

## Prepublication Copy Notice:

The Administrator of the United States Environmental Protection Agency signed the following document on October 8, 2026:

Title: [Clean Water Act Hazardous Substance Facility Response Plans: Compliance Date Delay and Changes to Reflect Administration Policy](#)

Action: **Final rule.**

Docket No.: **EPA-HQ-OLEM-2021-0585**

This is a **prepublication version** of the document that EPA is submitting to the docket for public comment. While the Agency has taken steps to ensure the accuracy of this prepublication version of the document, **it is not the official version** of the document for purposes of public comment or judicial review. Please refer to the official version of the document that will appear in the docket.

Once the official version of the document publishes in the docket, the prepublication version of the document posted on the agency's internet will be replaced with a link to the document that appears in the docket.

For more information about the docket and instructions for commenting, please consult the "ADDRESSES" section in the front of the document.

6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 118**

**[EPA-HQ-OLEM-2021-0585; FRL-7881.1-02-OLEM]**

**RIN 2050-AH38**

### **Clean Water Act Hazardous Substance Facility Response Plans: Compliance**

#### **Date Delay and Changes to Reflect Administration Policy**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing an extension to the compliance date for Facility Response Plans (FRPs) required by the Clean Water Act (CWA) addressing potential worst-case discharges of CWA hazardous substances. These requirements apply to 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 action is also finalizing language modifications to remove references to climate change and environmental justice in the FRP requirements to align with Executive Order 14148 of January 20, 2025. EPA is revising the compliance deadlines in light of serious concerns that facilities may be unable to comply with the relevant requirements by the existing deadline. These changes are necessary to allow the Agency to consider implementation and compliance assistance tools that regulated facilities may be able to take advantage of when complying with the

new requirements, and to ensure proper planning for all communities while promoting a science-based and risk-based approach to planning. EPA also recognizes that a delay would provide time for EPA to consider whether revisions are necessary before facilities must comply.

**DATES:** This final rule is effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-HQ-OLEM-2021-0585. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Melissa Kaps, Waste and Chemicals Implementation Division, Office of Resource Conservation and Recovery (5303T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 566-0501; email address: [kaps.melissa@epa.gov](mailto:kaps.melissa@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. General Information

A. Does this action apply to me?

B. What action is the Agency taking?

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

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

## II. Background

A. Statutory Authority and Delegation of Authority

B. Clean Water Act Hazardous Substances Facility Response Plans Regulation

C. Summary of the March 2026 Proposed Rule

1. Compliance Date Delay

2. Climate Change Language Recission

3. Environmental Justice Language Recission

## III. Discussion of the Final Rule and Public Comments

A. General Comments

B. Provisions in the Final Rule

## IV. Supporting Information

A. Children's Environmental Health

## V. Statutory and Executive Orders Reviews

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

Improving Regulation and Regulatory Review

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

C. Paperwork Reduction Act (PRA)

D. Regulatory Flexibility Act (RFA)

E. Unfunded Mandates Reform Act (UMRA)

F. Executive Order 13132: Federalism

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

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

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

J. National Technology Transfer and Advancement Act (NTTAA)

K. Congressional Review Act (CRA)

## I. General Information

### A. Does this action apply to me?

A list of North American Industry Classification System (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.                       |

|     |                                                               |
|-----|---------------------------------------------------------------|
| 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 entities likely to be regulated by this action. This table includes the types of entities that the EPA is now aware could potentially be regulated by this action. Other types of entities not included could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in 40 CFR 118.3. 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?*

The Agency is finalizing a three-year delay of the compliance date by which a regulated facility is required to prepare and submit their CWA hazardous substances FRP, as well as language modifications to 40 CFR part 118 to remove references to climate change and environmental justice to align with Executive Order (E.O.) 14148. Delaying the compliance date to June 1, 2030, 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 also recognizes that a delay would provide time for EPA to consider whether revisions are necessary before facilities must comply. Removal of the provisions related to climate change and environmental justice aligns with E.O. 14148 while ensuring proper planning

for all communities and promoting a science-based and risk-based approach to planning.

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

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

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

EPA has determined that the delay of the compliance date and the language modifications to remove references to climate change and environmental justice will have a deregulatory impact for affected facilities, State and local entities, and/or the Federal Government. Expressed in 2024 dollars, annualized cost savings due to the final rule are \$25.97 million and \$17.95 million using 7 and 3 percent discount rates, respectively. EPA's 2024 final rule assessed benefits of the CWA hazardous substances FRP program qualitatively, and therefore, there is no quantifiable effect of this final rule on benefits.

More details on the costs and benefits are found in Section 4, "Analysis of Costs," and Section 5, "Analysis of Benefits," in the "Regulatory Impact Analysis: Clean Water Act Hazardous Substance Facility Response Plans: Compliance Date Delay and Changes to Reflect Administration Policy," which is located in the docket.

## **II. Background**

*A. Statutory Authority and Delegation of Authority*

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.

*B. Clean Water Act Hazardous Substances Facility Response Plans Regulation*

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

*C. Summary of the March 2026 Proposed Rule*

On March 5, 2026 (91 FR 10787), the EPA proposed three modifications to the CWA Hazardous Substances FRP regulations at 40 CFR part 118: 1) delay the compliance date for regulated facilities to meet the requirements by three years; 2) remove

language referencing climate change; and 3) remove language referencing environmental justice.

#### 1. Compliance Date Delay

The EPA proposed a three-year delay in the compliance date in recognition of the complexity in implementing the new CWA Hazardous Substances FRP Regulation. Originally, in the 2022 proposal for the 2024 final rule, the EPA proposed that initially regulated facilities must prepare and submit a CWA hazardous substances FRP within 12 months (87 FR 17890 at 17921, March 28, 2022) of the effective date of the final rule. In the 2024 final rule, the EPA changed the language for plan submission to provide an initial 36-month implementation period (89 FR 21924 at 21941, March 28, 2024). In so doing, the EPA recognized that it was establishing a new program that would require significant compliance assistance. Indeed, the 2024 final rule is replete with statements where the EPA signaled its intent to provide tools and compliance assistance to help the regulated community with these new requirements because of the complexity of the new requirements to make applicability determinations. For example, there are many variables to consider in determining appropriate endpoints for all CWA hazardous substances present in a facility above the threshold quantity. 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. At the time, in recognizing both the complexity of implementing a new program and resource constraints, the EPA judged a 36-month

implementation period appropriate.

Upon further consideration, on March 5, 2026 (91 FR 10787), EPA proposed extending the compliance date by another three years due in part to the complexity of the existing requirements and extent of compliance assistance that EPA said it would provide in the 2024 final rule. EPA is continuing to consider what compliance assistance and tools are necessary while simultaneously considering changes to the underlying provisions. EPA considered several lengths of delay and, after reviewing public comment, has ultimately determined that it is necessary to delay the compliance date by three years. The three-year delay balances EPA's dual priorities of implementing the FRP program as soon as possible, while also ensuring compliance and consistency across regions. This delay is necessary to allow EPA adequate time to develop tools far enough in advance of the compliance deadline so as to be actionable. Specifically, the Agency proposed delaying 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 40 CFR 118.5(a)) 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 40 CFR 118.5(a) 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.

## 2. Climate Change Language Recission

The EPA proposed to remove references to climate change from the CWA hazardous substances FRP requirements in 40 CFR part 118 to reflect the January 20, 2025, E.O. 14148— *Initial Rescissions of Harmful Executive Orders and Actions*. E.O. 14148 specifically orders the rescission of E.O. 13990— *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*. Additionally, 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 foreseeable scenarios. Specifically, the Agency proposed modifications consistent with E.O. 14148 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 reference to “climate change” in adverse weather provision under 40 CFR 118.5(b)(9).
- Remove “impacts of climate change” and associated examples from the hazard evaluation provision under 40 CFR 118.11(b)(3)(i) and replace with “in adverse weather conditions.”

### 3. Environmental Justice Language Recission

The EPA proposed to remove references to environmental justice from the CWA hazardous substances FRP requirements in 40 CFR part 118 to reflect E.O. 14148, which specifically orders the rescission of E.O. 14096— *Revitalizing Our Nation's Commitment to Environmental Justice for All*. The EPA is also 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. Specifically, the Agency proposed modifications consistent with E.O. 14148 as follows:

- Remove “Potential to adversely impact communities with environmental justice concerns” provision under 40 CFR 118.5(b)(8) and amend to read “potentially exposed or susceptible populations.”

Remove “impacts to communities with environmental justice concerns” from the hazard evaluation provision under 40 CFR 118.11(b)(3)(i).

#### *D. Severability*

EPA intends that the provisions of the rule 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 many discrete provisions that operate independent of each other.

### **III. Discussion of the Final Rule and Public Comments**

#### *A. General Comments*

A total of 30 comments were received on the proposed rule: 18 supporting the proposal, 11 opposing, and one requesting additional information. Fifteen comments were from industry groups, and 10 comments were from citizens, while the remaining five comments were submitted by two environmental and health non-governmental organizations (NGOs), one local government, one Tribal community, and one utility provider.

The comments from industry groups, the utility provider, and the local government were generally in favor of the proposed delay of the compliance deadline from June 1, 2027, to June 1, 2030, citing the complexity of the underlying rule, the cost

of compliance, the lack of tools and guidance provided by the EPA, and the EPA's ongoing reconsideration of the underlying rule. Several of the comments encouraged the EPA to delay the compliance deadline by five years or more. Similarly, industry groups were generally in favor of the proposed language changes, arguing that climate change was difficult to predict, all communities should be protected, the rule was confusing as written, the proposed changes simplify compliance and follow Executive Order direction, and questioning the EPA's authority under the CWA to require covered facilities to consider environmental justice and climate change in their FRPs.

The comments from citizens, NGOs, and the Tribal community were generally opposed to the proposed delay of the compliance deadline, arguing that there could be environmental impacts of a discharge in the meantime, implementation is overdue, there is no valid reasoning for delaying compliance, and there is a need to quantify the foregone benefits associated with delaying compliance. Some commenters suggested that the EPA should have already developed the tools and guidance necessary for compliance with 40 CFR part 118, that the tools and guidance should not take three years to develop, and that a shorter delay for compliance, such as 12 months, should be sufficient to develop such tools and guidance. Similarly, many commenters were opposed to the language modifications, asserting that the proposal was arbitrary and not supported by evidence, would weaken protections for groups facing disproportionate impacts, and weaken the rule in general. These commenters stated that the proposed rule contradicts the EPA's own findings in the preamble to 40 CFR part 118, as well as argued that evidence supports climate-related hazards as

contributors to severe discharge scenarios and that 40 CFR part 118 was issued under the authority of the CWA and does not need to comply with Executive Orders.

The EPA agrees with commenters that supported the compliance delay due to the complexity of the rule and lack of guidance and tools provided by EPA thus far. However, EPA disagrees with commenters who argued that a five-year extension is needed, given the Agency expects a three-year extension will be adequate time for the Agency to consider implementation and compliance assistance such as tools, guidance, or any additional measures that would best support the regulated community. EPA seeks to implement the FRP program as soon as is feasibly possible and has determined that a delay of five years is not necessary to develop compliance assistance tools and consider necessary revisions, and therefore could unnecessarily delay the eventual implementation of the rule. EPA disagrees with commenters opposed to any delay. EPA needs additional time to consider compliance assistance and tools that regulated facilities may be able to take advantage of when complying with the new and complex requirements in order to promote compliance and maximum effectiveness of the FRP program.

EPA originally proposed a delay of three years based on timeframe expectations for the Agency to consider implementation and compliance assistance tools and approaches that would best support the regulated community and solicited comments for whether a delay was necessary and, if so, supporting rationale and data. Throughout this rulemaking, EPA has continued to assess potential timeframes for developing compliance assistance tools and reconsidering the underlying rule. EPA considered a

shorter delay of two years or less but determined that any timeframe shorter than three years would not allow adequate time to develop compliance assistance tools, and allow adequate time for regulated entities to come into compliance. Moreover, it is not clear from the comments on the proposal that a delay longer than three years is necessary to ensure compliance. In finalizing a delay of three years here, EPA seeks to balance timely implementation of the FRP program with the time necessary to carry out essential compliance assistance activities. EPA believes that three years is the correct amount of time to allow for such agency activities, as well as to provide adequate time to regulated entities to come into compliance.

The Agency has repeatedly acknowledged that implementation and compliance with the 2024 rule will be extremely difficult and regulated entities may face potential barriers to compliance because tools and models do not yet exist or have not been identified. Therefore, EPA guidance and compliance assistance may be necessary to enable compliance. For example, the current planning distance approach is very complex and relies on developing modeling assumptions that, by themselves, can be difficult to consistently apply across facilities. Facilities will have to determine how to factor in the flow path, stormwater behavior, stormwater intensity, containment performance, and terrain to avoid unnecessary inconsistencies. In addition, EPA has not been able to identify models or methods that could account for the specific physical and chemical properties of each of the 296 CWA hazardous substances and mixtures thereof that could apply to both overland and in-water transport. Additional calculations are required to assess the ability to cause substantial harm to the environment and

perform needed and appropriate calculations to numerous endpoints, as well as guidance and assistance for developing and implementing worst case discharge plans to protect the environment from substantial harm.

Given all the variabilities, EPA is concerned that even if facilities had compliance tools in hand today, determining applicability and submitting compliant FRPs by June of 2027 may not be possible. EPA's efforts to date confirm that the rule cannot be implemented absent a years-long effort to develop modeling and other tools necessary for compliance. Indeed, EPA is considering how to provide the necessary compliance tools far enough in advance of the compliance deadline to be actionable and simultaneously exploring whether changes to the underlying rule are warranted. In either case, EPA has determined that it is necessary to delay the compliance date by three years, to allow for EPA to develop tools far enough in advance of the compliance deadline so as to be actionable.

Guidance and other compliance assistance tools are not only necessary for regulated parties, but for EPA to administer the national CWA Hazardous Substances FRP program effectively and pursuant to the statute and corresponding regulations. EPA must ensure consistency across Regional Administrators and offices and provide regional staff with the tools to review and assess the adequacy and accuracy of CWA Hazardous Substances FRPs. For example, Regional Administrators are responsible for accepting and reviewing submitted FRPs, reviewing petitions from the public or any other party to require an FRP from any given facility, and determining if a facility that submits a substantial harm certification form is required to submit an

FRP. Without vital compliance assistance, programs, and guidance, enforcement of the FRP program may vary across regions leading to uneven applications.

EPA agrees with commenters who pointed out that a delay would allow EPA to consider whether revisions to the underlying FRP provisions are necessary in order to facilitate compliance and protectiveness. On February 18, 2026, EPA published an advanced notice of proposed rulemaking to seek feedback on reconsidering the provisions that were promulgated in the 2024 rule. This Advance notice of proposed rulemaking (ANPRM) sought feedback on potential amendments to address implementation challenges and clarify requirements from the 2024 final rule. EPA accepted comments on the ANPRM through May 19, 2026. EPA recognizes that additional corrections, clarifications, and/or revisions to these standards may be needed, and such changes cannot be made without an opportunity for notice and comment. Several commenters expressed concern over incurring significant costs to comply with the 2024 rule that could potentially be wasted if EPA makes revisions to the underlying FRP provisions as contemplated in the ANPRM. Through notice and comment rulemaking on this delay rule and the recent ANPRM, EPA has identified serious barriers to compliance with the 2024 rule. EPA finds that a delay is necessary to provide time to 1) determine if guidance, calculators, outreach, or other tools can address these serious compliance issues and/or 2) determine if revision of the 2024 rule is necessary to ensure compliance with the FRP program, therefore ensuring the most effective protection of human health and the environment. After reviewing further input from stakeholders, EPA has determined to revise the

compliance deadline in order to sufficiently analyze what revisions and/or

compliance assistance tools are necessary to address serious concerns that facilities may be unable to comply with the relevant requirements by the existing deadline.

EPA also agrees with commenters who supported the proposed changes to remove references to climate change and environmental justice, stating that the language modifications are needed to align with E.O. 14148, and that the changes will promote consistency without impacting 40 CFR part 118's effectiveness. The EPA disagreed with commenters who suggested the language modifications were not necessary, were arbitrary, and would weaken protections for groups facing disproportionate impacts. In particular, the language modifications will help avoid uneven applicability determinations and improper planning. A 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 foreseeable scenarios. Additionally, undue focus on particular communities rather than on the risks posed by any CWA hazardous substance release could lead to improper planning.

#### *B. Provisions in the Final Rule*

The EPA is finalizing the rule as proposed on March 5, 2026 (91 FR 10787), to modify the CWA Hazardous Substances FRPs Regulation at 40 CFR part 118. This rule finalizes language modifications to: 1) delay the compliance date by three years for regulated facilities to meet the requirements; 2) remove language on climate change; and 3) remove language on environmental justice. Please refer to section II.C of this

preamble for further details.

#### **IV. Supporting Information**

##### *A. Children's Environmental Health*

This action is not subject to the EPA's Children's Health Policy (<https://www.epa.gov/children/childrens-health-policy-and-plan>) because EPA does not believe the action has considerations for human health.

The removal of climate change and environmental justice language will prevent undue focus on climate-related hazards and particular communities rather than on the risks posed by more common scenarios to the community by any CWA hazardous substance release, which could lead to improper planning. Additionally, delaying the compliance date will allow for more thorough, protective, and targeting planning efforts.

#### **V. Statutory and Executive Orders 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 as defined under section 3(f)(1) of Executive Order 12866. Accordingly, it 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 analysis of the potential costs and benefits associated with this action. This analysis, "Regulatory Impact Analysis:

Clean Water Act Hazardous Substance Facility Response Plans: Compliance Date Delay and Changes to Reflect Administration Policy,” is available in the docket.

*B. Executive Order 14192: Unleashing Prosperity Through Deregulation*

This action is considered an Executive Order 14192 deregulatory action. For regulatory accounting purposes, the estimated present value and annualized value of the cost savings of this rule are \$348 million and \$24 million, respectively (7% discount rate, 2024\$, 2024 present value year, perpetuity time horizon). Details on the estimated cost savings of this final 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 any new information collection burden under the PRA.

*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. 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 burden on the small entities subject to the rule. This rule will not impose a regulatory burden for small entities because it only proposes to delay the compliance date of the Clean Water Act Hazardous Substances Facility Response Plans Regulation finalized on March 24, 2024 (see 89 FR 21924). Total annualized cost savings for small entities with existing facilities that would require an FRP are estimated to be approximately \$3.91 - \$7.29 million, using 3 and 7 percent

discount rates, respectively, expressed in 2024 dollars. Total annualized cost savings for small entities with existing facilities that would not require an FRP are estimated to be approximately \$73 - \$296 thousand, using 3 and 7 percent discount rates, respectively, expressed in 2024 dollars. The vast majority (about 97%) of small entity cost savings would accrue to entities that own or operate facilities that do require an FRP. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

*E. Unfunded Mandates Reform Act (UMRA)*

This action does not contain an unfunded mandate 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 rule will only delay the compliance date of the CWA Hazardous Substances Facility Response Plans 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. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA consulted with Tribal officials during the development of this action. A summary of that consultation is provided in “Tribal Consultation Summary-Clean Water Act Hazardous Substance Facility Response Plans: Compliance Date Delay and Changes to Reflect Administration Policy Final Rule,” which is located in the docket.

*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 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 rule does not involve technical standards.

*K. Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action meets the criteria set forth in 5 U.S.C. 804(2).

**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 set forth in the preamble, the EPA amends 40 CFR part 118 as follows:

**PART 118—CLEAN WATER ACT HAZARDOUS SUBSTANCES FACILITY RESPONSE PLANS.**

1. The authority citation for part 118 is revised 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 revisions read 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.

\* \* \* \* \*