



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 118

[EPA-HQ-OLEM-2021-0585; FRL-7881.1-01-OLEM]

RIN 2050-AH38

Clean Water Act Hazardous Substance Facility Response Plans: Compliance Date Delay and Changes to Reflect Administration Policy

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to delay the compliance date for Facility Response Plan (FRP) requirements as well as to make language modifications to align with the Administration's climate change and environmental justice policies in Executive Order 14148 of January 20, 2025. These requirements are for onshore non-transportation-related facilities that could reasonably be expected to cause substantial harm to the environment from a CWA hazardous substance worst case discharge to navigable waters, adjoining shorelines, or the exclusive economic zone. This delay action is necessary to allow the Agency to consider implementation and compliance assistance tools that regulated parties may be able to take advantage of when complying with the new requirements. EPA notes that it cannot quantify the number, nature, and magnitude of covered discharges that may occur during the proposed rule delay period.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OLEM-2021-0585, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov/> (our preferred method).

Follow the online instructions for submitting comments. A plain language summary of the proposed rule is also available at this address.

- Mail: U.S. Environmental Protection Agency, EPA Docket Center, EPA-HQ-OLEM-2021-0585 Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- Hand delivery or courier: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. to 4:30 p.m., Monday through Friday (except Federal holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking.

Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Rebecca Broussard, Office of Land and Emergency Management, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564-6706; email address: broussard.rebecca@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA-HQ-OLEM-2021-0585 at <https://www.regulations.gov> (our preferred method), or the other methods identified in the ADDRESSES section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA’s docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment

and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). Please visit <https://www.epa.gov/dockets/commenting-epa-dockets> for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

II. General Information

On March 28, 2024, EPA published a final rule requiring onshore non-transportation-related facilities to develop Facility Response Plans (FRPs) for responding to a worst case discharge of CWA hazardous substances, or a substantial threat of such a discharge, and submit them to EPA. A worst case discharge is defined as the largest foreseeable discharge in adverse weather conditions, including a discharge resulting from fire or explosion. The FRP requirements apply to onshore non-transportation-related facilities that could reasonably be expected to cause substantial harm to the environment, based on their location. The date for plan preparation and submission is currently June 1, 2027.

This action proposes a three-year delay of the compliance date by which a regulated facility is required to prepare and submit their CWA hazardous substance FRP, to June 1, 2030. The proposal also includes language modifications to reflect the Administration's policies, pursuant to the January 20, 2025, Executive Order 14148 – *Initial Rescissions of Harmful Executive Orders and Actions*, and specifically, the rescission of Executive Order 13990 – *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis* and of Executive Order 14096 – *Revitalizing Our Nation's Commitment to Environmental Justice for All*.

A. Does this action apply to me?

A list of NAICS codes at the three-digit level that could be affected by requirements established under CWA section 311(j)(5) is provided in table 1.

Table 1—Sectors Potentially Affected by the Proposed Rule

NAICS	NAICS Description
111	Crop Production
112	Animal Production and Aquaculture
115	Support Activities for Agriculture and Forestry
211	Oil and Gas Extraction
212	Mining (except Oil and Gas)
213	Support Activities for Mining
221	Utilities
236	Construction of Buildings
237	Heavy and Civil Engineering Construction
238	Specialty Trade Contractors
311	Food Manufacturing
312	Beverage and Tobacco Product Manufacturing
313	Textile Mills
314	Textile Product Mills
321	Wood Product Manufacturing
322	Paper Manufacturing
323	Printing and Related Support Activities
324	Petroleum and Coal Products Manufacturing
325	Chemical Manufacturing
326	Plastics and Rubber Products Manufacturing
327	Nonmetallic Mineral Product Manufacturing
331	Primary Metal Manufacturing
332	Fabricated Metal Product Manufacturing
333	Machinery Manufacturing
334	Computer and Electronic Product Manufacturing
335	Electrical Equipment, Appliance, and Component Manufacturing
336	Transportation Equipment Manufacturing
339	Miscellaneous Manufacturing
423	Merchant Wholesalers, Durable Goods
424	Merchant Wholesalers, Nondurable Goods

NAICS	NAICS Description
441	Motor Vehicle and Parts Dealers
444	Building Material and Garden Equipment and Supplies Dealers
447	Gasoline Stations
453	Miscellaneous Store Retailers
481	Air Transportation
486	Rail Transportation
488	Support Activities for Transportation
493	Warehousing and Storage
511	Publishing Industries (except Internet)
518	Data Processing, Hosting, and Related Services
522	Credit Intermediation and Related Activities
531	Real Estate
541	Professional, Scientific, and Technical Services
561	Administrative and Support Services
562	Waste Management and Remediation Services
611	Educational Services
622	Hospitals
624	Social Assistance
712	Museums, Historical Sites, and Similar Institutions
713	Amusement, Gambling, and Recreation Industries
811	Repair and Maintenance
812	Personal and Laundry Services
921	Executive, Legislative, and Other General Government Support
924	Administration of Environmental Quality Programs
926	Administration of Economic Programs
928	National Security and International Affairs

This table is not intended to be exhaustive, but rather provides a guide for readers regarding affected entities potentially regulated by this action. This table includes the types of entities that EPA is aware could potentially be regulated by this action. Other types of entities

not included in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What action is the Agency taking?

EPA is proposing to delay the compliance date for regulated facilities to meet the FRP requirements for worst case discharges of CWA hazardous substances. The requirements target onshore non-transportation-related facilities that, because of their location, could reasonably be expected to cause substantial harm to the environment by discharging into or on navigable waters, adjoining shorelines, or the exclusive economic zone.

Additionally, the Agency is proposing certain language modifications to reflect the Administration's climate change and environmental justice policies.

C. What is the Agency's authority for taking this action?

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

D. What are the costs and benefits of this action?

EPA has determined that the proposed delay of the compliance date and the proposed language modifications to align with the Administration's climate change and environmental justice policies would have a deregulatory impact for affected facilities, State and local entities, or the Federal government with cost savings resulting from the delayed compliance date relative to the baseline. The total annualized baseline costs of EPA's 2024 final rule are \$131.46 million at 7% and \$163.09 million at 3% discount rates, respectively, expressed in 2022 dollars.¹ To calculate the cost savings for this proposed rule, EPA estimates total costs for the CWA hazardous substances FRP program under the proposed rule, for facilities and the Agency, based

¹ To achieve consistency with the infinite time horizon requirement set forth in Executive Order 14192, EPA estimated baseline compliance costs through the year 2100, which EPA believes is a sufficient proxy of this concept, capturing the long-term, steady-state effects of the 2024 final rule. The same time horizon through the year 2100 was also used for calculating programs costs under the proposed delay.

on delaying the 2024 baseline costs by three years. EPA then calculates the incremental cost savings of the proposed rule as the difference between FRP program costs in the baseline and the proposed rule scenario. For each set of costs EPA calculates the present value and annualized value using 7 percent and 3 percent discount rates consistent with OMB Circular A-4 and EPA's Guidelines for Preparing Economic Analysis. Total annualized FRP program costs with the three-year delay in place are \$106.98 million using a 7 percent discount rate and \$146.18 million using a 3 percent discount rate, expressed in 2022 dollars for consistency with the 2024 final rule. The present value of total cost savings due to the rule is estimated to be \$347.7 million using a 7 percent discount rate and \$543.0 million using a 3 percent discount rate, expressed in 2022 dollars. Total annualized cost savings due to the proposed rule are \$24.48 million using a 7 percent discount rate and \$18.21 million using a 3 percent discount rate, expressed in 2022 dollars for consistency with the 2024 final rule. Expressed in 2024 dollars, annualized cost savings are \$25.97 million and \$19.33 million using those respective discount rates. EPA's 2024 final rule assessed benefits of the CWA hazardous substance FRP program qualitatively, and therefore, there is no quantifiable effect of this proposed rule on benefits. Qualitatively, the costs of this proposed rule comprise the foregone benefits associated with extending the compliance date of the 2024 rule by three years.

III. Background

The CWA section 311(j)(5)(A)(i) states, “[t]he President shall issue regulations which require an owner or operator of a tank vessel or facility . . . to prepare and submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance.” The EPA Administrator was delegated authority under E.O. 12777 of October 18, 1991, *Implementation of section 311 of the Federal Water Pollution Control Act of October 18, 1972, as amended, and the Oil Pollution Act of 1990* (56 FR 54757), for onshore non-transportation related facilities under this statutory

provision. The EPA Administrator also has authority under CWA section 501 to prescribe such regulations as are necessary to carry out provisions of the Act.

On March 28, 2022, EPA proposed the CWA Hazardous Substance Worst Case Discharge Planning Regulations (87 FR 17890); on March 28, 2024, EPA issued final FRP requirements for worst case discharges of CWA hazardous substances (89 FR 21924). The requirements are for onshore non-transportation-related facilities that could reasonably be expected to cause substantial harm to the environment by discharging a CWA hazardous substance into or on the navigable waters, adjoining shorelines, or exclusive economic zone. The date for plan submission is currently June 1, 2027.

IV. Proposal to Delay the Compliance Date and Make Language Modifications to Align with the Administration’s Climate Change and Environmental Justice Policies

For all the provisions detailed in this section and in this action, the EPA intends these provisions to be severable. In the event that any individual provision or part of the rule is invalidated, EPA intends that this would not render the entire rule invalid, and that any individual provisions that can continue to operate will be left in place. The rule contains a few discrete provisions that operate independent of each other.

A. Delay the Compliance Date

This proposed rule would delay by three years the compliance date for the CWA hazardous substance FRP requirements, to June 1, 2030. This proposed delay action would allow the Agency to consider implementation and compliance assistance tools that regulated parties may be able to take advantage of when complying with the new requirements. Specifically, the Agency proposes to delay the compliance dates in 40 CFR 118.4 (a) for onshore non-transportation related facilities (hereafter, covered facilities or facility) as follows:

- Covered facilities meeting the applicable criteria in 40 CFR 118.3 (a) and (b) but not (c) that are in operation on March 30, 2030, must submit the Substantial Harm Certification

Form by June 1, 2030, while covered facilities meeting the applicable criteria in 40 CFR 118.3 (a) and (b) after March 30, 2030, have 60 days to submit their form.

- Initially regulated covered facilities (covered facilities in operation on November 30, 2029, and that meet the criteria in 40 CFR 118.3 or are notified by a Regional Administrator (RA) as in § 118.5) shall prepare and submit an FRP by June 1, 2030.
- Newly regulated covered facilities (covered facilities that meet the criteria in 40 CFR 118.3 or are notified by an RA as in § 118.5 after November 30, 2029) shall prepare and submit an FRP within six months of meeting the criteria.
- Newly constructed covered facilities (covered facilities starting operations after June 1, 2030) shall prepare and submit an FRP and Substantial Harm Certification Form prior to the start of operations and including a 60-day start up period adjustment phase.
- Covered facilities regulated as a result of a planned event or change shall prepare and submit an FRP and Substantial Harm Certification Form prior to the start of operations and including a 60-day start up period adjustment phase, but no sooner than June 1, 2030.
- Covered facilities regulated as a result of an unplanned event or change shall prepare and submit an FRP and Substantial Harm Certification Form within six months of the unplanned event or change, but no sooner than June 1, 2030.

EPA recognized in the 2024 final rule the complexity of implementing this new program.

For example, there are many variables to consider in determining appropriate endpoints for all CWA hazardous substances present in a facility above the threshold. CWA hazardous substances and mixtures can be present onsite in myriad types of containers and configurations. Modeling worst case discharge scenarios and making substantial harm calculations will be needed to determine not only applicability but also to inform the development of the FRPs. In the final 2024 rule, EPA also signaled its intent to provide tools and compliance assistance to help the regulated community comply with these new requirements. While EPA considered this need when establishing the compliance date in the final rule, the proposed delay in this action is

necessary to fully assess and consider the range of compliance assistance tools that may be needed to best support implementation of the new requirements. The Agency proposal to extend the compliance date by three years is based on timeframe expectations for the Agency to consider implementation and compliance assistance tools and approaches that would best support the regulated community. Facility owners and operators are also expected to benefit from added time to consider any new implementation and compliance assistance tools the Agency may offer. Ultimately, the Agency expects the proposed delay in the compliance date to both promote compliance and ensure well-developed FRPs.

The Agency is soliciting comments on the proposed compliance date delay, and specifically, on whether compliance with the current rule may take longer than the two years now allowed by the current date of June 1, 2027. If so, comments should include supporting rationale for why compliance would take longer than two years, referencing for example expected activities needed for regulated facilities to comply with the new requirements. Additionally, EPA seeks comment on what activities industry has already undertaken to implement the 2024 rule. The Agency is also seeking comments on whether the proposed delay timeframe is reasonable and whether a longer or shorter timeframe may be more appropriate and/or feasible. Comments should include a supporting rationale and supporting data, if any, for the Agency to consider.

B. Modifications to Align with Administration Policies and Strengthen Community Protection

Revisions to 40 CFR part 118 are necessary to reflect the Administration's policies, pursuant to the January 20, 2025 Executive Order (EO) 14148 – *Initial Rescissions of Harmful Executive Orders and Actions*. EO 14148 specifically orders the rescission of EO 13990 – *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis* and of EO 14096 – *Revitalizing Our Nation's Commitment to Environmental Justice for All*. Thus, the Agency is proposing modified language that removes references to climate change and environmental justice from the CWA hazardous substance FRP requirements.

An independent reason for this proposed action is that, upon reconsideration, EPA is concerned that undue focus on particular communities rather than on the risks posed to the community by any CWA hazardous substance release could lead to improper planning. Indeed, comprehensive substantial harm criteria should protect all communities. Similarly, disproportionate focus on climate-related hazards may result in uneven applicability determinations, which could skew planning away from a risk-based approach. This unintended consequence could lead to planning based upon highly unlikely events, rather than more common scenarios.

In addition, in 40 CFR 118.5, Regional Administrators (RA) may determine that a facility could cause substantial harm to the environment based on a variety of potential impacts or effects, negating the need for specific language for specific types of populations. The criteria in 40 CFR 118.3 are designed to capture the bulk of those facilities that could reasonably be expected to cause substantial harm to the environment. However, because of the size and diversity of the types of facilities within the regulated community, EPA believes that there are facilities that will not meet the criteria in § 118.3, but may, due to facility-specific or location-specific circumstances, pose sufficient risk to the environment to be designated as being able to cause substantial harm to the environment. Accordingly, EPA has included the ability of the RA to make a case-by-case determination. The Agency recognizes that RAs possess unique knowledge of Region-specific considerations, and it is consistent with EPA's responsibilities under EO 12777 to designate facilities on a case-by-case basis that could reasonably be expected to cause substantial harm to the environment.

Specifically, the Agency proposes modifications as follows:

- Remove the term “climate change” and the associated examples from the definition of “adverse weather” under 40 CFR 118.2.
- Remove reference to “climate change” from the passive mitigation provision under 40 CFR 118.5(b)(7).

- Remove “Potential to adversely impact communities with environmental justice concerns” provision under 40 CFR 118.5(b)(8), and amended to read “potentially exposed or susceptible populations.”
- Remove reference to “climate change” in adverse weather provision under 40 CFR 118.5(b)(9).
- Remove “impacts to communities with environmental justice concerns” from the hazard evaluation provision under 118.11(b)(3)(i).
- Remove “impacts of climate change” and associated examples from the hazard evaluation provision under 118.11(b)(3)(i) and replace with “in adverse weather conditions.”

EO 14148 section 2, *Revocation of Orders and Actions*, specifically lists for rescission both EO 13990 (*Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*) and EO 14096 (*Revitalizing Our Nation's Commitment to Environmental Justice for All*). EO 14148 section 3, *Implementation*, specifically directs the heads of each agency to take immediate action to effectuate the revocations described in section 2 of the order and end federal implementation of those mandates. These actions include the “review (of) all Federal Government actions taken pursuant to the orders, memoranda, and proclamations listed in section 2 of this order and take necessary steps to rescind, replace, or amend such actions as appropriate.” The modified language EPA is proposing is consistent with EO 14148. The Agency seeks comment on these proposed modifications including on any significant reliance interests that may be implicated. Any alternative language, examples, or approaches presented should include a supporting rationale and supporting data, if any, for the Agency to consider.

V. Statutory and Executive Order Reviews

Additional information about these statutes and executive orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an economic analysis of the potential costs and benefits associated with this action. This analysis is available in the docket.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation.

This action is expected to be an Executive Order 14192 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in EPA's analysis of the potential costs and benefits associated with this action.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This proposed rule would only delay the compliance date of the Clean Water Act Hazardous Substance Facility Response Plan Regulation finalized on March 28, 2024 (see 89 FR 21924) and remove some administrative items; it does not propose any new information collection activities.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule has no net regulatory burden on the small entities subject to the rule. The proposed delay of the compliance date for the Clean Water Act Hazardous Substance Facility Response Plan Regulation finalized on March 24, 2024 would not impose a regulatory burden for small entities (see 89 FR 21924). This proposed rule would not impose a regulatory burden for small entities because it only proposes to delay the compliance date of the Clean Water Act Hazardous Substance Facility Response Plan Regulation finalized

on March 24, 2024 (see 89 FR 21924). We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act

This action does not contain any unfunded mandates as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or Tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have Tribal implications as specified in Executive Order 13175. This proposed rule would only delay the compliance date of the CWA Hazardous Substance Facility Response Plan regulation finalized on March 24, 2024 (see 89 FR 21924) and does not propose any new regulatory requirements. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. Therefore, this action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. Since this action does not concern human health, EPA’s Policy on Children’s Health also does not apply.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. The proposed rule will not cause reductions in the supply or production of oil, fuel, coal, or electricity; nor will it result in increased energy prices, increased cost of energy distribution, or an increased dependence on foreign supplies of energy.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

List of Subjects in 40 CFR Part 118

Environmental protection, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

Lee Zeldin,
Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 118 as follows:

PART 118—CLEAN WATER ACT HAZARDOUS SUBSTANCES FACILITY RESPONSE PLANS

1. Revise the authority citation for part 118 to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*; Executive Order 11735, superseded by Executive Order 12777, 56 FR 54757; and Executive Order 14148, 90 FR 8237.

2. Amend § 118.2 by revising the definition “adverse weather” to read as follows:

§ 118.2 Definitions.

* * * * *

Adverse weather means weather conditions that make it difficult for response equipment and personnel to clean up or respond to discharged CWA hazardous substances, and that must be considered when identifying response systems and equipment in a response plan for the applicable operating environment.

* * * * *

3. Amend § 118.4 by revising paragraphs (a)(1) through (5) to read as follows:

§ 118.4 General requirements.

(a) * * *

(1) *Initially regulated facilities.* The owner or operator of a non-transportation related onshore facility in operation on November 30, 2029, that satisfies the criteria in § 118.3 shall prepare and submit a facility response plan that satisfies the requirements of this section and appendix A: Substantial Harm Certification Form to the Regional Administrator by June 1, 2030.

(2) *Newly regulated facilities.* The owner or operator of a non-transportation related onshore facility that did not satisfy the criteria in § 118.3 on November 30, 2029, but satisfies the criteria in § 118.3 after November 30, 2029 or that is notified by the Regional Administrator pursuant to § 118.5 shall prepare and submit a facility response plan that satisfies the requirements of this

section and appendix A: Substantial Harm Certification Form to the Regional Administrator within six months of meeting the criteria or notification.

(3) *Newly constructed facilities.* For a newly constructed non-transportation related onshore facility that commences operation after June 1, 2030, and is required to prepare and submit a facility response plan based on the criteria in § 118.3, the owner or operator shall submit the facility response plan and appendix A: Substantial Harm Certification Form to the Regional Administrator prior to the start of operations. Adjustments to the facility response plan to reflect changes that occur during the start-up phase of operations must be submitted to the Regional Administrator after an operational trial period of 60 days.

(4) *Facilities regulated as a result of a planned event or change.* For a non-transportation related onshore facility required to prepare and submit a facility response plan after June 1, 2030, as a result of a planned change in design, construction, operation, or maintenance so that the non-transportation related onshore facility now meets the criteria in § 118.3 of this part, the owner or operator shall submit the facility response plan and appendix A: Substantial Harm Certification Form to the Regional Administrator before the portion of the non-transportation related onshore facility undergoing the planned change commences operations. Adjustments to the facility response plan to reflect changes that occur during the start-up phase of operations must be submitted to the Regional Administrator after an operational trial period of 60 days.

(5) *Facilities regulated as a result of an unplanned event or change.* For a non-transportation related onshore facility required to prepare and submit a facility response plan after June 1, 2030, as a result of an unplanned event or change in facility characteristics that renders the non-transportation related onshore facility subject to the criteria in § 118.3, the owner or operator shall submit the facility response plan and appendix A: Substantial Harm Certification Form to the Regional Administrator within six months of the unplanned event or change.

* * * * *

4. Amend § 118.5 by:

- a. Revising paragraphs (b)(7) through (10); and
- b. Removing paragraphs (b)(11) and (12).

The revision reads as follows:

§ 118.5 Regional Administrator determination of substantial harm and significant and substantial harm.

* * * * *

(b) * * *

- (7) Lack of passive mitigation measures or systems;
- (8) Reportable discharge history; or
- (9) Other site-specific characteristics and environmental factors that the Regional Administrator determines to be relevant to recovery, shoreline protection, and cleanup; or
- (10) Density of facilities with CWA hazardous substances onsite in the immediate area.

* * * * *

5. Amend § 118.11 by revising paragraph (b)(3)(i) to read as follows:

§ 118.11 Facility response plan requirements.

* * * * *

(b) * * *

(3) * * *

- (i) Chemical-specific information, including the response considerations, health hazards, fire hazards, chemical reactivity, hazard classifications, and physical and chemical properties; and potential effects of a CWA hazardous substance worst case discharge as per 118.10 in adverse weather conditions. Illustrative diagrams of the hazard evaluation should be included.

* * * * *