

**SUPPORTING STATEMENT FOR  
EPA INFORMATION COLLECTION REQUEST NUMBER 2554.01  
REPORTING AND RECORDKEEPING REQUIREMENTS FOR EPA'S FINANCIAL  
RESPONSIBILITY REQUIREMENTS UNDER CERCLA § 108(b)  
FOR CLASSES OF FACILITIES IN THE  
HARDROCK MINING INDUSTRY PROPOSED RULE**

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## TABLE OF CONTENTS

1.	IDENTIFICATION OF THE INFORMATION COLLECTION.....	1
	1(a) Title and Number of the Information Collection .....	1
	1(b) Short Characterization .....	1
2.	NEED FOR AND USE OF THE COLLECTION .....	2
	2(a) Need and Authority for the Collection.....	2
	2(b) Practical Utility and Users of the Data .....	4
3.	NONDUPLICATION, CONSULTATIONS, AND OTHER COLLECTION CRITERIA .....	5
	3(a) Nonduplication.....	5
	3(b) Public Notice.....	6
	3(c) Consultations.....	6
	3(d) Effects of Less Frequent Collection.....	6
	3(e) General Guidelines.....	6
	3(f) Confidentiality .....	6
	3(g) Sensitive Questions.....	6
4.	THE RESPONDENTS AND THE INFORMATION REQUESTED .....	7
	4(a) Respondents and NAICS Codes .....	7
	4(b) Information Requested.....	7
5.	THE INFORMATION COLLECTED—AGENCY ACTIVITIES, COLLECTION METHODOLOGY, AND INFORMATION MANAGEMENT .....	22
	5(a) Agency Activities.....	22
	5(b) Collection Methodology and Management.....	24
	5(c) Small Entity Flexibility.....	24
	5(d) Collection Schedule .....	25
6.	ESTIMATING THE HOUR AND COST BURDEN OF THE COLLECTION.....	25
	6(a) Identifying the Respondent Universe.....	26
	6(b) Estimating Respondent Cost Categories .....	28
	6(c) Estimating Agency Cost Categories .....	30

6(d)	Estimating Respondent Hours and Costs .....	31
6(e)	Estimating Agency Hours and Costs .....	39
6(f)	Bottom Line Burden Hours and Costs .....	41
6(g)	Reasons for Change in Burden .....	41
6(h)	Burden Statement.....	42

## LIST OF EXHIBITS

Exhibit 1.	NAICS Categories in Respondent Universe .....	7
Exhibit 2.	Hardrock Commodities Considered for the Potentially Regulated Universe .....	26
Exhibit 3.	Included Universe, by Facility Type and Operating Status .....	27
Exhibit 4.	Included Universe, by Commodity and Operating Status .....	28
Exhibit 5.	Respondent Labor and Cost Burden for Each Information Collection Activity..	32
Exhibit 6.	Respondent Recordkeeping Labor and Cost Burden .....	33
Exhibit 7.	Labor Burden for Calculating, Establishing, and Maintaining FR Subtasks .....	34
Exhibit 8.	Agency Labor and Cost Burden for Each Information Collection Activity .....	39
Exhibit 9.	Bottom Line Total and Average Annual Labor and Cost Burden .....	41

## **1. IDENTIFICATION OF THE INFORMATION COLLECTION**

### **1(a) Title and Number of the Information Collection**

This information Collection Request (ICR) is entitled “Reporting and Recordkeeping Requirements for the Proposed CERCLA 108(b) Hardrock Mining Financial Assurance Rule,” Environmental Protection Agency (EPA) ICR Number 2554.01, Office of Management and Budget (OMB) Number 2050-NEW.

### **1(b) Short Characterization**

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) authorizes EPA to conduct cleanup at abandoned and non-operating sites contaminated with hazardous substances. CERCLA was enacted to provide for cleanup of hazardous substances and to hold responsible parties liable for cleanup. The Act therefore addresses threats posed by existing contamination through remediation and discourages future contamination through enforcement.

Section 108(b) of CERCLA establishes the government’s authority to promulgate financial responsibility requirements for facilities involved in the production, transport, storage, or disposal of hazardous material. The 1986 Superfund Amendments and Reauthorization Act amendments to CERCLA clarified that section 108(b) can require regulated facilities to demonstrate financial responsibilities through one of the following financial assurance mechanisms: insurance, guarantee, surety bond, letter of credit, or qualification as self-insurer. CERCLA 108(b) allows EPA to require facility owners and operators to acquire financial assurance for their environmental liabilities and stipulates the instruments through which an owner or operator may do so.

A series of studies and reviews conducted by the EPA Office of Inspector General (OIG) and the Government Accountability Office (GAO) from 2004 through 2008 demonstrated that the hardrock mining industry presented a risk to EPA and the taxpayers with respect to the amount of cleanup costs for which they would be responsible. In accordance with CERCLA section 108(b) and in response to these concerns, EPA is publishing the proposed rule that would create a financial assurance regime for CERCLA liabilities in the hardrock mining industry. The proposed rule endeavors to increase the likelihood that owners and operators will retain funds necessary to address the CERCLA liabilities at their facilities, thus preventing the burden from shifting to the taxpayer. In addition, the rule would provide an incentive for implementation of sound practices at hardrock mining facilities that would decrease the need for future CERCLA actions.

The proposed rule establishes financial responsibility requirements for certain facilities within the hardrock mining industry. EPA’s Federal Register notice (the Priority Notice) defined hardrock mining facilities as “those which extract, beneficiate or process metals (e.g., copper, gold, iron, lead, magnesium, molybdenum, silver, uranium, and zinc) and non-metallic, non-fuel

minerals (e.g., asbestos, gypsum, phosphate rock, and sulfur).” With respect to the proposed rule, these facilities include: (1) mining facilities that fall within the classes described in the Priority Notice and (2) mineral processing facilities identified in the Priority Notice that receive ore from mining facilities subject to the rule.

Owners and operators of facilities subject to this rule are required to demonstrate financial responsibility to cover costs associated with liabilities identified in CERCLA section 107 (e.g. response component, health assessment component, and natural resource damages).

The proposed rule requires that owners and operators subject to the rule:

- Notify EPA that they are subject to the rule and intend to comply;
- Provide basic facility information, within 30 days of the rule’s effective date;
- Identify a CERCLA section 108(b) financial responsibility level for their facility; and
- Submit evidence of financial responsibility to EPA.

The rule proposes a formula that owners and operators must use to determine a financial responsibility amount sufficient to cover response component, health assessment component, and natural resource damages. The proposed rule would allow for the use of third-party financial responsibility instruments identified in CERCLA section 108(b)(2), namely: insurance, guarantee, surety bond, and letter of credit. Alternatively, under one proposed option, facilities may pass a financial test to demonstrate financial responsibility without acquiring a third-party instrument.

The proposed rule allows owners and operators to demonstrate the financial responsibility level required at a facility using one or a combination of these instruments. In addition, the proposed rule allows the owner or operator to demonstrate financial responsibility for multiple facilities using a single instrument.

This ICR is a description of the information collection requirements for all hardrock mining and mineral processing facilities.

## **2. NEED FOR AND USE OF THE COLLECTION**

### **2(a) Need and Authority for the Collection**

The regulations are under the authority of CERCLA §§ 104, 108, and 115, 42 U.S.C. §§ 9604, 9608, 9615. Following are brief summaries of the need for the paperwork requirement the CERCLA 108(B) rule.

#### **Information Submission Requirement (§ 320.6)**

- 1) *Notification:* Under § 320.5, EPA is proposing to require owners or operators subject to the requirements of this rule to submit an initial notification form to EPA. This requirement would allow EPA to identify the universe of facilities subject to the rule. In addition, it would assure that all facilities subject to the rule receive an EPA

identification number, which will allow EPA to track financial responsibility implementation information.

- 2) *Financial Responsibility Amount*: Under § 320.66 EPA is proposing a provision that require owners and operators of hardrock mining facilities to calculate a financial responsibility amount at their facility, and submit information to support the calculation financial responsibility amount (§ 320.64). The information submitted would enable the Agency to review and verify the adequacy of the financial responsibility amount.
- 3) *Establish Financial Responsibility*. Under subpart C, the proposed rule would require owners and operators to demonstrate financial responsibility, and submit information to support the establishment of financial responsibility.
- 4) *Maintenance of Financial Responsibility*. This proposal also requires information submission to assure proper maintenance of financial responsibility until the owner or operator is released of from financial responsibility requirements. The precise submittal requirements for each of the following are described in § 320.65. These include a requirement to update financial responsibility amount calculations every three years, at a minimum, and to notify EPA of changes in the information on the facility's initial notification form, facility transfer, claims filed against the instrument or owner or operator, intent to close the facility, failure of an instrument provider, instrument provider intent to cancel, and owner or operator bankruptcy. The information owners and operators submit to EPA enables the Agency to review and verify the adequacy of the amount, or the terms, of the instruments at any time.
- 5) *Public Involvement*. Under § 320.9, EPA is proposing requirements for public notice for owners and operators subject to CERCLA §108(b) requirements. Under these requirements, owners and operators will be required to establish and maintain a website for posting information related to the facility's financial responsibility. Owners or operators will be required to submit to EPA the URL of a location its company website where the owner or operator will make information available to the public. EPA will post on its website notice to the public that the facility is subject to § 108(b) requirements, and provide the public the facility name, EPA ID, and the URL.

### **Recordkeeping Requirements (§ 320.8)**

- 1) EPA is proposing that owners or operators be required to develop and maintain a facility record that includes information documenting compliance with the financial responsibility requirements of this proposed rule. The facility record must include at least all information required to be submitted to EPA, comments received from the public, and all notifications received from EPA related to the financial responsibility obligations of the facility. The rule would require owners or operators to maintain this

information until three years after the Agency releases the owner or operator from the requirement for financial responsibility.

### **Requirement for Public Notice (§ 320.9)**

- 1) EPA is proposing requirements for public notice for owners and operators subject to CERCLA §108(b) requirements. Under these requirements, owners and operators will be required to establish and maintain a website for posting information related to the facility's financial responsibility. This information will help to achieve a transparent implementation of CERCLA § 108(b) requirements.

### **2(b) Practical Utility and Users of the Data**

EPA will use the collected information to ensure that all hardrock mining and mineral processing facilities have obtained financial responsibility instruments sufficient to cover environmental liabilities associated with each facility's activities, so that if a facility operator enters default, the burden does not shift to the taxpayer.

### **Information Submission Requirement (§ 320.6)**

- 1) *Notification:* EPA uses the information submitted as part of the initial notification requirement for several purposes important to the effective implementation of the rule. First, it would allow EPA to identify the universe of facilities subject to the rule. In addition, it would assure that all facilities subject to the rule receive an EPA identification number, which will allow EPA to track financial responsibility implementation information. Finally, it would provide EPA information about the facility that EPA anticipates will be important for effective rule implementation.
- 2) *Financial Responsibility Amount:* The information submitted enables the Agency to review the formula calculation, determine if the inputs to the formula were accurate, verify the adequacy of the financial responsibility amount, and determine compliance with applicable Subpart H regulations.
- 3) *Establish Financial Responsibility:* Under subpart C, the proposed rule would require owners and operators to demonstrate financial responsibility, and submit information to support the establishment of financial responsibility. The information submitted to EPA enables the Agency to review and verify the validity of the instrument, acceptability of the financial assurance provider, the terms of the instruments, and the fulfilment of the other regulatory requirements.
- 4) *Maintenance of Financial Responsibility:* The information submitted to EPA enables the Agency to review and verify at any time, the validity of the instrument, acceptability of the financial assurance provider, the terms of the instruments, fulfilment of the other regulatory requirements. In addition, in cases of claims brought against the owner or operator, the notifications allow the Agency to monitor potential claims because claims made may affect the adequacy of the instrument provided

under the regulations, because those claims may reduce the amount available to below that which is required for that facility class. In addition, these requirements will inform the Agency of potential issues at a site that could ultimately lead to EPA or another governmental agency having to take a response at the facility.

- 5) *Public Involvement.* Under these requirements, owners and operators will be required to establish and maintain a website for posting information related to the facility's financial responsibility. Owner or operator will be required to submit to EPA the URL of a location on its company website where the owner or operator will make information available to the public. EPA will post on its website notice to the public that the facility is subject to § 108(b) requirements, and provide the public the facility name, EPA ID, and the URL. This information will help for a transparent implementation of CERCLA § 108(b) requirements.

### **Recordkeeping Requirements (§ 320.8)**

- 1) EPA is proposing that owners or operators be required to develop and maintain a facility record that includes information documenting compliance with the financial responsibility requirements of this proposed rule. EPA believes this requirement will add the benefit of transparency to implementation of CERCLA § 108(b) requirements.

### **Requirement for Public Notice (§ 320.9)**

- 1) EPA is proposing requirements for public notice for owners and operators subject to CERCLA §108(b) requirements. Under these requirements, owners and operators will be required to establish and maintain a website for posting information related to the owner or operator's financial responsibility. EPA believes this requirement will add the benefit of transparency to implementation of CERCLA § 108(b) requirements as the readily available information will inform the public that facilities properly determined their financial responsibility amount. In addition, the ready access to this information will help ensure that parties with CERCLA claims, and parties potentially impacted by the CERCLA claims of others, will have the opportunity to monitor changes in the facility's financial responsibility.

## **3. NONDUPLICATION, CONSULTATIONS, AND OTHER COLLECTION CRITERIA**

### **3(a) Nonduplication**

None of the information required by the final rule will duplicate information required by existing CERCLA regulations.

### **3(b) Public Notice**

On July 28, 2009, EPA published a notice in the Federal Register (the “Priority Notice”) identifying classes of facilities within the hardrock mining industry as those for which the Agency would first develop financial responsibility requirements under CERCLA section 108(b). The notice defined hardrock mining facilities as “those which extract, beneficiate or process metals (e.g., copper, gold, iron, lead, magnesium, molybdenum, silver, uranium, and zinc) and non-metallic, non-fuel minerals (e.g., asbestos, gypsum, phosphate rock, and sulfur).”<sup>1</sup>

### **3(c) Consultations**

The proposed rule covered by this ICR will be promulgated using proper rulemaking procedures. EPA is soliciting comments from the general public, industry officials, and appropriate agencies. These comments will inform the draft ICR for the final rule.

### **3(d) Effects of Less Frequent Collection**

EPA has carefully considered the burden imposed upon the regulated community by the final rule. EPA is confident that those activities required of respondents are necessary, and to the extent possible, the Agency has attempted to minimize the burden imposed. EPA strongly believes that, if the minimum information collection requirements of the final rule are not met, neither industry nor EPA will be able to ensure that hardrock mining and mineral processing facilities have obtained sufficient financial assurance to cover environmental liabilities and related costs.

### **3(e) General Guidelines**

This ICR adheres to the guidelines stated in the Paperwork Reduction Act of 1995, OMB’s implementing regulations, EPA’s ICR Handbook, and other applicable OMB guidance.

### **3(f) Confidentiality**

Section 3007(b) of RCRA and 40 CFR Part 2, Subpart B, which defines EPA’s general policy on public disclosure of information, contain provisions for confidentiality. However, the Agency does not anticipate that businesses will assert a claim of confidentiality covering all or part of the final rule. If such a claim is asserted, EPA must and will treat the information in accordance with the regulations cited above. EPA also will assure that this information collection complies with the Privacy Act of 1974 and OMB Circular 108.

### **3(g) Sensitive Questions**

No questions of a sensitive nature are included in the information collection requirements associated with the final rule.

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<sup>1</sup> “Identification of Priority Classes of Facilities for Development of CERCLA Section 108(b) Financial Responsibility Requirements.” Federal Register Vol. 74, No. 143. July 28, 2009.

#### 4. THE RESPONDENTS AND THE INFORMATION REQUESTED

##### 4(a) Respondents and NAICS Codes

The following is a list of North American Industrial Classification System (NAICS) codes associated with the facilities most likely to be affected by the information collection requirements covered in this ICR. This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be impacted by this action.

<b>Exhibit 1.</b>	
<b>NAICS Categories in Respondent Universe</b>	
<b>NAICS</b>	<b>NAICS CATEGORY</b>
112	Animal Production and Aquaculture
211	Oil and Gas Extraction
212	Mining (Except Oil and Gas)
213	Support Activities for Mining
236	Construction of Buildings
237	Heavy and Civil Engineering Construction
238	Specialty Trade Contractors
325	Chemical Manufacturing
327	Nonmetallic Mineral Product Manufacturing
331	Primary Metal Manufacturing
334	Computer and Electronic Product Manufacturing
423	Merchant Wholesalers, Durable Goods
522	Credit Intermediation and Related Activities
523	Securities, Commodity Contracts, and Other Financial Investments and Related Activities
541	Professional, Scientific, and Technical Services
551	Management of Companies and Enterprises
561	Administrative and Support Services
722	Food Services and Drinking Places
921	Executive, Legislative, and Other General Government Support

Note that the above-listed NAICS codes describe both the parent companies of the entities that operate hardrock mining and mineral processing facilities, and the operators of the respondent facilities themselves.

##### 4(b) Information Requested

This section describes information collection requirements applicable to entities that will be affected by the final rule.

##### Reading the Regulations

###### (i) Data items:

EPA assumes that to complete the information collection and recordkeeping activities described below, companies within the respondent universe will first need to read the final version of the rule. The EPA does not anticipate this requirement will result in any data items.

(ii) Respondent activities:

Respondents will read the text of the final version of the rule prior to completing any information collection or recordkeeping activities.

**Notification**

(i) Data items:

Under Section § 320.5 of the proposed rule, owners and operators of hardrock mining and mineral processing facilities will be required to submit a Notification Form within 30 days of the effective date of regulation.

The Notification Form requires facilities to provide the following information to EPA:

- The name, address, and EPA ID number of the facility;
- The type of land the site occupies (private, county, state, federal, etc.);
- Contact information for the facility's representative;
- The owner and operator of the facility; and
- A description of the activity that occurs at the facility requiring financial responsibility under CERCLA 108(b).

(ii) Respondent activities:

Facilities will be required to complete and submit EPA's CERCLA Notification Form within 30 days of the effective date of the regulation that first makes their facility subject to the requirements of CERCLA 108(b). Facilities must also update their Notification form within 30 days of any changes made to the facility or the CERCLA-relevant activities that occur there.

Owners and operators must post their completed Notification form to a page of their company website (see below).

**Public Involvement**

(i) Data items:

Within 90 days of the date a facility becomes subject to CERCLA 108(b), owners and operators of hardrock mining and mineral processing facilities must make relevant information available to the public in a prominent place on the company's website.

The information must include:

- The name and contact information for a person who will provide public information about the facility's financial responsibility requirement under CERCLA 108(b);
- Any information the owner or operator has submitted to EPA that is not Confidential Business Information;
- Any relevant notification the facilities has received from EPA regarding the status of its financial responsibility; and

- Opportunity to provide comments on the financial responsibility requirements at the site.

(ii) Respondent activities:

Within 60 days of the date that a facility becomes subject to the requirements of CERCLA 108(b), the owner or operator must provide to EPA the URL of a location on the company website titled “CERCLA Section 108(b) Financial Responsibility Information,” where the owner or operator will make information available to the public. Within 90 days of the date a facility becomes subject to CERCLA 108(b), the owner or operator must post relevant information to the public at the above website and assure that it is readily available to the public.

### **Applicable Financial Responsibility Amounts**

(i) Data items:

Owners and operators of hardrock mining and mineral processing facilities must provide an estimate of the financial responsibility related to CERCLA activities at their facilities. Owners and operators must include in their financial responsibility estimates fixed amounts for the health assessment component and natural resource damages. To estimate their financial responsibility, owners and operators will evaluate their facility or facilities and fill in a formula that EPA will provide.

Owners and operators must also submit site characterization information and evaluations that support their financial responsibility estimate. That information can be found in documents like:

- Plans of operation;
- Reclamation plans; and
- Relevant permits.

(ii) Respondent activities:

Owners and operators must calculate the amount of financial responsibility required for their facilities and provide the calculation and supporting documents to EPA.

Owners and operators must post relevant information regarding their financial responsibility level, absent information that owners and operators identify as confidential business information (CBI), to a page on their company website.

### **Establishing Financial Responsibility**

Owners and operators must demonstrate evidence of having obtained financial responsibility instruments necessary to meet the estimated financial responsibility requirements in accordance with the timeframes specified below. Owners and operators may obtain financial assurance through any of the following instruments:

- Insurance policy;
- Letter of credit;
- Surety bond; or
- Trust fund.

Owners and operators may also meet financial responsibility requirements by obtaining a combination of the above-listed instruments. Alternatively, owners and operators may demonstrate full or partial financial responsibility by passing a financial test, or receiving a corporate guarantee from an entity with which the operator has a “substantial business relationship” that passes the financial test.

The rule would require that owners demonstrate financial assurance in stages:

- For the health assessment component within two years of the proposed rule’s date of publication;
- For 50 percent of the financial responsibility within three years of the proposed rule’s date of publication; and
- For the full financial responsibility, including natural resource damages within 4 years of the proposed rule’s date of publication.

Regardless of the financial assurance instrument owners and operators select to provide financial assurance, they must update EPA annually to confirm they have followed the schedule described above.

For all of the above instruments, owners and operators must post relevant information regarding their financial assurance, absent information that owners and operators identify as CBI, to a page of their company website.

Instrument-specific data items and respondent activities are described below.

***Insurance***

(i) Data items:

To meet financial responsibility requirements through an insurance policy, owners and operators must submit to EPA:

- Evidence that the owner or operator has acquired an insurance policy that meets the currently calculated financial responsibility requirements.
- Evidence that the issuing institution has a financial strength rating of B+ or higher from AM Best or a comparable rating agency within 30 days of the anniversary date of the insurance instrument.
- A duplicate original of the CERCLA 108(b) financial responsibility endorsement signed by the issuing institution. If the owner or operator has obtained insurance from multiple insurers, they must submit a signed duplicate endorsement from each issuing institution.

- An originally signed duplicate of the trust agreement for a standby trust fund and Schedule A of the trust agreement within 60 days after any change in the amount of CERCLA 108(b) financial responsibility.

(ii) Respondent activities:

Owners and operators of hardrock mining and mineral processing facilities that choose to meet all or part of their financial assurance requirements through an insurance policy or policies must submit to EPA evidence that they have acquired a policy that covers their estimated financial responsibility from an issuing institution with a financial strength rating of at least a B+. The issuing institution must provide coverage for claims against all current owners and operators of the facility. Owners and operators must also demonstrate that they have established a standby trust.

***Letter of Credit***

(i) Data items:

To meet financial responsibility requirements through a letter of credit, owners and operators must submit to EPA:

- A certified copy of the letter of credit issued in favor of the trustee of a trust fund or the letter itself if issued in favor of any and all third-party CERCLA claimants in an amount at least equal to the financial responsibility requirement.
- An originally signed duplicate of the trust agreement for a standby trust fund.

(ii) Respondent activities:

Owners and operators of hardrock mining and mineral processing facilities that choose to meet all or part of their financial assurance requirements through a letter of credit must submit to EPA evidence that they have acquired an irrevocable standby letter of credit issued for at least one year that covers their estimated financial responsibility from an authorized and regulated issuing institution. Owners and operators must also demonstrate that they have established a standby trust.

***Surety Bond***

(i) Data items:

To meet financial responsibility requirements through a surety bond, owners and operators must submit to EPA:

- A surety bond in an amount at least equal to the financial responsibility requirements.
- Evidence that the bond was issued by a surety company or companies among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.
- An originally signed duplicate of the trust agreement for a standby trust fund.

The surety will become liable on the bond obligation if the owner or operator fails to perform as guaranteed by the bond and the issuer must make payment in accordance with the claimant in a penal sum equal to the financial responsibility required.

(ii) Respondent activities:

Owners and operators of hardrock mining and mineral processing facilities that choose to meet all or part of their financial assurance requirements through a surety bond must submit to EPA evidence that they have acquired surety bond from an issuer authorized by the U.S. Treasury Department Circular 570 that covers their estimated financial responsibility. Owners and operators must also demonstrate that they have established a standby trust.<sup>2</sup>

***Trust Fund***

(i) Data items:

To meet financial responsibility requirements through a trust fund, owners and operators must submit to EPA:

- An originally signed duplicate of a trust agreement in an amount at least equal to the estimated financial responsibility requirements the fund is meant to cover.
- Evidence that the trustee has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

The trust must be fully funded within four years of the owner or operator being subject to the regulations.

(ii) Respondent activities:

Owners and operators of hardrock mining and mineral processing facilities that choose to meet all or part of their financial assurance requirements through a trust fund must submit to EPA evidence that they have acquired trust fund that covers their estimated financial responsibility from an entity authorized to act as a trustee and whose trust operations are regulated. The trust must be fully funded within four years of the owner or operator becoming subject to the rule.

***Financial Test***

(i) Data items:

Owners and operators may also demonstrate financial assurance for all or half of financial responsibility requirements by passing a financial test. To demonstrate financial assurance for all financial responsibility requirements, an owner or operator must have:

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<sup>2</sup> Note that in the accompanying RIA, EPA did not anticipate that any respondents would opt to obtain financial responsibility through a surety bond. Therefore, this ICR makes the same assumption. The costs associated with obtaining and maintaining a surety bond fall somewhere between costs associated with a letter of credit and costs associated with a trust.

- At least one long-term credit rating of at least A-, as issued by Standard and Poor's, or an equivalent as issued by another Nationally Recognized Statistical Rating Organization;
- Tangible net worth of at least six times the environmental liabilities; and
- Assets in the United States amounting to either at least 90 percent of total assets or six times the amount of financial responsibility.

Owners and operators may demonstrate financial assurance for one half of financial responsibility requirements, provided they meet the same tangible net worth and asset thresholds listed above, and have received a credit rating from Standard and Poor's of BBB+ or BBB, or an equivalent rating from another Nationally Recognized Statistical Ratings Organization.

To demonstrate passage of a financial test, an owner or operator must post on its website, include in its facility record, and annually submit all of the following:

- Letter to the Regional Administrator signed by the CFO;
- Special report of procedures and findings from an independent certified public accountant resulting from an agreed upon procedures engagement in accordance with the American Institute of Certified Public Accountant's standards;
- A copy of the owner or operator's most recent independent audited financial statements prepared in accordance with an accounting standard deemed acceptable by the SEC.

Owners and operators must submit all of the above documents to EPA within 60 days of the date of the establishment of CERCLA financial responsibility requirements.

Owners and operators may also demonstrate all or half of their financial assurance by receiving a corporate guarantee from a parent company that passes the financial test described above.

(ii) Respondent activities:

Owners and operators who choose to demonstrate financial assurance for all or half of their financial responsibility requirements must submit to EPA a signed letter from the owner or operator CFO, a procedure report filed by a CPA, and a copy of the owner or operator (or parent company providing a corporate guarantee) financial statements prepared in accordance with an accounting standard that the SEC has deemed acceptable.

**Corporate Guarantees**

(i) Data items:

Owners and operators may also demonstrate financial assurance by obtaining a written guarantee. The guarantor must meet the requirements for owners or operators in paragraphs (a) through (g) of § 320.43 and must comply with the terms of the guarantee. To demonstrate

financial assurance for all financial responsibility requirements, the guarantor of the owner or operator must have:

- At least one long-term credit rating of at least A-, as issued by Standard and Poor's, or an equivalent as issued by another Nationally Recognized Statistical Rating Organization;
- Tangible net worth of at least six times the environmental liabilities; and
- Assets in the United States amounting to either at least 90 percent of total assets or six times the amount of financial responsibility.

Owners and operators may demonstrate financial assurance for one half of financial responsibility requirements, provided the guarantor meet the same tangible net worth and asset thresholds listed above, and have received a credit rating from Standard and Poor's of BBB+ or BBB, or an equivalent rating from another Nationally Recognized Statistical Ratings Organization.

To demonstrate passage of a financial test, the guarantor must annually submit all of the following:

- Letter to the Regional Administrator signed by the CFO;
- Special report of procedures and findings from an independent certified public accountant resulting from an agreed upon procedures engagement in according with the American Institute of Certified Public Accountant's standards;
- A copy of the guarantor's most recent independent audited financial statements prepared in accordance with an accounting standard deemed acceptable by the SEC.

The guarantor must submit all of the above documents to EPA within 60 days of the date of the establishment of CERCLA financial responsibility requirements.

(ii) Respondent activities:

Owners and operators who choose to demonstrate financial assurance for all or half of their financial responsibility requirements through corporate guarantee, the guarantor must submit to EPA a signed letter from the owner or operator CFO, a procedure report filed by a CPA, and a copy of the owner or operator (or parent company providing a corporate guarantee) financial statements prepared in accordance with an accounting standard that the SEC has deemed acceptable.

**Maintenance of Instruments**

Owners and operators must maintain financial assurance through any or a combination of the instruments listed in the above section. Maintenance tasks and information required by the EPA vary by instrument. Instrument-specific tasks and information are described below.

For all of the above instruments, owners and operators must post relevant information regarding their financial assurance, absent information that owners and operators identify as CBI, to a page of their company website.

### ***Insurance Policy***

#### (i) Data items:

Owners and operators who obtain financial assurance through an insurance policy or policies for all or part of their financial responsibility requirements must provide EPA the following information to demonstrate maintenance of that policy or those policies:

- Every three years, starting four years after the effective date of the rule and after every successful claim against a 108(b) financial responsibility, owners and operators must recalculate each facility's CERCLA liabilities and other financial responsibility requirements using the most current facility information possible.
- The above recalculation of facility financial responsibility must include adjustments for inflation to the original financial responsibility requirement.
- Evidence that the face amount of the insurance policy has increased commensurate to any increase in the CERCLA 108(b) financial responsibility requirements the policy covers within 60 days of the increase.
- Notification of a claim being made against the current owner or operator or the insurance policy within 10 days of the claim.
- Update Schedule A of the trust agreement for the standby trust fund within 60 days after any change in the amount of CERCLA 108(b) financial responsibility.

#### (ii) Respondent activities:

To maintain their financial assurance, owners and operators must recalculate the financial responsibility requirement in three year intervals following the fourth year after the establishment of the rule to adjust for changes in mining or processing activity and inflation. If the financial responsibility requirement increases as a result of the recalculation, owners and operators must acquire additional financial assurance to meet the adjusted responsibility. Owners and operators must also update the standby trust attendant to the revised financial responsibility requirements.

### ***Letter of Credit***

#### (i) Data items:

Owners and operators who obtain financial assurance through a letter of credit for all or part of their financial responsibility requirements must provide EPA the following information to demonstrate maintenance of that policy or those policies:

- Every three years, starting four years after the effective date of the rule and after every successful claim against a 108(b) financial responsibility, owners and operators

- must recalculate each facility's CERCLA liabilities and other financial responsibility requirements using the most current facility information possible.
- The above recalculation of facility financial responsibility must include adjustments for inflation to the original financial responsibility requirement.
  - Evidence that the face amount of the letter of credit has increased commensurate to any increase in the CERCLA 108(b) financial responsibility requirements the letter covers within 60 days of the increase.
  - Notification of a claim being made against the current owner or operator or the issuer of the letter of credit within 10 days of the claim.
  - Updated and Schedule A of the trust agreement for the standby trust fund within 60 days after any change in the amount of CERCLA 108(b) financial responsibility.

(ii) Respondent activities:

To maintain their financial assurance, owners and operators must recalculate the financial responsibility requirement in three year intervals following the fourth year after the establishment of the rule to adjust for additional mining or processing activity and inflation. If the financial responsibility requirement increases as a result of the recalculation, owners and operators must acquire additional financial assurance to meet the adjusted responsibility. Owners and operators must also update the standby trust attendant to the revised financial responsibility requirements.

***Surety Bond***

(i) Data items:

Owners and operators who obtain financial assurance through a surety bond for all or part of their financial responsibility requirements must provide EPA the following information to demonstrate maintenance of that policy or those policies:

- Every three years, starting four years after the effective date of the rule and after every successful claim against a 108(b) financial responsibility, owners and operators must recalculate each facility's CERCLA liabilities and other financial responsibility requirements using the most current facility information possible.
- The above recalculation of facility financial responsibility must include adjustments for inflation to the original financial responsibility requirement.
- Evidence that the face amount of the surety bond has increased commensurate to any increase in the CERCLA 108(b) financial responsibility requirements the bond covers within 60 days of the increase.
- Notification of a claim being made against the current owner or operator or the issuer of the surety bond within 10 days of the claim.

- Updated and Schedule A of the trust agreement for the standby trust fund within 60 days after any change in the amount of CERCLA 108(b) financial responsibility.<sup>3</sup>

(ii) Respondent activities:

To maintain their financial assurance, owners and operators must recalculate the financial responsibility requirement in three year intervals following the fourth year after the establishment of the rule to adjust for additional mining or processing activity and inflation. If the financial responsibility requirement increases as a result of the recalculation, owners and operators must acquire additional financial assurance to meet the adjusted responsibility. Owners and operators must also update the standby trust attendant to the revised financial responsibility requirements.

***Trust Fund***

(i) Data items:

Owners and operators who obtain financial assurance through a trust fund for all or part of their financial responsibility requirements must provide EPA the following information to demonstrate maintenance of that policy or those policies:

- Every three years, starting four years after the effective date of the rule and after every successful claim against a 108(b) financial responsibility, owners and operators must recalculate each facility's CERCLA liabilities and other financial responsibility requirements using the most current facility information possible.
- The above recalculation of facility financial responsibility must include adjustments for inflation to the original financial responsibility requirement.
- Evidence that the face amount of the trust fund has increased commensurate to any increase in the CERCLA 108(b) financial responsibility requirements the letter covers within 60 days of the increase.
- Notification of a claim being made against trust fund within 10 days of the claim.

(ii) Respondent activities:

To maintain their financial assurance, owners and operators must recalculate the financial responsibility requirement in three year intervals following the fourth year after the establishment of the rule to adjust for additional mining or processing activity and inflation. If the financial responsibility requirement increases as a result of the recalculation, owners and operators must acquire additional financial assurance to meet the adjusted responsibility.

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<sup>3</sup> Note that in the accompanying RIA, EPA did not anticipate that any respondents would opt to obtain financial responsibility through a surety bond. Therefore, this ICR makes the same assumption. The costs associated with obtaining and maintaining a surety bond fall somewhere between costs associated with a letter of credit and costs associated with a trust.

### ***Financial Test***

#### (i) Data items:

To maintain demonstration of financial assurance for all or half of financial responsibility requirements through passage of a financial test, owners and operators (or their corporate guarantors) must submit to EPA the following updated financial documents within 60 days of the close of each succeeding fiscal year:

- A letter signed by their CFO describing the company's financials;
- A procedure report filed by an independent CPA; and
- Independently audited financial statements prepared in accordance with SEC accounting standards.

Additionally, every three years, starting four years after the effective date of the rule and after every successful claim against a 108(b) financial responsibility, owners and operators must recalculate each facility's CERCLA liabilities and other financial responsibility requirements using the most current facility information possible.

If an owner or operator (or corporate guarantor) no longer meets the requirements to pass a financial test, they must submit notice of their intent to establish alternative financial assurance to the Regional Administrator by certified mail within 30 days of failure to meet the financial test standards. They must demonstrate coverage through an alternative financial assurance method within 120 days of no longer passing the financial test.

If the Regional Administrator discovers through inquiry that the owner, operator, or corporate guarantor no longer meets the threshold to pass the financial test and the owner, operator, or corporate guarantor had not disclosed that information, the owner, operator, or corporate guarantor has 30 days to demonstrate alternative financial assurance coverage.

#### (ii) Respondent activities:

To maintain financial assurance for all or half of financial responsibility requirements through passage of a financial test, owners and operators must re-submit documents demonstrating the company's financial condition, verified by an independent accountant and meeting the SEC's accounting standards, each year within 60 days of the close of the fiscal year.

If the entity that has passed the financial test no longer meets the threshold for passage, the owner or operator must demonstrate financial assurance for the financial responsibility requirements through an alternative method.

### ***Corporate Guarantee***

#### (i) Data items:

To maintain demonstration of financial assurance for all or half of financial responsibility requirements through corporate guarantee, the corporate guarantors must submit to EPA the

following updated financial documents within 60 days of the close of each succeeding fiscal year:

- A letter signed by their CFO describing the company's financials;
- A procedure report filed by an independent CPA; and
- Independently audited financial statements prepared in accordance with SEC accounting standards.

Additionally, every three years, starting four years after the effective date of the rule and after every successful claim against a 108(b) financial responsibility, the owners and operators must recalculate each facility's financial responsibility requirements using the most current facility information possible.

If the corporate guarantor no longer meets the requirements to pass a financial test, the owner or operator must submit notice of their intent to establish alternative financial assurance to the Regional Administrator by certified mail within 30 days of failure to meet the financial test standards. They must demonstrate coverage through an alternative financial assurance method within 120 days of no longer passing the financial test.

If the Regional Administrator discovers through inquiry that the corporate guarantor no longer meets the threshold to pass the financial test and the guarantor had not disclosed that information, the owner or operator has 30 days to demonstrate alternative financial assurance coverage.

(ii) Respondent activities:

To maintain financial assurance for all or half of financial responsibility requirements through corporate guarantee, the guarantor must re-submit documents demonstrating the company's financial condition, verified by an independent accountant and meeting the SEC's accounting standards, each year within 60 days of the close of the fiscal year.

If the guarantor no longer meets the threshold for passage, the owner or operator must demonstrate financial assurance for the financial responsibility requirements through an alternative method.

**Incapacity of Owners, Operators, Guarantors, or Financial Institutions**

(i) Data items:

Owners and operators who enter Chapter 11 bankruptcy proceedings must notify the Regional Administrator. If an owner or operator has demonstrated financial responsibility through an instrument issued by a third-party institution and the issuer enters bankruptcy or otherwise loses its authority to issue, the owner or operator of the facility must demonstrate financial responsibility through another means.

(ii) Respondent activities:

- If the owner or operator itself enters Chapter 11 bankruptcy, the owner or operator must notify the Regional Administrator by certified mail within 10 days of the commencement of bankruptcy proceedings.
- If a facility has demonstrated financial responsibility through a surety bond, letter of credit, corporate guarantee, or insurance policy and the issuing institution enters bankruptcy or is otherwise loses its authority to act as trustee, the owner or operator has 60 days to provide evidence of financial responsibility.
- Owners and operators must post relevant information regarding owner, operator, guarantor, or issuing institution incapacity, absent information that owners and operators identify as CBI, to a page of their company website.

**Notification of Claims Brought Against Owners, Operators, or Guarantors**

(i) Data items:

An owner or operator must notify EPA of any claim pursuant to CERCLA naming the owner, operator, or guarantor as defendant.

Notification must include:

- Copies of any papers filed by the claimant with a court; or
- Any other information that would allow EPA to identify the court, case number, and parties.

(ii) Respondent activities:

The owner or operator must submit notification of any claim pursuant to CERCLA naming the owner, operator, or guarantor of a facility within 10 days after the commencement of proceedings to the Regional Administrator by certified mail.

Owners and operators must post relevant information regarding claims brought against the owner, operator, or guarantor, absent information that owners and operators identify as CBI, to a page of their company website.

**Facility Transfer**

(i) Data items:

Upon transfer of a facility or a portion of a facility, the new owner must obtain and demonstrate financial responsibility.

(ii) Respondent activities:

The old owner or operator of a transferred facility must maintain financial responsibility through the transfer. Once the new owner demonstrates financial responsibility to the Regional Administrator, the old owner is released from their financial responsibility requirements.

Owners and operators must post relevant information regarding facility transfer, absent information that owners and operators identify as CBI, to a page of their company website.

### **Release from Financial Responsibility Requirements**

(i) Data items:

The owner or operator must notify the Regional Administrator of the date the facility is no longer authorized to operate or the date by which the owner or operator must provide notification that the facility is ceasing operations under another regulatory program.

(ii) Respondent activities:

The owner or operator must notify the Regional Administrator 30 days prior to either the date the facility is no longer authorized to operate under another applicable regulatory program or to the date the owner or operator is required to provide notification that the facility is ceasing operations under another applicable regulatory program, whichever is earlier.

If the Regional Administrator determines that no CERCLA action will be necessary at the facility and there will be no claims for natural resource damages, the Regional Administrator will initiate the procedures for public involvement to release the owner or operator from financial responsibility (see section on Public Involvement, above).

If the Regional Administrator does not release the owner or operator from financial responsibility, the owner or operator may petition the Regional Administrator for a renewed determination upon presentation of new and relevant information that the Regional Administrator did not consider at the time decision not to release.

Owners and operators must post relevant information regarding release from financial responsibility, absent information that owners and operators identify as CBI, to a page of their company website.

### **Recordkeeping Requirements**

(i) Data items:

The owner or operator must maintain a record of all of the information related to its financial responsibility requirements and retain those records for three years after release from financial responsibility requirements. The record must include:

- All information submitted to EPA;
- All documents that supported financial responsibility estimates;
- All comments received from the public; and
- All notifications received from EPA.

(ii) Respondent activities:

The owner or operator must keep records of all of the above documents during operation and for three years following release from financial responsibility.

As noted above, the owner or operator must also post the information that they submit to EPA to a page of their company website, absent any information they identify as CBI.

**5. THE INFORMATION COLLECTED—AGENCY ACTIVITIES, COLLECTION METHODOLOGY, AND INFORMATION MANAGEMENT**

**5(a) Agency Activities**

**Notification**

Upon receiving a facility's Notification Form, EPA will provide the owner or operator acknowledgment of receipt of the notification. If the facility has not received an EPA ID number, the EPA will provide one. EPA will use the information to identify the universe of facilities subject to the rule.

**Public Involvement**

Within 30 days of receiving the company's public information URL, EPA will post on its website notice that the facility is subject to CERCLA 108(b) requirements, along with the facility name, EPA ID, and the company-provided URL.

**Applicable Financial Responsibility Amounts**

The Agency will provide owners and operators of facilities subject to CERCLA 108(b) the formula they will use to estimate their financial responsibility requirement. EPA will retain and use the document that respondents submit showing the calculation of their financial responsibility amount to review and verify the adequacy of the financial responsibility levels the respondent has obtained. If EPA determines the financial responsibility amount is insufficient, the EPA may choose to initiate enforcement proceedings.

**Establishing Financial Responsibility**

Upon receiving an owner or operator's estimate of financial responsibility requirements at a facility, EPA may use the information at any time to verify the financial responsibility or the terms of the financial responsibility instrument the respondent submits to EPA. If EPA determines the level of financial responsibility is insufficient, EPA may choose to initiate enforcement proceedings.

The agency will also confirm that owners and operators have obtained the necessary level of financial assurance required at the end of the each of the first four years following the effective date of the rule:

- The health assessment component within two years of the proposed rule;
- 50 percent of the financial responsibility and natural resource damages costs within three years of the proposed rule; and
- The full financial responsibility and natural resource damages costs within 4 years of the proposed rule.

### **Maintenance of Instruments**

If the owner or operator is using an insurance policy, letter of credit, surety bond, or trust fund to cover their financial responsibility requirements, they will update their financial responsibility estimate every three years following the fourth year after the effective date of the rule. When the respondent submits financial responsibility information to EPA, the Agency may choose to review the updated financial responsibility to determine if it is sufficient to cover the potential liabilities at the facility. EPA can also use the information to confirm that whichever financial assurance instrument or combination of financial assurance instrument the owner or operator is using to cover financial responsibility at the site increases commensurate to the increase in financial responsibility. The same is true of the standby trusts owners and operators must form to complement insurance policies, letters of credit, and surety bonds.

If the owner or operator passes a financial test, each year EPA may choose to review the updated financial responsibility to determine if it is sufficient to cover the potential liabilities at the facility financial data the owner or operator will submit confirming that they continue to pass the financial test.

### **Incapacity of Owners, Operators, Guarantors, or Financial Institutions**

There are no Agency activities directly associated with incapable owners, operators, guarantors, or financial institutions. If an owner or operator enters bankruptcy proceedings, the owner or operator must notify the Regional Administrator. If a corporate guarantor or a financial institution that issued a financial assurance instrument enters bankruptcy, the owner or operator must provide evidence of alternative financial assurance coverage, repeating the process described above to establish financial responsibility.

### **Notification of Claims Brought Against Owners, Operators, or Guarantors**

The owner or operator must notify the Regional Administrator of any claims that name them or a corporate guarantor as defendant within 10 days of the commencement of proceedings. That notification should include information by which the Regional Administrator can identify the court, case name and number, and the parties. There are no agency activities directly associated with notification of claims brought against owners or operators.

### **Facility Transfer**

When the new owner or operator of a facility has acquired sufficient financial assurance, the Agency will provide notice to the previous owner or operator releasing their requirement to

provide evidence of financial responsibility. The new owner or operator will also submit a Notification Form, establish a webpage to house relevant information about the facility on their company website, and establish evidence of financial responsibility. The agency will perform its tasks attendant to those activities.

### **Release from Financial Responsibility Requirements**

Upon receiving a petition requesting release from financial responsibility requirements, the Regional Administrator will evaluate facility information, including information the owner or operator submitted regarding the degree and duration of risk at the site, and make a determination regarding the petition.

If the Regional Administrator determines that there is minimal risk at the facility, the Regional Administrator will initiate procedures for public involvement (see above).

If the Regional Administrator determines that the owner or operator should not be released from CERCLA financial responsibility at the facility, the Regional Administrator will provide a detailed written statement to the owner or operator explaining the decision.

### **5(b) Collection Methodology and Management**

In collecting and analyzing the information required by CERCLA 108(b), the Agency will rely upon hard copy forms and electronic submissions. Facilities must submit information to EPA in hard copy, paper format until the electronic financial responsibility compliance date. After that date, facilities must submit information in electronic format. EPA will notify the public of when the electronic financial responsibility submission requirement comes into effect through a post in the *Federal Register* at least 60 days prior to the electronic compliance date.

Regional Administrators may grant a waiver for renewable periods of one year for electronic submissions. Facilities that receive a waiver may continue to submit information in paper format. Facilities may receive a waiver due to an inability to access sufficient broadband service or another system that would allow electronic reporting, or religious practices of the owner or operator that prohibit the use of necessary technologies.

### **5(c) Small Entity Flexibility**

Some respondents will be small organizations. In certain cases, they will be able to complete application, labeling, manifest, recordkeeping, and reporting requirements in less time than large organizations because they carry out fewer of these activities. However, the size of the organization does not always reflect the amount of time needed to estimate financial responsibility requirements, select, obtain, and maintain financial assurance instruments, or provide notification in advance of facility transfer or closure. EPA believes that the information to be collected is the minimum amount necessary to fulfill the purpose of the final rule.

#### **5(d) Collection Schedule**

The submission of most information under this collection will be determined by the effective date of the rule. Owners and operators must complete a notification form 30 days after the effective date of the rule and provide the information necessary for public involvement 60 days after the effective date of the rule. The rule also requires owners and operators to have obtained financial assurance for certain portions of their full financial responsibility requirements by each of the first three years following the rule's effective date, with full assurance required by the fourth year after implementation.

Owners and operators will also initiate the submission of some information under this collection: when they or their issuing institution enters bankruptcy proceedings, when they or their issuing institution has a claim brought against them, when a facility will be transferred from one owner to another, and to initiate the release of financial responsibility requirements.

### **6. ESTIMATING THE HOUR AND COST BURDEN OF THE COLLECTION**

In this section, EPA estimates the total average annual respondent and Agency hour and cost burden for all information collection requirements covered in this ICR for the first three years after the implementation of the rule. The ICR presents the cost burden for both the respondent universe and the Agency in 2015 dollars, and does not adjust for inflation to reflect the years in which the respondent universe and the Agency will incur the costs. Exhibits 5 and 6 provide estimates of the annual respondent burden associated with these information collection and recordkeeping requirements. Exhibit 5 presents the total aggregate annual cost burden to all respondents under the information collection requirements covered in this ICR. Exhibit 6 estimates Agency hour and cost burden. Exhibit 7 presents the bottomline labor and cost burden to the Agency and the respondent universe as annual averages and in total during the first three years of the rule.

These exhibits estimate burden over the next three years. As discussed earlier, EPA currently plans to require owners and operators to submit information electronically. EPA does not know when it will have the capability to receive electronic submissions. As such, owners and operators will submit information in paper format until EPA has achieved electronic capability, at which point owners and operators must submit information electronically. When EPA has established a system by which owners and operators can make electronic submissions, it will provide notice in the *Federal Register* 60 days in advance of the date on which it will require electronic submissions. Absent an electronic requirement date, this ICR assumes that respondents will submit information in paper format for all three years the ICR describes.

The regulatory impact analysis for this rule presents estimates costs under two options: with and without a financial test that would allow qualifying companies not to rely on a third-party instrument to demonstrate financial responsibility. The option with a financial test increases the estimated costs that this ICR considers, and therefore the ICR assumes implementation of the rule under the financial test option.

### 6(a) Identifying the Respondent Universe

The potentially regulated universe includes 221 currently operating mining and processing facilities, including co-located mines and combined mining/processing operations. EPA selected those 221 facilities from a list of 354 facilities included mining and processing facilities associated with 33 commodities of interest presented in Exhibit 2 and considered to have current operations, including:

- Active facilities, which operate on a full-time basis throughout the entire year, barring temporary closure due to unforeseen circumstances such as strikes, accidents, or maintenance shutdowns;
- Intermittent facilities, which only operate during a portion of the year because of seasonal or periodic factors such as weather or economic demand; and
- Temporarily idled facilities, which have ceased all activity, but still have recoverable reserves and anticipate reopening operations.

**Exhibit 2.  
Hardrock Commodities Considered for the Potentially Regulated Universe**

• Antimony	• Lead
• Barium/barite	• Lithium
• Bauxite/Alumina	• Magnesium
• Beryllium	• Molybdenum
• Bismuth	• Nickel
• Boron	• Phosphate/phosphorous
• Cadmium	• Platinum
• Chromium and compounds	• Potash
• Cobalt	• Rare Earths
• Copper	• Silver
• Fluorspar/fluorite/fluoride compounds	• Titanium
• Germanium	• Tungsten
• Gold	• Uranium
• Hafnium	• Vanadium
• Indium	• Vermiculite
• Iron	• Zinc
	• Zirconium

A number of mine facilities are outside the scope of the proposed rule. Specifically, EPA identified classes of facilities that may present a lower level of risk of injury than other facilities within the 2009 Priority Notice universe, and were therefore not included. Those classes are:

*Mineral exploration projects* – defined as activities conducted to ascertain the existence, location, extent, and/or quality of a deposit of ore or other mineral that is not at an established mine; so long as exploration activities do not exceed an area of five acres of disturbance; owners and operators are required under federal or state law to address environmental matters; owners and operators are compliant with those requirements; and so long as activities do not include development or production activities. Compared to fully-developed mining operations, the impacts of mineral exploration and the volume of waste generated are relatively low.

*Placer mines* – defined as the extraction or prospecting of materials in glacial or alluvial deposits using water to concentrate, and recover, heavy minerals from placer deposits, including recreational placer operations and suction dredging, so long as no hazardous substances are used in the concentration or processing of materials. Most modern placer mining does not utilize added chemicals, minimizing the potential for release of hazardous substances.

*Mining operations of less than five acres that do not use hazardous substances and have no underground tunnels or adits* – while individual small mines may cause releases or contamination as a result of certain hazardous substances or mining practices used, such contamination tends to be more limited due to their lower volumes of mining. Further, small mine projects causing a surface disturbance of less than five acres are currently eligible for exemptions from certain financial responsibility requirements.

*Processors with waste piles and surface impoundments of less than five disturbed acres* – Mineral processing facilities typically generate wastes containing high concentrations of hazardous substances and storage of these liquids and sludges in large impoundments and piles are more likely to result in a breach or leak due to high pressure and structural instability. EPA found that those facilities with impoundments or piles greater than five acres more likely to have a release to groundwater or surface water than facilities with smaller or no waste management units. EPA believes that five acres is a reasonable cutoff for distinguishing between higher and lower risk mineral processing facilities. Therefore, the proposed rule exempts facilities with impoundments or piles less than five acres from this rulemaking.

EPA excluded 133 facilities in these classes, leaving 221 facilities in the potentially regulated universe that this ICR considers.

Exhibit 3, below, summarizes the facilities in the “included” respondent universe by activity and by operating status (active, intermittent, temporarily idled).

<b>Exhibit 3.</b>				
<b>Included Universe, by Facility Type and Operating Status</b>				
<b>Type of Facility</b>	<b>Operating Status</b>			<b>Subtotal</b>
	<b>Active</b>	<b>Intermittent Operation</b>	<b>Temporarily Idled</b>	
Brine Extraction	6			<b>6</b>
In-situ Recovery	8			<b>8</b>
Surface Mine	88	4		<b>92</b>
Underground Mine	56		4	<b>60</b>
Processing	68	4	1	<b>73</b>
Primary Smelter	25			<b>25</b>
<b>Note:</b> Many of the 221 facilities conduct multiple activities. Thus, facilities may be counted in multiple rows of this exhibit.				

Exhibit 4 summarizes the respondent universe by primary commodity and operating status.

<b>Exhibit 4.</b>				
<b>Included Universe, by Commodity and Operating Status</b>				
<b>Primary Commodity</b>	<b>Operating Status</b>			<b>Sub-Total</b>
	<b>Active</b>	<b>Intermittent Operation</b>	<b>Temporarily Idled</b>	
Alumina	4			<b>4</b>
Aluminum	8			<b>8</b>
Antimony	2			<b>2</b>
Bauxite	2	1		<b>3</b>
Beryllium	3			<b>3</b>
Boron	4			<b>4</b>
Brucite	2			<b>2</b>
Copper	29			<b>29</b>
Germanium	3			<b>3</b>
Gold	55	3	3	<b>61</b>
Indium	2			<b>2</b>
Iron Ore	26	2	1	<b>29</b>
Lead-Zinc Ore	8			<b>8</b>
Lithium	2			<b>2</b>
Magnesium	1			<b>1</b>
Molybdenum	5			<b>5</b>
Nickel	1			<b>1</b>
Phosphate Rock	13			<b>13</b>
Platinum Group Ore	2			<b>2</b>
Potash	6			<b>6</b>
Rare Earths	1	1		<b>2</b>
Silver Ore	5			<b>5</b>
Titanium	2			<b>2</b>
Tungsten	0	1		<b>1</b>
Uranium	10		1	<b>11</b>
Zinc	8			<b>8</b>
Zirconium and hafnium	4			<b>4</b>
<b>TOTAL</b>	<b>208</b>	<b>8</b>	<b>5</b>	<b>221</b>

### **6(b) Estimating Respondent Cost Categories**

The following is a discussion of the categories of labor, capital, and operation and maintenance (O&M) costs that the respondent universe experiences under the rule.

#### **Labor Costs**

EPA estimates an average hourly respondent labor cost of \$107.45 for legal staff, \$101.97 for managerial staff, \$65.84 for engineering staff, \$56.19 for accounting staff, \$53.61 for information and technology (IT) staff, and \$32.95 for clerical staff. EPA developed these hourly estimates by consulting the Bureau of Labor Statistics’ “Occupational Employment Statistics: May 2015 Industry Specific Occupational Employment and Wage Estimates – NAICS

212200 – Metal Ore Mining.”<sup>4</sup> The Bureau of Labor Statistics’ estimates represent the unloaded (base) hourly rate for major occupational groups in the metal ore mining sector. In accordance with the OMB’s “Circular No. A-76, Revised”, EPA applied a multiplier of 1.526 to reflect fringe benefits and overhead.<sup>5</sup> EPA then adjusted the fully loaded wages to December 2015 using the Bureau of Labor Statistics’ Employment Cost Index on an occupational and industry basis.<sup>6</sup>

In total, EPA estimates the respondents will incur \$1,273,280 in labor costs during the first three years of the rule, for an average annual cost of \$424,427.

### **Capital Costs**

Capital costs include any produced physical good necessary to fulfill the information collection and recordkeeping requirements of the rule, such as machinery, computers, and other equipment. For this ICR, EPA does not anticipate respondents will incur any capital costs to fulfill the requirements of the rule. Respondents will need to store the records they generate as a result of the rule in a filing cabinet. However, EPA calculates the costs related to that recordkeeping activity as the rolling cost of the filing cabinet capacity each record will require, assuming that respondents will use filing cabinets for general recordkeeping purposes. EPA therefore calculates this capacity as an operations and maintenance (O&M) cost, explained below, and not as a capital cost.

### **Operations and Maintenance (O&M) Costs**

Operations and maintenance costs comprise any costs that the respondents will incur continuously over the life of the ICR. For this ICR, O&M costs include the cost of submitting information to EPA through certified mail, and the cost of storing records in a filing cabinet. The cost of mailing information through certified mail includes the following components: \$0.47 for postage,<sup>7</sup> \$3.30 for the certified mail fee,<sup>8</sup> and \$0.03 for an envelope.<sup>9</sup>

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<sup>4</sup> “Occupational Employment Statistics: May 2015 Industry-Specific Occupational Employment and Wage Estimates – NAICS 212200 – Metal Ore Mining,” Bureau of Labor Statistics, last modified 30 March 2016. Accessed at: [http://www.bls.gov/oes/current/naics4\\_212200.htm](http://www.bls.gov/oes/current/naics4_212200.htm).

<sup>5</sup> “Circular No. A-76, Revised,” Office of Management and Budget, 29 March 2003 and corrected 6 September 2013, accessed at: [http://www.whitehouse.gov/omb/circulars\\_a076\\_a76\\_incl\\_tech\\_correction](http://www.whitehouse.gov/omb/circulars_a076_a76_incl_tech_correction).

<sup>6</sup> “Employment Cost Index Historical Listing Current-Dollar March 2001-December 2015, Table 1: Employment Cost Index Historical Listing Current-Dollar March 2001 – December 2015, Table 1: Employment Cost Index for Total Compensation by Occupation Group and Industry (Seasonally Adjusted),” Bureau of Labor Statistics, accessed at: <http://www.bls.gov/web/eci/echistrynaics.pdf>.

<sup>7</sup> “Mailing & Shipping Prices,” United States Postal Service, accessed at: <https://www.usps.com/business/prices.htm>, last accessed on August 1, 2016.

<sup>8</sup> “Notice 123 – Effective April 10, 2016: Price List,” United States Postal Service, accessed at: <http://pe.usps.com/text/dmm300/Notice123.htm>, last accessed August 1, 2016.

<sup>9</sup> Standard-size envelope cost based on current market price, as of August 17, 2016 (i.e., box of 500 standard business gummed envelopes at \$14.99).

EPA anticipates that to fulfill the recordkeeping requirements of the rule, respondents will store hard copies of the documents produced to fulfill the information collection activities of the rule in a filing cabinet. The rule also requires respondents to maintain records of documents that support FR estimates and any public comments a facility receives. EPA assumes that respondents will store these records in filing cabinets used for the purpose of general record maintenance, and estimates the cost to respondents as an O&M cost equal to the filing cabinet capacity each record will occupy. A standard-size, five-drawer, lateral file cabinet can store 25,000 pages of material and costs \$830. Therefore, to calculate the cost for the collection of each record, EPA divided \$829.99 by 25,000, which yielded a cost per page of \$0.0332. EPA applied that cost per page to each page it anticipated that industry would generate as a result of recordkeeping requirements in the first three years of the rule, and assigned the cost as the total recordkeeping O&M cost.

In total, EPA estimates that respondents will incur \$8,980 in O&M costs associated with information collection activities during the first three years of the rule's implementation, for an average annual cost of \$2,993. EPA further estimates that respondents will incur \$11,364 in O&M costs associated with recordkeeping activities during the first three years of the rule's implementation, for an average annual cost of \$3,788. In total, EPA estimates that respondents will incur \$20,344 of O&M costs during the first three years of the rule's implementation, for an average annual cost of \$6,781.

### **6(c) Estimating Agency Cost Categories**

The following is a discussion of the labor, capital, and operation and O&M costs that the agency incurs under the rule related to the information collection requirements.

#### **Labor Costs**

EPA estimates an average hourly labor cost of \$85.06 for legal staff (GS-15, Step 5), \$74.32 for managerial staff (GS-15, Step 1), \$61.19 for technical staff (GS-13, Step 5), and \$26.11 for clerical staff (GS-06, Step 5). To derive these hourly rates, EPA referred to the Office of Personnel Management's "Salary Table 2015-GS: Incorporating the 1% General Schedule Increase, Effective January 2015."<sup>10</sup> This publication summarizes the unloaded (base) hourly rate for various labor categories in the federal government. In accordance with OMB's "Circular No. A-76, Revised", EPA applied a multiplier of 1.526 to reflect fringe benefits and overhead.<sup>11</sup> The hourly rates would remain constant for the entirety of 2015, so EPA did not adjust the rates with the Employment Cost Index, as it had with the respondent labor costs.

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<sup>10</sup> "Salary Table 2015-GS: Incorporating the 1% General Schedule Increase, Effective January 2015," Office of Personnel Management, accessed at: [https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2015/GS\\_h.pdf](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2015/GS_h.pdf).

<sup>11</sup> "Circular No. A-76, Revised," Office of Management and Budget, 29 March 2003 and corrected 6 September 2013, accessed at: [http://www.whitehouse.gov/omb/circulars\\_a076\\_a76\\_incl\\_tech\\_correction](http://www.whitehouse.gov/omb/circulars_a076_a76_incl_tech_correction).

In total, EPA estimates that the Agency will incur \$193,486 in labor costs during the first three years of the rule, for an average annual cost of \$64,495.

### **Capital Costs**

EPA does not anticipate that the Agency will incur any significant capital costs during the first three years of the rule.

### **Operation and Maintenance (O&M) Costs**

For this ICR, EPA O&M costs include the cost of mailing costs associated with providing facilities with EPA ID numbers. EPA estimates that the Agency will incur a cost of \$3.80 per facility to distribute ID numbers: \$0.47 for postage,<sup>12</sup> \$3.30 for the certified mail fee,<sup>13</sup> and \$0.03 for an envelope.<sup>14</sup>

EPA estimates the Agency will incur \$2,933 of O&M costs during the first three years of the rule, for an average annual cost of \$978.

### **6(d) Estimating Respondent Hours and Costs**

The following section breaks down respondent hours and costs on an activity by activity basis, describing the burden calculations and assumptions made for each activity. Exhibit 5 summarizes the respondent labor and cost burden for each information collection activity.<sup>15</sup> Exhibit 6 summarizes the labor and cost burden industry will incur as a result of recordkeeping activities. Exhibit 7 provides the labor burden for calculating, establishing, and maintaining financial responsibility, broken down by subtask.

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<sup>12</sup> “Mailing & Shipping Prices,” United States Postal Service, accessed at: <https://www.usps.com/business/prices.htm>, last accessed on August 1, 2016.

<sup>13</sup> “Notice 123 – Effective April 10, 2016: Price List,” United States Postal Service, accessed at: <http://pe.usps.com/text/dmm300/Notice123.htm>, last accessed August 1, 2016.

<sup>14</sup> Standard-size envelope cost based on current market price, as of August 17, 2016 (i.e., box of 500 standard business gummed envelopes at \$14.99).

<sup>15</sup> Note that in Exhibit 5, the sum of all of the financial instruments (financial test, corporate guarantee, insurance, letter of credit, and trusts does not total 221 (the entire respondent universe). This is because: 1) respondents that pass the financial test must also submit a corporate guarantee; 2) it is possible for respondents to partially pass the financial test, which qualifies them to self-insure for 50 percent of their financial responsibility – for the other 50 percent they must acquire another financial assurance instrument.

**Exhibit 5.  
Respondent Labor and Cost Burden for Each Information Collection Activity**

Information Collection Activity	Frequency in First 3 Years	Labor and Cost Burden Per Activity Per Respondent								Total Labor and Costs Per Activity				
		Legal \$107.45/hr	Managerial \$101.97/hr	Engineer \$65.84/hr	Accounting \$56.19/hr	IT \$53.61/hr	Clerical \$32.95/hr	Capital Costs	O&M Costs	# of Resp.	Total Hours per Resp.	Labor Costs	Capital and O&M Costs	Total Cost
<b>Reading the Regulations</b>	1	2.00	1.00	0.00	2.00	0.00	1.00	\$0	\$0	221	6.00	\$102,143	\$0	\$102,143
<b>Notification</b>	1	0.00	0.25	0.75	0.00	0.00	0.25	\$0	\$4	221	1.25	\$18,366	\$840	\$19,206
<b>Public Involvement</b>	1	0.00	0.25	0.25	0.00	2.00	0.50	\$0	\$0	221	3.00	\$36,606	\$0	\$36,606
<b>Calculating Applicable FR</b>	2	0.00	1.00	14.00	0.00	0.00	3.00	\$0	\$4	221	18.00	\$248,076	\$840	\$248,916
<b>Establishing FR</b>														
<i>Financial Test</i>	2	1.00	0.25	0.00	10.00	0.00	1.75	\$0	\$8	65	13.00	\$48,671	\$492	\$49,163
<i>Corporate Guarantee</i>	2	0.50	0.50	0.00	0.50	0.00	1.50	\$0	\$8	65	3.00	\$11,787	\$492	\$12,278
<i>Insurance</i>	2	4.00	1.50	0.00	2.00	0.00	1.00	\$0	\$4	27	8.50	\$19,622	\$102	\$19,725
<i>Letter of Credit</i>	2	5.25	1.75	0.00	2.00	0.00	1.50	\$0	\$8	49	10.50	\$43,872	\$369	\$44,240
<i>Surety Bond</i>	2	4.00	1.50	0.00	2.00	0.00	1.00	\$0	\$8	0	8.50	\$0	\$0	\$0
<i>Trust</i>	2	4.00	1.50	0.00	2.00	0.00	4.50	\$0	\$8	146	12.00	\$122,744	\$1,106	\$123,850
<b>Maintenance of Instruments</b>														
<i>Financial Test</i>	1	0.00	0.00	0.00	8.00	0.00	4.00	\$0	\$8	65	12.00	\$37,599	\$492	\$38,091
<i>Corporate Guarantee</i>	1	0.00	0.00	0.00	0.00	0.00	4.00	\$0	\$8	65	4.00	\$8,525	\$246	\$8,771
<b>Operator Incapacity</b>	1	0.00	0.25	0.00	0.00	0.25	1.50	\$0	\$4	26	2.00	\$2,284	\$98	\$2,382
<b>CERCLA Claim</b>	1	0.00	0.25	0.00	0.00	0.00	2.25	\$0	\$8	11	2.50	\$1,101	\$84	\$1,185
<b>Facility Transfer</b>	1	8.59	5.53	15.00	9.02	2.30	11.68	\$0	\$19	22	52.12	\$77,112	\$420	\$77,532
<b>Release from FR</b>	0	0.00	0.00	0.00	0.00	0.00	0.00	\$0	\$0	0	0.00	\$0	\$0	\$0

**Exhibit 6.  
Respondent Recordkeeping Labor and Cost Burden**

<b>Recordkeeping Activity</b>	<b>Pages to be Stored</b>	<b>Labor Costs</b>	<b>Capital Costs</b>	<b>O&amp;M Costs</b>	<b>Total Costs per Respondent</b>
<b>Reading the Regulations</b>	400	\$0	\$0	\$13	\$13
<b>Notification</b>	1	\$0	\$0	\$0	\$0
<b>Public Involvement</b>	0	\$0	\$0	\$0	\$0
<b>Calculating Applicable FR</b>	250	\$0	\$0	\$8	\$8
<b>Establishing FR</b>					
<i>Financial Test</i>	103	\$0	\$0	\$3	\$3
<i>Corporate Guarantee</i>	7	\$0	\$0	\$0	\$0
<i>Insurance</i>	2	\$0	\$0	\$0	\$0
<i>Letter of Credit</i>	7	\$0	\$0	\$0	\$0
<i>Surety Bond</i>	7	\$0	\$0	\$0	\$0
<i>Trust</i>	8	\$0	\$0	\$0	\$0
<b>Maintenance of Instruments</b>					
<i>Financial Test</i>	101	\$0	\$0	\$3	\$3
<i>Corporate Guarantee</i>	2	\$0	\$0	\$0	\$0
<b>Operator Incapacity</b>	1	\$0	\$0	\$0	\$0
<b>CERCLA Claim</b>	201	\$0	\$0	\$7	\$7
<b>Facility Transfer</b>	291	\$0	\$0	\$10	\$10
<b>Release from FR</b>	N/A	N/A	N/A	N/A	N/A
<b>Public Comments</b>	500	\$0	\$0	\$17	\$17

<b>Exhibit 7.</b>							
<b>Labor Burden for Calculating, Establishing, and Maintaining FR Subtasks</b>							
<b>Information Collection Activity</b>	<b>Labor Burden Per Subtask Per Respondent</b>						<b>Total Labor Burden Per Respondent</b>
	<b>Legal \$107.45/hr</b>	<b>Managerial \$101.97/hr</b>	<b>Engineer \$65.84/hr</b>	<b>Accounting \$56.19/hr</b>	<b>IT \$53.61/hr</b>	<b>Clerical \$32.95/hr</b>	
<b>Calculating Applicable FR</b>							
<i>Collect Data</i>	0.00	0.50	13.00	0.00	0.00	2.00	15.50
<i>Prepare and Submit Written Cost Estimate</i>	0.00	0.50	1.00	0.00	0.00	1.00	2.50
<b>Establishing FR</b>							
<b>Financial Test</b>							
<i>Write and Submit Letter Signed by CFO</i>	1.00	0.25	0.00	2.00	0.00	0.75	4.00
<i>Accountant's Special Report</i>	0.00	0.00	0.00	8.00	0.00	0.00	8.00
<i>Submit Accountant's Report and Special Report</i>	0.00	0.00	0.00	0.00	0.00	1.00	1.00
<b>Corporate Guarantee</b>							
<i>Obtain and Submit Corporate Guarantee from Parent Corporation</i>	0.50	0.50	0.00	0.50	0.00	0.50	2.00
<i>Submit Letter from Guarantor's CFO</i>	0.00	0.00	0.00	0.00	0.00	1.00	1.00
<b>Insurance</b>							
<i>Establish Insurance Policy</i>	4.00	1.50	0.00	0.00	2.00	0.50	8.00
<i>Submit Insurance Policy Certificate to EPA</i>	0.00	0.00	0.00	0.00	0.00	0.50	0.50
<b>Letter of Credit</b>							
<i>Obtain Letter of Credit</i>	4.00	1.50	0.00	2.00	0.00	0.50	8.00
<i>Write Letter to Accompany Letter of Credit</i>	1.25	0.25	0.00	0.00	0.00	0.50	2.00
<i>Submit Original Trust Agreement</i>	0.00	0.00	0.00	0.00	0.00	0.50	0.50
<b>Surety Bond</b>							
<i>Establish Surety Bond and Trust Agreement</i>	4.00	1.50	0.00	2.00	0.00	0.50	8.00
<i>Submit Original Trust Agreement</i>	0.00	0.00	0.00	0.00	0.00	0.50	0.50
<b>Trust</b>							
<i>Establish Trust Fund</i>	4.00	1.50	0.00	0.00	2.00	3.00	10.50
<i>Submit Original Trust Agreement</i>	0.00	0.00	0.00	0.00	0.00	0.50	0.50
<i>Submit Receipt for First Payment Under Trust</i>	0.00	0.00	0.00	0.00	0.00	1.00	1.00
<b>Maintenance of Instruments</b>							
<b>Financial Test</b>							
<i>Accountant's Special Report</i>	0.00	0.00	0.00	8.00	0.00	0.00	8.00
<i>Submit Updated Information</i>	0.00	0.00	0.00	0.00	0.00	4.00	4.00
<b>Corporate Guarantee</b>							
<i>Submit Updated Information</i>	0.00	0.00	0.00	0.00	0.00	4.00	4.00

## **Reading the Regulations**

EPA estimates that reading the regulations will require six hours of labor. All of the 221 facilities in the respondent universe will incur this one-time cost for a total of 1,326 hours. EPA anticipates the total costs related to reading the regulations to be \$462 per facility in the first year

after the promulgation of the rule, for a total of \$102,143 for the entire respondent universe in the first year after implementation.

Facilities may experience this cost more than once if a facility transfer occurs during the first three years of the rule. EPA includes the labor and cost burden associated with the submission of the notification form as a result of facility transfer as part of the facility transfer burden, described below.

### **Notification**

EPA estimates that submitting the notification form will require 1.25 hours of labor. All of the 221 facilities in the respondent universe will incur this one-time cost for a total of 276 hours. EPA anticipates the total costs related to the notification activity to be \$87 per facility in the first year after the promulgation of the rule, for a total of \$19,206 for the entire respondent universe in the first year after implementation.

Facilities may experience this cost more than once if a facility transfer occurs during the first three years of the rule. EPA includes the labor and cost burden associated with the submission of the notification form as a result of facility transfer as part of the facility transfer burden, described below.

### **Public Involvement**

EPA estimates that fulfilling the public involvement collection activity will require 3 hours of labor. All of the 221 facilities in the respondent universe will incur this one-time cost for a total of 663 hours. EPA anticipates the total costs related to the public involvement activity to be \$166 per facility in the first year after the promulgation of the rule, for a total of \$36,606 for the entire respondent universe in the first year after implementation.

Facilities may experience this cost more than once if a facility transfer occurs during the first three years of the rule. EPA includes the labor and cost burden associated with the submission of the public involvement as a result of facility transfer as part of the facility transfer burden, described below.

### **Calculating Applicable Financial Responsibility Amounts**

EPA estimates that calculating the applicable financial responsibility amounts will require 18 hours of labor per facility. All of the 221 facilities in the respondent universe will incur this cost twice during the first three years of the rule. During those three years, the rule requires facilities to increase their financial responsibility such that each facility's financial responsibility covers the health assessment component two years after the promulgation of the rule and 50 percent of the response component and natural resource amount three years after implementation. Therefore, this ICR assumes facilities will calculate applicable financial responsibility amount at each of these deadlines. The total labor burden for the respondent universe at each deadline will be 3,978 hours. The cost related to calculating applicable financial

responsibility at each deadline will be \$1,126 for each facility and \$248,916 for the entire respondent universe at each deadline.

Facilities may also experience this cost if a facility transfer occurs during the first three years of the rule. EPA includes the labor and cost burden associated with the calculation of applicable financial responsibility as a result of facility transfer as part of the facility transfer burden, described below.

### **Establishing Financial Responsibility**

Respondents may establish financial responsibility by obtaining a letter of credit, insurance policy, surety bond, trust fund, or by passing a financial test and submitting a corporate guarantee to relieve them of the obligation to demonstrate financial responsibility. Respondents may also use a combination of those instruments. EPA conducted analysis to estimate which instrument a modeled universe of respondents may use, under the assumption that respondents would select the lowest cost option based on their financial responsibility requirements. The analysis determined that 29 percent of facilities would either partially or fully pass a financial test, 20 percent of facilities would opt to use a letter of credit, 12 percent of facilities would use an insurance policy, and 65 percent of facilities would use a trust fund as their primary means of demonstrating financial responsibility. Note that those percentages add up to greater than 100 percent due to hybrid instruments. Note, too, that EPA did not have publicly available financial data for the entities that owned and operated facilities in the respondent universe – they are the subsidiaries of publicly traded parent companies. Instead, EPA used publicly available financial data for their parent companies. As a result, EPA assumed that each facility where the parent passed the financial test incurred the costs related to the financial test and the corporate guarantee, since the parent passed and therefore would provide the guarantee for the facility owner or operator.

EPA calculated the weighted average labor and cost burden for the respondent universe assuming it would have the same instrument distribution as the modeled universe. Under this assumption, EPA estimates that obtaining financial responsibility will require 16 hours of labor per facility. All of the 221 facilities in the respondent universe will incur this cost on an annual basis for the first three years of the rule. During those three years, the rule requires facilities to increase their financial responsibility on an annual basis such that each facility's financial responsibility covers the health assessment component two years after the promulgation of the rule and fifty percent of the response component and natural resource amount three years after implementation. The labor burden at each facility will vary depending on which financial responsibility instrument(s) they qualify for or select. The total labor burden for the respondent universe at each of the financial responsibility deadlines will be 3,520 hours. The total cost related to calculating applicable financial responsibility will vary for each facility at each deadline, but the average will be \$1,128. The total cost for the entire respondent universe at each deadline will be \$249,256.

Facilities may also experience this cost if a facility transfer occurs during the first three years of the rule. EPA includes the labor and cost burden associated with obtaining financial responsibility as a result of facility transfer as part of the facility transfer burden, described below.

### **Maintenance of Instruments**

Facilities will be required to increase their financial responsibility in two of the first three years, as described above. Fulfilling that requirement for letters of credit, insurance policies, surety bonds, and trust funds will render the maintenance of those instruments activity redundant. Therefore, EPA does not anticipate facilities to incur any labor or cost burden related to the maintenance of those instruments during the first three years of the rule.

However, respondents that pass a financial test and submit a corporate guarantee must update their information each year. Therefore, those respondents will incur the costs related to maintaining those instruments once in the first three years of the rule, the year facilities will not acquire additional financial responsibility to meet the thresholds the rule imposes (see above). Annual FR maintenance for a financial test will require 12 hours per facility. Annual FR maintenance for a corporate guarantee will require 4 hours per facility. EPA estimates that 65 facilities will pass the financial test and submit a corporate guarantee. The total labor burden for all 65 of the facilities that pass a financial test and receive a corporate guarantee will be 1,035 hours. The cost related to maintaining financial responsibility will be \$724 per facility that experiences the cost and \$46,861 for all 65 facilities.

### **Incapacity of Owners, Operators, Guarantors, or Financial Institutions**

EPA estimates that the activities the rule requires respondents to undertake upon facility owner, operator, guarantor, or financial responsibility issuer financial institution financial incapacity will require two hours per facility. EPA estimates that 12 percent of the respondent universe will experience incapacity during the first three years of the rule, or about 26 facilities.<sup>16</sup> The total labor burden for those 26 facilities will be 52 hours, and the average annual labor burden will be 17 hours.<sup>17</sup> EPA anticipates the total cost of tasks related to owner incapacity will be \$92 per facility that experiences incapacity and the average annual cost for all facilities that experience incapacity will be \$794.

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<sup>16</sup> The trailing 12-month incapacity or default rate in the metals/mining industry was 3.9 percent as of April 13, 2016. That annual rate was multiplied by 5 to arrive at the percent of facilities likely to experience incapacity in the first five years of the rule. Note that 3.9 percent includes coal mines and other non-hardrock facilities. See Fitch Ratings, "Fitch: Peabody Pushes US Metals/Mining Loan Default Rate to 29%," accessed 21 July 2016 at <https://www.fitchratings.com/site/pressrelease?id=1002413/>.

<sup>17</sup> Note that numbers do not add up due to rounding.

### **Notification of Claims Brought Against Owners, Operators, or Guarantors**

EPA estimates that the activities the rule requires respondents to take when a CERCLA claim is brought against them will require 2.5 hours. EPA estimates that 5 percent of the respondent universe will have a claim brought against them during the first three years of the rule, or about 11 facilities.<sup>18</sup> The total labor burden for those 11 facilities will be 28 hours and the average annual burden will be 9 hours. EPA anticipates that the total cost of tasks related to a CERCLA claim will be \$107 per facility that experiences the cost and the average annual cost for all facilities that experience the cost will be \$395.

### **Facility Transfer**

EPA estimates that the activities the rule requires respondents to take following the transfer of a facility from one owner to another will require an average of 52 hours. When a facility transfer occurs, the new owner must submit a notification to EPA, post relevant information about the facility on their company's website, calculate the facility financial responsibility amount, and obtain financial responsibility. Since the burden is dependent on the financial responsibility instrument(s) the new owner or operator obtains, the burden at each facility will vary. EPA assumes that the new owners of facilities that experience a transfer will select the same distribution of financial responsibility instruments as the modeled universe (see above).

EPA estimates that 10 percent of the respondent universe during will experience facility transfer during the first three years of the rule, or about 22 facilities.<sup>19</sup> The total labor burden for those 22 facilities will be 1,152 hours and the average annual labor burden will be 384 hours. EPA anticipates the total cost of tasks related to facility transfer will be \$3,508 per facility that experiences a transfer and the average annual cost for all facilities that experience transfers will be \$25,844.

### **Release from Financial Responsibility**

EPA does not anticipate that any facilities in the respondent universe will close in the first three years of the rule. Therefore, no respondents will incur a labor or cost burden related to this collection activity.

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<sup>18</sup> Two of the 40 facilities in the modeled cost universe were on the National Priorities List at some point in the previous five years (through 2013, inclusive). Search for facilities conducted at EPA, "Search Superfund Site Information," accessed 21 July 2016 at <https://cumulis.epa.gov/supercpad/CurSites/srchsites.cfm/>.

<sup>19</sup> Four of the 40 facilities in the modeled cost universe changed operators in the previous three years (through 2013, inclusive), according to MSHA. Search for facility operator information conducted at U.S. Department of Labor, Mine Safety and Health Administration, Mine Data Retrieval System, accessed 21 July 2016 at <http://arlweb.msha.gov/drs/drshome.htm/>.

## Recordkeeping Requirements

EPA estimates that facilities will incur a total cost of \$51 per facility and \$11,364 for the full respondent universe to fulfill recordkeeping requirements, for an average annual cost of \$3,788

### 6(e) Estimating Agency Hours and Costs

The following section breaks down respondent hours and costs on an activity by activity basis, describing the burden calculations and assumptions made for each activity. Exhibit 8, below, summarizes the agency labor and cost burden for each activity.

<b>Exhibit 8. Agency Labor and Cost Burden for Each Information Collection Activity</b>										
Information Collection Activity	Frequency in First 3 Years	Labor and Cost Burden Per Activity Per Respondent						Total Labor and Costs Per Activity		
		Legal \$85.06/hr	Managerial \$74.32/hr	Technical \$61.19/hr	Clerical \$26.11	Capital Costs	O&M Costs	# of Resp.	Total Hours per Resp.	Total Cost
Notification	1	0.00	0.25	0.25	0.50	\$0	\$4	221	1.00	\$11,212
Public Involvement	1	0.00	0.00	0.25	0.50	\$0	\$0	221	0.75	\$6,266
Calculating Applicable FR	2	0.00	0.00	0.00	0.00	\$0	\$0	221	0.00	\$0
Establishing FR	2	0.00	0.00	5.00	1.00	\$0	\$4	221	6.00	\$74,288
Maintenance of Instruments	1	0.00	0.00	5.00	1.00	\$0	\$0	65	6.00	\$21,725
Owner or Operator Incapacity	3	0.00	0.00	0.00	0.00	\$0	\$0	26	0.00	\$0
Claim Against Owner or Operator	3	0.00	0.00	0.00	0.00	\$0	\$0	11	0.00	\$0
Facility Transfer	3	0.00	0.00	5.50	2.00	\$0	\$8	22	7.50	\$8,760
Release from FR	N/A	0.00	0.00	0.00	0.00	\$0	\$0	0	0.00	\$0

### Notification

EPA estimates that Agency tasks related to notification will require one hour per facility, and 166 hours for the full respondent universe. EPA will incur \$51 of costs per facility in the first year after the promulgation of the rule, and \$11,212 for the full respondent universe in the first year after implementation.

The Agency experience this cost more than once for facilities that experience a transfer during the first three years of the rule. EPA includes the labor and cost burden associated with the submission of the public involvement as a result of facility transfer as part of the facility transfer burden, described below.

### **Public Involvement**

EPA estimates that Agency tasks related to public involvement will require less than one hour per facility, and 166 hours for the full respondent universe. EPA will incur \$28 of costs per facility and \$6,266 for the full respondent universe.

The Agency experience this cost more than once for facilities that experience a transfer during the first three years of the rule. EPA includes the labor and cost burden associated with the submission of the public involvement as a result of facility transfer as part of the facility transfer burden, described below.

### **Calculating Applicable Financial Responsibility Amounts**

EPA does not anticipate that the Agency will incur any significant labor or cost burden as a result of activities related to the calculation of applicable financial responsibility amounts.

### **Establishing Financial Responsibility**

Respondents will establish financial responsibility in two of the three years following the rule's promulgation. EPA estimates that Agency tasks related to the establishment of financial responsibility will require six hours per facility and 1,326 hours for the full respondent universe at each deadline. EPA will incur a total cost of \$336 per facility and \$74,228 for the full respondent universe at each deadline.

### **Maintenance of Instruments**

Respondents that passed a financial test and submitted a corporate guarantee will need to maintain those instruments by submitting updated information once during the first three years of the rule's implementation. This will occur once in the first three years after the promulgation of the rule. EPA estimates that Agency task related to the maintenance of those financial responsibility instruments will require six hours per facility that passes the financial test and submits a corporate guarantee, and 388 hours for all of the facilities that pass the financial test and submit a corporate guarantee. EPA will incur a cost of \$336 per facility that passes the financial test and submits a corporate guarantee, and \$21,725 for all of the facilities that pass the financial test and submit a corporate guarantee.

### **Incapacity of Owners, Operators, Guarantors, or Financial Institutions**

There are no Agency activities directly associated with incapable owners, operators, guarantors, or financial institutions.

### **Notification of Claims Brought Against Owners, Operators, or Guarantors**

There are no Agency activities directly associated with incapable owners, operators, guarantors, or financial institutions.

### Facility Transfer

EPA estimates the agency tasks related to facility transfers will require seven and one half hours of labor per facility that experiences a transfer, and 166 hours for all of the facilities that experience a transfer, for an average annual burden of 55 hours. EPA will incur a total cost of \$396 per facility that experiences a transfer, and an average annual cost of \$2,920 for all of the facilities that experience a transfer.

### Release from Financial Responsibility

This activity will not occur during the three years that this ICR covers. The Agency will therefore not incur a labor or cost burden as a result of tasks related to the activity.

### Recordkeeping

The agency will not incur any costs related to respondent recordkeeping.

### 6(f) Bottom Line Burden Hours and Costs

Exhibit 9 summarizes the total and average annual time and cost burden to the respondent universe and to the Agency for the first three years of the rule.

<b>Exhibit 9. Bottom Line Total and Average Annual Labor and Cost Burden</b>				
<b>Entity</b>	<b>Total Hours</b>	<b>Total Labor Cost</b>	<b>Total Capital and O&amp;M Cost</b>	<b>Total Costs</b>
<b>Average Annual Cost</b>				
<b>Respondent Universe</b>	6,509	\$424,427	\$6,781	\$431,208
<b>Agency</b>	1,198	\$64,495	\$978	\$65,473
<b>Total Cost (First 3 Years)</b>				
<b>Respondent Universe</b>	19,527	\$1,273,280	\$20,344	\$1,293,623
<b>Agency</b>	3,593	\$193,486	\$2,933	\$196,419

### 6(g) Reasons for Change in Burden

As described in this ICR, EPA expects that the final rule will result in an increase in burden to affected entities. The expected increase in burden during for hardrock mining and mineral processing facilities during the three years this ICR considers is a total of 88 hours per facility under the provisions of the final rule. This increase in burden reflects specific paperwork requirements established by the final rule. EPA has determined that these paperwork requirements are necessary to improve regulatory efficiency and provide further protection of human health and the environment.

## **6(h) Burden Statement**

The average annual public reporting and recordkeeping burden for this collection of information is estimated to be 29 hours per respondent annually. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this ICR under Docket ID Number EPA-HQ-SFUND-2015-0781, which is available for online viewing at [www.regulations.gov](http://www.regulations.gov), or in person viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, D.C. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the RCRA Docket is (202) 566-0270. An electronic version of the public docket is available at [www.regulations.gov](http://www.regulations.gov). This site can be used to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the Docket ID Number identified above. Also, you can send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, D.C. 20503, Attention: Desk Officer for EPA. Please include the EPA Docket ID Number HQ-SFUND-2015-0781 and OMB Control Number 2050-NEW in any correspondence.