed rule.

However, several comments requested that Interior develop technical guidance on utilizing the new Type A procedures. Proposed topics for guidance included modeling, Type A Reports, cooperative agreements, the operability of the rebuttable presumption, and various other case scenarios. Interior agrees that additional guidance on how to use the new Type A procedures may be needed for practitioners and intends to develop appropriate guidance after the rule is finalized and published. If/when the guidance is developed, we will provide that guidance to OMB as a nonsubstantive change request associated with Control No. 1091-0002.

Interior is now ready to proceed with the publication of the final rule. The final rule will solicit comments on the information collections for a period of 30 days.

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

There is no offer of monetary or material value for this information collection.

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

NRDAR is a legal process that includes privileged and confidential information, including protection by the Attorney Client, Deliberative, Law Enforcement, Common Interest and/or Joint Prosecution Privileges, and is not subject to disclosure under FOIA. The Trustees develop agreements on how to handle confidentiality. Personally identifiable information (PII) is not part of this information collection. The new version of DARTS, set to launch in 2027, is currently undergoing Privacy Threshold and Privacy Impact Analyses which are expected to be completed by August 2026.

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.

Tribal Trustees can choose whether they want to provide any information on injured natural resources that have cultural values, including religious or spiritual uses, but this ICR does not create or include any obligation to do so. Otherwise, Trustees do not collect information on these types of sensitive questions.

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

- * Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so,

agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. 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. Generally, estimates should not include burden hours for customary and usual business practices.

- * If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.
- * 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.

We estimate that we will receive **155 annual responses** totaling **513,926 burden hours** for this information collection (see Attachment A). We estimate the annual dollar value of the burden hours is **\$75,579,469** (rounded) (see Attachment A).

(1) General BLS Statistical Data for Individuals and Government

We used the Bureau of Labor Statistics (BLS) [News Release](#) USDL-26-0827, June 12, 2026 Costs for Employee Compensation—March 2026, to calculate the cost of the total annual burden hours:

- Individuals/Households – the hourly rate for all workers is \$49.32, including benefits.
- Private Sector – See item (2) below for specialized rate calculated for this category.
- State/Tribal Government – the hourly rate for all workers is \$66.41, including benefits.

(2) Scientific, Legal, and Technical Managers and Consultants in the Oil and Gas Industry for Private Sector

The cost burden associated with NRDAR activities are often conducted using contracted services, which do not fit well within the hourly rates published by the BLS. The cost of these services can vary widely depending on size of the consulting company, the seniority of the persons providing the services, and the reputation of the consulting firm. Although PRPs come from a wide range of industries, we used BLS May 2023 National Industry-Specific Occupational Employment and Wage Estimates for NAICS Code [211100, "Oil and Gas Extraction"](#) (dated April 3, 2024) as a reasonable representation of PRPs and consultants which lists the mean hourly wages for 11-9121 Natural Sciences Managers as \$102.95 and 23-1000, Lawyers as \$108.55 (see Attachment A). To account for benefits, we used 43% as an average overhead rate for contracted work resulting in a fully burdened weighted average hourly rate of \$151.23.

See Attachment B for a description of the methods.

13. Provide an estimate of the total annual non-hour cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected in item 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 and purchase of services component. The estimates

should take into account costs associated with generating, maintaining, and disclosing or providing the information (including filing fees paid for form processing). 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.

- * If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. 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.
- * 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.

We have not identified any non-hour cost burden associated with this collection.

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.

The annualized cost to the Federal Government is an estimated **91,688** burden hours with an annual dollar value of **\$7,095,734** (rounded). See Attachment A for the calculations. Attachment B describes the methods used.

15. Explain the reasons for any program changes or adjustments in hour or cost burden.

This is a request for a new control number in conjunction with the information collections contained in our proposed rulemaking under RIN 1090-AB26, "Natural Resource Damages for Hazardous Substances."

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.

As identified in Table 2.1, some reports are released for public comment through the Federal Register. As a legal process, NRDAR information collection and documentation have no pre-established publication dates. There are no complex analytical techniques required by this ICR.

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.

We will display the OMB Control Number and expiration date on appropriate materials.

18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."

There are no exceptions to the certification statement.