**SUPPORTING STATEMENT**

**For Renewal of Information Collection Requirements under the**

**Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*.**

**40 CFR Part 6:**

**Procedures for Implementing the National Environmental Policy Act and**

**Assessing the Environmental Effects Abroad of EPA Actions**

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**Attachments**

Attachment 1: Exemptions from NEPA for Certain EPA Actions and EPA’s Voluntary NEPA Policy and Procedures

Attachment 2: Estimates of Hours and Contractor Costs for Applicants and EPA

**List of Acronyms**

CE Categorical Exclusion

CEQ Regulations Council on Environmental Quality’s Regulations, 40 CFR 1500 – 1508

EA Environmental assessment

EID Environmental information document

EIS Environmental Impact Statement

EPA Environmental Protection Agency

FONSI Finding of no significant impact

FMSD Facilities Management and Services Division

ICR Information collection request

MPRSA Marine Protection, Research and Sanctuaries Act, 33 U.S.C. 1401 *et seq*.

NEPA National Environmental Policy Act of 1969, 42 U.S.C. 4321 – 4347

NPDES National Pollutant Discharge Elimination System

OMB Office of Management and Budget

PRF Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*.

RFA Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*.

ROD Record of Decision

SBREFA Small Business Regulatory Enforcement Fairness Act of 1996

STAG State and Tribal Assistance Grants

**SUPPORTING STATEMENT**

**For Renewal of Information Collection Requirements under the**

**Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.***

**40 CFR Part 6:**

**Procedures for Implementing the National Environmental Policy Act and**

**Assessing the Environmental Effects Abroad of EPA Actions**

**1. IDENTIFICATION OF THE INFORMATION COLLECTION**

**1(a) Title of the Information Collection** **:** "Procedures for Implementing the National Environmental Policy Act and Assessing the Environmental Effects Abroad of EPA Actions” – i.e., 40 CFR Part 6

**1(b) Abstract** **:**

The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321-4347 establishes a national policy for the environment. The Council on Environmental Quality (CEQ) oversees the NEPA implementation. CEQ’s Regulations (CEQ Regulations) at 40 CFR parts 1500 through 1508 set the standard for NEPA compliance. They also require agencies to establish their own NEPA implementing procedures. EPA’s procedures for implementing NEPA are found in 40 CFR Part 6. Through this part, EPA adopted the CEQ Regulations and supplemented those regulations for actions proposed by EPA that are subject to NEPA requirements. EPA actions subject to NEPA include the award of wastewater treatment construction grants under Title II of the Clean Water Act, EPA’s issuance of new source National Pollutant Discharge Elimination System (NPDES) permits under section 402 of the Clean Water Act, certain research and development projects, development and issuance of regulations, EPA actions involving renovations or new construction of facilities, and certain grants awarded for projects authorized by Congress through the Agency’s annual Appropriations Act.

Compliance of EPA’s actions subject to 40 CFR Part 6 is the responsibility of EPA's Responsible Officials. For applicant-proposed actions, certain procedures apply to applicants (that is grantees and permit applicants) who must submit environmental information to EPA as part of the environmental review process. The EPA Responsible Official is responsible for the environmental review process, including any categorical exclusion (CE) determination[[1]](#footnote-1) or the scope, accuracy, and contents of a final environmental assessment (EA) or environmental impact statement (EIS) and any supporting documents. The applicant contributes by submitting environmental information to EPA as part of the environmental review process.

For actions subject to NEPA, the Responsible Official may determine that the proposed action does not individually or cumulatively have a significant effect on the human environment and may, therefore, be categorically excluded from further NEPA review. If the proposed action is not categorically excluded, the Responsible Official may prepare an EA in order to determine whether to prepare an EIS or a finding of no significant impact (FONSI). If necessary, the Responsible Official must prepare an EIS if the proposed action will have a significant effect on the human environment. For applicant-proposed actions, the applicant may submit information to the Responsible Official regarding the applicability of a categorical exclusion and request a determination by the Responsible Official. If the applicant-proposed action is not eligible for a categorical exclusion, the Responsible Official may gather information and prepare the NEPA documents without assistance from the applicant, or have the applicant prepare an environmental information document (EID) or a draft EA and supporting documents, or implement a third-party contract agreement with the applicant.

40 CFR Part 6 also includes EPA’s procedures, “Assessing the Environmental Effects Abroad of EPA Actions,” that implement Executive Order 12114, “Environmental Effects Abroad of Major Federal Actions" (see 46 FR 3364). EPA’s Executive Order 12114 procedures further the purpose of NEPA and provide that EPA may be guided by its NEPA procedures to the extent they are applicable.[[2]](#footnote-2) Therefore, when EPA conducts an environmental assessment pursuant to its Executive Order 12114 procedures, the Agency generally follows its NEPA procedures. Compliance with the procedures is the responsibility of EPA’s Responsible Officials and for applicant-proposed actions, applicants may be required to provide environmental information to EPA as part of the environmental review process. For this Information Collection Request (ICR), applicant-proposed projects subject to either NEPA or Executive Order 12114 (and that are not addressed in other EPA programs’ ICRs) are addressed through the NEPA process.

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

**2(a) Need/Authority for the Collection** **:** The CEQ Regulations (40 CFR 1505.1) require federal agencies to adopt and, as needed, revise their own implementing procedures to supplement the CEQ Regulations. The purpose of 40 CFR Part 6 is to satisfy the procedural requirements of the CEQ Regulations for NEPA for applicable EPA actions. Additionally, 40 CFR Part 6 includes EPA's environment review procedures implementing Executive Order 12114. EPA is collecting information from certain applicants as part of the process of complying with either NEPA or Executive Order 12114 per 40 CFR Part 6.

**2(b) Practical Utility/Users of the Data** **:** EPA’s NEPA regulations apply to the actions of EPA that are subject to NEPA in order to ensure that environmental information is available to the Agency's decision-makers and the public before decisions are made and before actions are taken. This includes actions such as wastewater treatment construction grants under Title II of the Clean Water Act, EPA’s issuance of new source National Pollutant Discharge Elimination System (NPDES) permits, certain research and development projects, EPA actions involving renovations at or new construction of EPA facilities, and certain grants awarded for special projects authorized by Congress through the Agency’s annual Appropriations Act. EPA actions subject to NEPA that are based on applicant proposals may include any of these except EPA actions for construction of special purpose facilities or facility renovations of EPA facilities. The Part 6 regulations also include EPA’s procedures implementing Executive Order 12114. These procedures ensure that environmental information is available to the Agency’s decision-makers and other appropriate Federal agencies and officials for actions subject to Executive Order 12114.

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

**3(a) Nonduplication**: For both the NEPA and Executive Order 12114 implementing procedures, the information submitted by an applicant does not duplicate information otherwise submitted to the government. For an EPA action subject to NEPA that is based on an applicant proposal, the applicant (e.g., grantee or permit applicant) would submit information used by the Responsible Official during the environmental review process. This one-time submission is specific to the applicant's proposed action in order to provide project-specific information necessary for the Responsible Official’s environmental review of the proposed action.

**3(b) Public Notice Requirement Regarding ICR Submission to OMB** **:** The Office of Public comments were previously requested via the *Federal Register* (81 FR 35762) on June 3, 2016 during a 60-day comment period. No comments were received.

**3(c) Consultations** **:**

EPA’s NEPA Practitioners: EPA actions subject to NEPA or Executive Order 12114 that are based on applicant proposals are one-time only and involve various government jurisdictions and businesses rather than repeated requests for information from specific government jurisdictions and businesses. EPA relied on information available from its NEPA practitioners and their experience working with grantees and permit applicants to prepare the burden estimates in this ICR. These are the same EPA practitioners that conduct the assessments of applicant-proposed actions subject to NEPA or Executive Order 12114 as further discussed in Section 4(a) of this Supporting Statement. As provided for in Executive Order 12114, EPA’s NEPA procedures may be used for assessing these projects. EPA has, however, requested public comment on this ICR as discussed in Section 3(b), above.

Council on Environmental Quality (CEQ): 40 CFR Part 6 was developed in consultation with CEQ (see 40 CFR 1507.3(a)).

**3(d) Effects of Less Frequent Collection** **:** Under 40 CFR Part 6, respondents submit project-specific information only for EPA actions subject to NEPA or Executive Order 12114 that are based on applicant proposals (as further discussed in Section 4(a)). Such actions are generally one-time requests from EPA for environmental information from applicants requesting grant assistance for specific projects subject to NEPA or for new source NPDES permits to be issued by EPA. There are no ongoing or periodic reporting or recordkeeping requirements.

**3(e) General Guidelines** **:** The information submitted by applicants would be consistent with the guidelines of the Office of Management and Budget (OMB) in 5 CFR 1320.6. For an applicant-proposed action, the applicant (e.g., grantee or permit applicant) submits information to EPA's Responsible Official as part of the environmental review process. This is a one-time submission specific to the applicant's proposed action in order to provide project-specific information necessary for the environmental review of the proposed action. The Responsible Official, however, may ask the applicant to provide additional information if the Responsible Official needs it to prepare the EA or EIS. There are no schedule requirements or requirements on the number of copies of the documentation to be submitted or requirements for ongoing reporting or recordkeeping or to conduct statistical surveys.

**3(f) Confidentiality** **:** 40 CFR Part 6 does not require applicants to submit confidential, proprietary or trade secret information.

**3(g) Sensitive Questions** **:** 40 CFR Part 6 does not require applicant response to sensitive questions (e.g., questions concerning sexual behavior or attitudes, religious beliefs, or other matters usually considered private).

**4. THE RESPONDENTS AND THE INFORMATION REQUESTED**

**4(a) Respondents** **:** Those subject to 40 CFR Part 6 include EPA officials who must comply with NEPA or Executive Order 12114, and certain grant or permit applicants who must submit environmental information documentation to EPA for their projects. For purposes of delineating the information collection requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, "applicants" (e.g., grantees or permit applicants) are the respondents (e.g., the persons who must generate, maintain, or provide information to or for a Federal agency).

EPA actions generally subject to NEPA include: wastewater treatment construction grants, issuance of new source NPDES permits by EPA, certain research and development grants, EPA actions for construction of special purpose facilities or facility renovations of EPA facilities, and certain grants awarded for projects authorized by Congress through the Agency’s annual Appropriations Act. EPA actions subject to NEPA that are based on applicant proposals may include any of these except EPA actions for construction of special purpose facilities or facility renovations of EPA facilities. The EPA Responsible Official is responsible for the environmental review process, including any categorical exclusion determination or the scope, accuracy, and contents of a final EA or EIS and any supporting documents. The applicant may contribute by submitting environmental information to EPA as part of the environmental review process.

EPA actions typically subject to Executive Order 12114 include major EPA actions which affect the environment of a foreign nation or the global commons and may include: major research or demonstration projects, ocean dumping activities carried out under section 102 of the Marine Protection, Research, and Sanctuaries Act (MPRSA) (33U.S.C. 1401 *et seq.*), major permitting or licensing of facilities by EPA,[[3]](#footnote-3) Wastewater Treatment Construction Grant Program under section 201 of the Clean Water Act when activities addressed in the facility plan would have environmental effects abroad, and other EPA activities as determined by EPA.

Wastewater Treatment Construction Grants Program facilities or new source NPDES permits to be issued by EPA for facilities in the U.S. bordering Mexico or Canada are subject to EPA’s NEPA implementing procedures. If these facilities could have significant environmental effects abroad, generally they would also be subject to EPA’s procedures implementing Executive Order 12114. In addition, EPA has determined that certain grants awarded for special projects authorized by Congress through the Agency’s annual Appropriations Act are subject to NEPA. STAG special projects in the U.S. bordering Mexico or Canada and that could have significant environmental effects abroad generally would also be subject to EPA’s procedures implementing Executive Order 12114.

Further, certain actions subject to EPA’s Executive Order 12114 implementing procedures are not subject to EPA’s NEPA implementing procedures. As with EPA’s current Part 6 regulations, EPA’s Executive Order 12114 implementing procedures (with only minor, technical amendments) provide that: (a) for ocean dumping activities, the information submitted under 40 CFR part 221 is sufficient to satisfy the environmental assessment requirements; and (b) for permits issued under section 3005 of the Resource Conservation and Recovery Act, section 402 of the Clean Water Act, and section 165 of the Clean Air Act, the information submitted by applicants for such permits or approvals under the applicable consolidated permit regulations (40 CFR parts 122 and 124) and Prevention of Significant Deterioration regulations (40 CFR part 52) satisfy the environmental document requirements of Executive Order 12114.

In summary, the applicant burden for any applicant-proposed actions, including permitting or licensing, under these authorities is already addressed under EPA’s ICRs for these programs and is not further addressed in this ICR. However, the applicant burden for any EPA action subject to NEPA and/or Executive Order 12114 that is based on an applicant proposal, including Wastewater Treatment Construction Grants Program facilities, STAG actions subject to NEPA and new source NPDES permits issued by EPA, is addressed in this ICR. EPA’s Executive Order 12114 implementing procedures further the purpose of NEPA and provide that EPA may be guided by the CEQ Regulations to the extent they are applicable. Therefore, when EPA conducts an environmental assessment pursuant to its Executive Order 12114 procedures, the Agency generally follows the CEQ Regulations and the procedures in EPA’s NEPA implementing regulations. For these reasons, for applicant-proposed actions subject to either NEPA or Executive Order 12114 (and that are not addressed in other EPA programs’ ICRs), the remainder of this ICR Supporting Statement will evaluate the respondent burden only with regard to EPA’s NEPA implementing procedures.

For purposes of this ICR, EPA considers the model respondents to be two types of applicants:

* Grant applicants applying to EPA for funding of special projects identified in the STAG account authorized by Congress through the Agency’s annual Appropriations Act. These applicants are generally governmental jurisdictions.[[4]](#footnote-4)
* Permit applicants applying to EPA for issuance of new source NPDES permits under §402 CWA[[5]](#footnote-5). Because of the large number of facilities requiring permits, EPA issues general permits for certain discharges. A general permit is an NPDES permit that covers multiple facilities that have similar discharges and are located in a specific geographic area. A general permit applies the same or similar conditions to all dischargers covered under the general permit. Using a general permit to cover numerous facilities reduces paperwork for permitting authorities and permittees, and ensures consistency of permit conditions for similar facilities.

**4(b) Information Requested** **:** For EPA actions subject to NEPA, the Responsible Official may determine that the proposed action does not individually or cumulatively have a significant effect on the human environment and may, therefore, be categorically excluded from further NEPA review. If the proposed action is not categorically excluded, the Responsible Official may prepare an EA in order to determine whether to prepare an EIS or a FONSI. The Responsible Official prepares an EIS if the proposed action will have a significant effect on the human environment. For EPA actions subject to NEPA that are based on applicant proposals, the Responsible Official may gather the information and prepare the NEPA documents without environmental information submitted by the applicant, or have the applicant prepare an EID, or a draft EA and supporting documents, or implement a third-party agreement with the applicant.[[6]](#footnote-6)

The level of NEPA documentation and the project-specific information the Responsible Official needs for decision-making is determined by the potential for environmental impact of the action, or the facility to be permitted or the project to be funded by the action rather than the dollar amount of the project or whether the applicant is a grantee or permit applicant.[[7]](#footnote-7) Table 1 summarizes the information to be submitted by an applicant for a categorical exclusion (CE) determination, an EA and FONSI, and an EIS and Record of Decision (ROD). There are no schedule requirements or requirements on the number of copies of the information document to be submitted or requirements for ongoing reporting or recordkeeping.

Table 1. Summary of Information Submitted by Applicants for CEs, EAs/FONSIs, and EISs/RODs

|  |
| --- |
| Categorical Exclusion (CE) means a category of actions which do not individually or cumulatively have a significant effect on the human environment and have been found by EPA to have no such effect. To find that a proposed action is categorically excluded, the Responsible Official needs to determine that the proposed action fits within a categorical exclusion that is listed in the regulations, and the proposed action does not involve any extraordinary circumstances as listed in the regulations. “Extraordinary circumstances” mean those circumstances in which a normally excluded action may have a significant environmental effect. Based on review of information in the applicant’s application and other available information, the Responsible Official notifies the applicant if the action is categorically excluded, or if EPA needs additional information to support the application of a categorical exclusion.  Information Submitted by Applicant: The applicant may provide statements or documents to the Responsible Official to verify that the proposed action would not involve any of the listed extraordinary circumstances.   * For example, the applicant might submit information to support a categorical exclusion determination for an action that meets the criteria for “Actions in unsewered communities relating to the use of proposed wastewater on-site technologies where such technologies replace existing systems.” If the project area is known to be near a property with nationally significant historic value, the applicant would likely enclose a letter from the State Historic Preservation Officer that confirms the proposed project will not have a significant environmental effect on the historic property. The applicant letter may also verify there are no wetlands in the project area. |
| Environmental Assessments (EAs) need to include sufficient information and analysis for the Responsible Official to determine whether to prepare an EIS or to issue a FONSI.  Information Submitted by Applicant: The applicant submits an EID of sufficient scope to enable the Responsible Official to prepare an EA, and then determine whether to issue a FONSI or prepare an EIS. At the discretion of the Responsible Official, the applicant may prepare a draft EA and supporting documents in lieu of an EID.   * An EID for an EA, or a draft EA and supporting documents, generally will: (1) include brief discussions of the need for the proposed action; the alternatives, including the no action alternative; description of the affected environment; and the environmental impacts of the proposed action and alternatives; (2) include a listing or summarize any coordination or consultation undertaken with any federal agency, state or local government, or federally-recognized Indian tribe, including compliance with applicable laws and executive orders; (3) identify and describe any mitigation measures that must be considered, including any mitigation measures that must be adopted to ensure the action will not have significant impacts; and (4) incorporate documents by reference. |
| Environmental Impact Statements (EISs) are generally prepared for major actions that may significantly affect the quality of the human environment, or when an EA indicates that significant impacts may occur that cannot be reduced or eliminated by changes to or mitigation of the proposed action. A Record of Decision (ROD) documents the decision of the Responsible Official.  Information Submitted by Applicant: The applicant submits an EID of sufficient scope to enable the Responsible Official to prepare an EIS and ROD. In lieu of submitting documentation, the Responsible Official and the applicant may enter into a third-party contract agreement. The information needed for an EIS parallels the information needed for an EA with a focus on assessment of significant environmental issues and alternatives.   * An EID for an EIS generally will: (1) provide EPA with information the Agency will use to prepare an EIS; (2) analyze all reasonable alternatives and the no action alternative; (3) describe the potentially affected environment including, as appropriate, the size and location of new and existing facilities, land requirements, operation and maintenance requirements, auxiliary structures such as pipelines or transmission lines, and construction schedules; (4) summarize any coordination or consultation undertaken with any federal agency, state or local government, or federally-recognized Indian tribe, including compliance with applicable laws and executive orders; (5) the draft EIS must summarize any public meetings during the scoping process, and the final EIS must summarize the public participation process held after publication of the draft EIS; (6) the draft EIS must consider substantive comments received during the scoping process, and the final EIS must summarize all comments on the draft EIS and respond to any substantive comments and explain any changes to a revised draft EIS or the final EIS and the reasons for the changes; and (7) include the names and qualifications of the persons primarily responsible for preparing the EIS including significant background papers. |

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

**5(a) Agency Activities** **:** Compliance with the regulations is the responsibility of EPA's Responsible Officials. For applicant-proposed actions, grantees or permit applicants must submit environmental information to EPA as part of the environmental review process unless the Responsible Official decides to prepare the NEPA documents without assistance from the applicant. As noted in Table 1 above, the Responsible Official may determine that the action is categorically excluded, or prepare an EA in order to determine whether to prepare an EIS or issue a FONSI, or prepare an EIS and ROD.

**5(b) Collection Methodology and Management** **:** Whether the NEPA documents are based on environmental information developed by the Responsible Official or submitted by the applicant, the NEPA review and resulting documents generally rely on the use of existing data and information, including data and information from other federal agencies, state or local governments, or federally-recognized Indian tribes with jurisdiction by law or special expertise.

Whether the NEPA documents are prepared by the Responsible Official or based on environmental information submitted by the applicant, the quality of the information provided by an applicant must be sufficient to enable the Responsible Official to make a decision. This is accomplished under EPA’s NEPA implementing procedures through: (1) early coordination and cooperation with federal agencies, state and local governments, and federally-recognized Indian tribes with jurisdiction by law or special expertise (see final rule § 6.202); and (2) the public participation process associated with actions other than those categorically excluded[[8]](#footnote-8) (see final rule § 6.203).[[9]](#footnote-9) When the environmental information is provided by the applicant, the Responsible Official is responsible for the statements, analyses, and conclusions of the EA or EIS and any supporting documents.

The information compiled is a one-time submission in narrative text format (see final rule §§ 6.205 and 6.207) rather than computerized compilations of data and information. There are no forms, checklists, or ongoing reporting, recordkeeping or file-maintenance requirements for applicants (see Subpart C). EPA maintains file records for each action.

**5(c) Small Entity Flexibility** **:[[10]](#footnote-10)** The 1995 Paperwork Reduction Act (PRA) incorporated the Regulatory Flexibility Act (RFA) into it. The RFA requires EPA to prepare a regulatory flexibility analysis for any rule that has a "significant economic impact on a substantial number of small entities." As part of the certification requirement, the EPA must show that the collection:

*"reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601(6)), the use of such techniques as:*

*"(1) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;*

*"(2) the clarification, consolidation, or simplification of compliance and reporting requirements; or*

*"(3) an exemption from coverage of the collection of information, or any part thereof”*

The requirements of the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 must also be considered.

The information collected under this ICR is one-time only for applicant-proposed actions; e.g., actions proposed by grantees seeking funding assistance from EPA or for an NPDES permit application initiated by the permit applicant. In either case, EPA assumes the action will directly benefit the applicant (such as a grantee seeking grant funding for renovation of a community drinking water system, or a permit applicant seeking a new source NPDES permit from EPA to further the applicant’s business interests). Nonetheless, if the applicant cannot afford to provide the required environmental information to EPA, then EPA would undertake the environmental review without input from the applicant.[[11]](#footnote-11) Further, grantees may be grant-eligible for certain costs associated with providing environmental information to EPA.[[12]](#footnote-12) Permit applicants are not eligible for EPA financial assistance.

EPA has reduced the burden on small entities (including businesses and government jurisdictions) through the following provisions in EPA’s NEPA implementing procedures:

* **Section 6.300**: An EID is not required when the action is categorically excluded, or the applicant will prepare a draft EA and supporting documents. The Responsible Official may prepare the NEPA documents without environmental information submitted by the applicant.
* **Section 6.302:**
  + The Responsible Official may prepare generic guidance for categories of actions involving a large number of applicants; and must ensure early involvement of applicants, consult with the applicant and provide guidance describing the scope and level of environmental information required, and provide guidance on a project-by-project basis to any applicant seeking assistance.
  + The Responsible Official must consider the extent to which the applicant is capable of providing the required information, may not require the applicant to gather data or perform analyses that unnecessarily duplicate either existing data or the results of existing analyses available to EPA, and must limit the request for environmental information to that necessary for the environmental review.
* **Section 6.303:** An applicant may enter into a third-party agreement with EPA. (For grantees, certain third-party contractor costs may be eligible for cost reimbursement; see footnote 12. However, new source NPDES permit applicants are not eligible for EPA financial assistance.)

**5(d) Collection Schedule** **:** Information must be submitted by an applicant only for EPA actions subject to NEPA that are based on applicant proposals unless EPA will prepare the NEPA documents without environmental information submitted by the applicant. The information to be submitted is required only when an applicant applies for a grant for an action subject to NEPA or a new source NPDES permit to be issued by EPA, a one-time application process. The Responsible Official, however, may ask the applicant to provide additional information if the Responsible Official needs it to prepare the EA or EIS. There are no schedules in the regulations for this collection process.

**6. ESTIMATING THE BURDEN OF THE COLLECTION**

The content of the environmental information submitted by an applicant for a draft EA and supporting documents and an EID for a draft EA and supporting documents is similar. There may be a financial difference for grantees in that EPA financial assistance generally may be used to prepare an EID but not to prepare a draft EA and supporting documents (see footnote 12). New source NPDES permit applicants are not eligible for EPA financial assistance. The applicant may also enter into a third-party agreement whereby the applicant engages and pays for the services of a contractor to prepare the draft EA and supporting documents. EPA’s experience with applicants has generally been that they contract directly for preparation of an EID or a draft EA and supporting documents.[[13]](#footnote-13) Therefore, for purposes of estimating the maximum burden, the calculations will be based on preparation of a draft EA by a contractor whose services will be paid for by the applicant.

The content of the environmental information submitted by an applicant for a draft EIS and supporting documents and an EID for a draft EIS and supporting documents is similar. For grantees, third-party contractor costs may be eligible for cost reimbursement (see footnote 12). New source NPDES permit applicants are not eligible for EPA financial assistance. Although an applicant may contract for preparation of an EID for a draft EIS, because EISs are generally more complex than EAs in terms of the issues to be addressed and the associated analyses, it has generally been EPA’s experience that applicants will enter into a third-party agreement with EPA for preparation of the EIS and supporting documents. Therefore, for purposes of estimating the maximum burden for this ICR, EPA assumes the applicant will enter into a third-party agreement for the environmental review process and preparation of the documents for the project.[[14]](#footnote-14)

**6(a) Estimated Respondent Burden** **:** For an EPA action subject to NEPA that is based on an applicant proposal, the applicant would generally submit information to the EPA Responsible Official as part of the environmental review process as delineated in Section 4(b), Table 1. As noted above, EPA assumes the applicant will use a contractor to compile and prepare the environmental information to be submitted to the Responsible Official. For the applicant, the burden[[15]](#footnote-15) includes the time and costs needed to:

1. Procure contractor services.
2. Review instructions (such as the regulations and any program-specific guidelines the Responsible Official may also provide) and/or meet with the Responsible Official.
3. Research data sources.
4. Complete and review the collection of environmental information.
5. Transmit the information to the Responsible Official.
6. Meet with the Responsible Official on the need for any revisions to the environmental information, and prepare and submit any necessary revisions to the information.

The applicant would not be required to develop, acquire, install, or 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; or train personnel to be able to respond to a collection of information; nor would there be requirements for ongoing reporting or recordkeeping.

In summary, EPA assumes an applicant would expend time and incur contractor costs to submit: (1) information to support application of a categorical exclusion with environmental information prepared directly by the applicant’s contractor, or (2) a draft EA and supporting documents prepared directly by the applicant’s contractor, or (3) a draft and final EIS and supporting documents prepared by the applicant’s contractor under a third-party agreement with EPA.

Respondents include grant applicants applying to EPA for funding of special projects identified in the STAG account authorized by Congress through the Agency’s annual Appropriations Act. These applicants are generally governmental jurisdictions. Such grants authorized by Congress, and subsequently awarded by EPA, had generally been increasing annually until the 3-year period between 2007 through 2010,[[16]](#footnote-16) in which the number of grants awarded stabilized at about 300 annually. No more Special Appropriations Act Program (SAAP) grants have been awarded since 2010; however, grants issued in 2010 or prior still may be currently undergoing the NEPA process. Beginning in August 2013, EPA began posting its NEPA documents for its own actions that require documentation online (see website at <https://cdxnodengn.epa.gov/cdx-enepa-public/action/nepa/search>). Based on the elimination of awarding SAAP grants since 2010 and information collected in EPA’s NEPA Compliance Database, EPA anticipates that approximately 150 NEPA documents will be completed for STAG grants during the 3-year life of this ICR, with approximately 50 requiring documentation completed annually. EPA estimated, in our 2013 ICR renewal, that about 75% of the STAG projects were documented with a CE, and about 25% with an EA/FONSI. Thus, based on experience, EPA anticipates there will be no change to this and therefore there will be approximately 50 NEPA documents annually with about 75% of these projects documented with a CE, and about 25% with an EA/FONSI. In addition, EPA estimates that one project (less than one percent of the total annual grantee projects) will have an EIS/ROD completed during the 3-year period of this ICR. EPA estimated contractor costs and hours, and hours for grantees and EPA for CE, EA/FONSI and EIS/ROD documentation, between the current ICR and the submitted ICR renewal, are summarized in Table 2 (also see Section 6(b) for further information on estimates for EPA’s burden).

6(b) Estimated Respondent Costs **:**

Table 2. Summary of Estimated Contractor Costs and Hours for Grantees and EPA

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | ***CE Documents Project*** | | ***EA/FONSI Documents Project*** | | ***EIS/ROD Documents Project*** | |
| ***Current ICR*** | ***3-Yr ICR Period Renewal*** | ***Current ICR*** | ***3-Yr ICR Period Renewal*** | ***Current ICR*** | ***3-Yr ICR Period Renewal*** |
| Grantee | $3,000  5 hrs | $3,000\*  5 hrs | $19,000  60 hrs | $19,000\*  60 hrs | $372,000  440 hrs | $372,000\*  440 hrs |
| \*Contractor: $75/hour(a)  $75/hr x 40 hrs = $3,000 | | \*Contractor: $95/hour  $95/hr x 200 hrs = $19,000 | | \*Contractor: $155/hour  $155/hr x 2400 hrs = $372,000 | |
| EPA | $0 | $0 | $5,000 for  25% of projects | $5,000 for 25%  of projects | $0 | $0 |
| 40 hrs  75% | 40 hrs  75% | 120 hrs  25% | 120 hrs  25% | 530 hrs  1 per 3-yrs | 530 hrs  1 per 3-yrs |

a Contractor cost/hour assumed to include consolidated wages for all personnel working on the project, project expenses, overhead and profit.

Respondents also include permit applicants applying to EPA for issuance of new source NPDES permits under §402 CWA. EPA issues new source NPDES permits only in states and U.S. territories that have not assumed authority for this program (see Section (4(a)). Because most states have assumed the NPDES program, few new source NPDES permits are issued by EPA. Regions 4, 6 and 10 currently handle the majority of these projects. As presented in Section 4(a) of this Supporting Statement, most projects involve oil and gas extraction in off-shore waters areas, hardrock mining, concentrated animal feeding operations (CAFOs), dairy farming, and seafood processing. None of these projects have been documented with a CE and, during the 3-year life of this ICR, EPA does not anticipate any projects will be documented initially with a CE. Further, for the 3-year life of this ICR, EPA estimates that annually about 11 projects will be documented with EAs/FONSIs. In addition, EPA estimates one project will have an EIS/ROD completed annually. EPA estimated contractor costs and hours, and hours for permit applicants and EPA for EA/FONSI and EIS/ROD documentation are summarized in Table 3 (also see Section 6(b) for further information on estimates for EPA’s burden).

Table 3. Summary of Estimated Contractor Costs and Hours for Permit Applicants and EPA

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | ***CE Documents Project*** | | ***EA/FONSI Documents Project*** | | ***EIS/ROD Documents Project*** | |
| ***Current ICR*** | ***3-Yr ICR Period Renewal*** | ***Current ICR*** | ***3-Yr ICR Period Renewal*** | ***Current*** | ***3-Yr ICR Period Renewal*** |
| Permit Applicant | None None | | $62,000  60 hrs | $62,000\*  60 hrs | $372,000\*  440 hrs | $372,000\*  440 hrs |
| \* Contractor: $155/houra  $155/hr x 400 hrs = $62,000 | | \*Contractor: $155/hour  $155/hr x 2400 hrs = $372,000 | |
| EPA | None None | | $5,000 for 50% of projects | $5,000 for 50% of projects | $0 | $0 |
| 120 hrs  11 projects | 120 hrs  11 projects | 530 hrs  1 per year | 530 hrs  1 per year |

a Contractor cost/hour assumed to include consolidated wages for all personnel working on the project, project expenses, overhead and profit.

EPA does not anticipate any applicant capital or start up costs.[[17]](#footnote-17) Operating and maintenance (O&M) costs are the recurring dollar amount of cost associated with O&M or purchasing services. EPA assumes the O&M costs associated with the paperwork requirements for respondents would be costs for photocopying and mailing the compiled environmental information for a CE, EA or EIS. For a CE, EPA assumes up to 20 pages may be copied at 15¢ per page, or $3.00. For maximum cost estimate purposes, EPA assumes the documentation is mailed (using U.S. Postal Service priority mail service) at a cost of $23.00, for a total cost of $26.00 per CE. For an EA, EPA assumes 100 pages will be submitted at a cost of $15.00 for copying and $23.00 for priority mail for a total cost of $38.00 per EA. For an EIS, EPA assumes 800 pages will be submitted (4 x 200 pages per EIS - preliminary draft EIS, draft EIS, preliminary final EIS, final EIS) at a cost of $120.00 for copying and $92.00 for priority mail (4 x $23 per document) for a total cost of $212.00 per EIS. Alternatively, the compiled information for a CE, EA or EIS may be submitted to EPA electronically, saving respondents the O&M costs associated with the paperwork requirements for photocopying and mailing.

Based on the above assumptions and estimates for grantees and permit applicants, Tables 4 and 5 list the estimated one-time, annual and three-year contractor hours and costs, and hours, direct labor and O&M costs for grantees and permit applicants (three years represents the approval period for this ICR). The direct labor rate, including benefits, for state and local government (management and professional) applicants is assumed to be $54; loaded at 25% for other non-benefits overhead, this rate is $68. The direct labor rate for federally-recognized Indian tribe applicants is assumed to be the same as for state and local government applicants. Grantee applicants are assumed to be state and local governments and federally-recognized Indian tribes. The direct labor rate, including benefits, for civilian worker (professional) applicants is assumed to be $57; loaded at 50% for other non-benefits overhead and including profit, this rate is about $86. Permit applicants are assumed to be civilian worker applicants. (Labor rates, including benefits, from the Bureau of Labor Statistics, “Employer Costs for Employee Compensation – June 2016,” <http://www.bls.gov/news.release/ecec.nr0.htm> )

Table 4. One-Time, Annual and 3-Year Total Estimated Costs and Hours for Grant Applicants

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ***Respondent*** | ***CE Projects*** | ***EA/FONSI Projects*** | ***EIS/ROD Projects*** | ***Totals*** |
| Grantee-Annual:  Number of Projects  Contractor Hours  Contractor Costs  Grantee  Hours  Grantee Labor Costs  O&M  Totals on One-Time Proj. Basis | 75% x 50 proj = 38 proj  38 proj x 40 hrs/proj =  1,520 hours  38 proj x $3,000/proj = $114,000  38 proj x 5 hrs/proj =  190 hours  190 hours x $68/hour =  $12,920  38 proj x $26/proj =  $988  40 + 5 = 45 hours/project  $3,000 + ($68 x 5) + $26 = $3,366/project | 25% x 50 proj = 12 proj  12 proj x 200 hrs/proj =  2,400 hours  12 proj x $19,000/proj = $228,000  12 proj x 60 hrs/proj =  720 hours  720 hours x $68/hour =  $48,960  12 proj x $38/proj =  $456  200 + 60 = 260 hours/proj  $19,000 + ($68 x 60) + $38= $23,118/project | (None annually, one on a 3-year basis)  (None annually, one on a 3-year basis)  (None annually, one on a 3-  year basis)  (None annually, one on a 3-year basis)  (None annually, one on a 3-year basis)  (None annually, one on a 3-  year basis)  (None annually, one on a 3-year basis) | Grantee-Annual:  50 projects  3,920 hours  $342,000  910 hours  $61,880  $1,444 |
| Grantee-  3-Yr Total:  Number of Projects  Contractor Hours  Contractor Costs  Grantee Hours  Grantee Labor Costs  O&M  Totals on One-Time Proj. Basis | 3 yrs x 38 proj = 114 proj  3 yrs x 1,520 hours =  4,560 hours  3 yrs x $114,000/yr =  $342,000  3 yrs x 190 hours =  570 hours  3 yrs x $12,920/yr =  $38,760  3 yrs x $988/yr = $2,964 | 3 yrs x 12 proj = 36 proj  3 yrs x 2,400 hours =  7,200 hours  3 yrs x $228,000/yr =  $684,000  3 yrs x 720 hours =  2,160 hours  3 yrs x $48,960/yr =  $146,880  3 yrs x $456/yr = $1,368 | 1 project on a 3-year basis  1 proj x 2,400 hours/proj =  2,400 hours  1 proj x $372,000/proj =  $372,000  1 proj x 440 hours/proj =  440 hours  440 hrs x $68/hour =  $29,920  1 proj x $212/proj = $212  2,400 + 440 = 2,840 hours  $372,000 + ($68 x 440) + $212 = $402,132 | Grantee-  3-Yr Total:  151 projects  14,160 hours  $1,398,000  3,170 hours  $215,560  $ 4,544 |

Table 5. One-Time, Annual and 3-Year Total Estimated Costs and Hours for Permit Applicants

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ***Respondent*** | ***CE Projects*** | ***EA/FONSI Projects*** | ***EIS/ROD Projects*** | ***Totals*** |
| Permitee-Annual:  Number of Projects  Contractor Hours  Contractor Costs  Permitee Hours  Permitee Labor Costs  O&M  Totals on One-Time Proj. Basis | None  None  None  None  None  None  (None) | 11 projects/year  11 proj x 400 hrs/proj =  4,400 hours  11 proj x $62,000/proj = $682,000  11 proj x 60 hrs/proj =  660 hours  660 hours x $86/hour =  $56,760  11 proj x $38/proj = $418  400 + 60 = 460 hours  $62,000 + ($86 x 60) + $38 = $67,198 | 1 project/year  1 proj x 2,400 hrs/proj =  2,400 hours  1proj x $372,000/proj = $372,000  1 proj x 440 hrs/proj =  440 hours  440 hours x $86/hour =  $37,840  1 proj x $212/proj = $212  2,400 + 440 = 2,840 hours  $372,000 + ($86 x 440) + $212 = $410,052 | Permitee-Annual:  12 projects  6,800 hours  $1,054,000  1,100 hours  $94,600  $ 630 |
| Permitee-  3-Yr Total:  Number of Projects  Contractor Hours  Contractor Costs  Permitee Hours  Permitee Labor Costs  O&M | None  None  None  None  None  None | 3 yrs x 11 proj/yr = 33 proj  3 yrs x 4,400 hours =  13,200 hours  3 yrs x $682,000/yr =  $2,046,000  3 yrs x 660 hours =  1,980 hours  3 yrs x $56,760 =  $170,280  3 yrs x $418/yr = $1,254 | 3 yrs x 1 proj/yr = 3 proj  3 yrs x 2,400 hours =  7,200 hours  3 yrs x $372,000/yr = $1,116,000  3 yrs x 440 hrs/yr =  1,320 hours  3 yrs x $37,840 =  $113,520  3 yrs x $212/yr = $636 | Permitee-  3-Yr Total:  36 projects  20,400 hours  $3,162,000  3,300 hours  $283,800  $ 1,890 |

As discussed in Section 5, the information collected under this ICR is one-time only for applicant-proposed actions. Grantees or permit applicants must submit environmental information to EPA as part of the environmental review process unless the Responsible Official decides to prepare the NEPA documents without assistance from the applicant. If the applicant cannot afford to provide the required environmental information to EPA, then EPA would undertake the environmental review without input from the applicant (see footnote 11). Further, grantees may be grant-eligible for certain costs associated with providing environmental information to EPA (see footnote 12); permit applicants are not eligible for EPA financial assistance. Table 6 summarizes the one-time total estimated applicant costs, including contractor hours and costs, applicant hours and direct labor costs, and O&M for documentation to support a CE, or an EA/FONSI, or an EIS/ROD. Based on EPA experience, under 40 CFR Part 6, EPA anticipates that for grantees there will be approximately 50 projects with about 75% of the projects documented with a CE, and about 25% with an EA/FONSI. In addition, EPA estimates that one project (less than one percent of the total annual grantee projects) will have an EIS/ROD completed during the 3-year life of this ICR. For permit applicants, EPA assumes there will be approximately 12 projects annually with about 11 of the projects documented with an EA/FONSI. In addition, EPA estimates one project will have an EIS/ROD completed annually. None will be documented initially with a CE.

Table 6. Summary of Estimated One-Time Total Costs and Hours for Applicants

|  |  |
| --- | --- |
| ***Respondent*** | ***One-Time Total Costs and Hours***  ***CE EA/FONSI EIS/ROD*** |
| Grant Applicant  Contractor Hrs/Cost  Direct Hrs/Labor Cost  O&M  Total | Hours Cost Hours Cost Hours Cost  40 $3,000 200 $19,000 2,400 $372,000  5 340 60 4,080 440 29,920  $26 $38 $212  45 $3,366 260 $23,118 2,840 $410,052  ONE PER 3-YEARS |
| Permit Applicants  Contractor Hrs/Cost  Direct Hrs/Labor Cost  O&M  Total | Hours Cost Hours Cost Hours Cost  None None 400 $62,000 2,400 $372,000  None None 60 5,160 440 37,840  None None $ 38 $ 212  None None 460 $67,198 2,840 $410,052 |

The information collected under this ICR is one-time only for EPA actions subject to NEPA that are based on applicant proposals (see Section 5). For purposes of this ICR, Table 7 summarizes the estimated total annual and 3-year applicant costs, including contractor hours and costs, applicant hours and direct labor costs, and O&M for the three-year period of this ICR. Based on EPA’s experience, EPA anticipates there will be approximately 50 grantee projects annually with about 75% of these projects documented with a CE, and about 25% with an EA/FONSI. In addition, EPA estimates that one project (less than one percent of the total annual grantee projects) will have an EIS/ROD completed during the 3-year life of this ICR. For permit applicants, EPA assumes there will be approximately 12 projects annually with about 11 of the projects documented with an EA/FONSI. In addition, EPA estimates one project will have an EIS/ROD completed annually. None will be documented initially with a CE.

Table 7. Summary of Total Estimated Annual and 3-Year Costs and Hours for Applicants

|  |  |  |
| --- | --- | --- |
| ***Respondent*** | ***Annual*** | ***3-Year Life of ICR*** |
| Grant Applicant  Contractor Hrs/Cost  Direct Hrs/Labor Cost  O&M  Number of Projects  Sub-Totals | Hours Cost  3,920 $342,000  910 61,880  $1,444  50  50 4,830 $405,324 | Hours Cost  14,160 $1,398,000  3,170 215,560  $ 4,544  151  151 17,330 $1,618,104 |
| Permit Applicant  Contractor Hrs/Cost  Direct Hrs/Labor Cost  O&M  Number of Projects  Sub-Totals | Hours Cost  6,800 $1,054,000  1,100 94,600  $ 630  12  12 7,900 $1,149,230 | Hours Cost  20,400 $3,162,000  3,300 283,800  $ 1,890  36  36 23,700 $3,447,690 |
| Totals | 62 12,730 $1,554,554 | 187 41,030 $5,065,794 |

**6(c) Estimated Agency Burden and Cost** **:[[18]](#footnote-18)** For EPA actions subject to NEPA that are based on applicant proposals, EPA may: (1) prepare the NEPA documents without assistance from the applicant, with or without using EPA contractor support; or (2) prepare the NEPA documents based on information submitted by the applicant (and any other supplemental information) with or without using EPA contractor support. If an EPA contractor is used, the contractor is generally tasked with technical assistance for reviewing any applicant-submitted information, gathering any other necessary information, and preparing the EA or EIS and supporting documents for EPA’s Responsible Official. EPA generally does not use its contractors on projects documented with a CE or for which EPA and the applicant enter into a third-party agreement.

* For CEs, EPA estimates it prepares CE documentation without assistance from the applicant for five STAG projects per year based on the information in a grantee’s grant application and supplemental information gathered directly by EPA using about 50 hours per project. For CE-documented projects based on grantee-submitted information, EPA uses an estimated 40 hours.
* For EAs, EPA estimates contractor costs for technical assistance with reviewing an applicant’s draft EA and supporting documents and subsequent preparation of the EA at $5,000, with EPA using an estimated 120 hours. EPA estimates use of a contractor on about 25% of the grantee projects and 50% of the permit applicant projects.
* Most applicant EISs are prepared under a third-party agreement with EPA directly reviewing the third-party contractor-prepared EIS and supporting documents using an estimated 530 hours per project. EPA has also, and will likely continue to prepare EISs for new source NPDES permit projects in conjunction with other federal agencies. In these cases, EPA is usually a Cooperating Agency and either adopts or supplements and reissues the lead agency’s EIS. EPA may also supplement and reissue one of its own EISs for a project. EPA generally uses a contractor in these cases with contractor costs ranging widely with an average of $50,000 per project. For purposes of this ICR and based on EPA’s experience with adoption or supplementation of another EIS, EPA estimates that for direct preparation of one such EIS/ROD annually, EPA’s contractor costs are estimated to be $50,000 with EPA using an estimated 570 hours.

Estimated contractor costs and hours for EPA for applicant-proposed projects are compiled on a document-type basis with the burden assumed to be the same for environmental information submitted by either a grantee or permit applicant. The following lists EPA’s tasks generally associated with preparation of NEPA documents based on environmental information submitted by an applicant and the estimated hours for these tasks:

1. Consult with the applicant as early as possible in the planning process to provide guidance with respect to the appropriate level and scope of information that EPA may require; for CEs, EPA estimates 10 hours, for EAs 20 hours, and for EISs 60 hours.
2. Review and independently evaluate the applicant-submitted and other project-related documents, including the grant or permit application and any appropriate public comments, and provide comments or guidance to the applicant about any additional information needed. For purposes of this ICR, these cost and hour estimates include using EPA contractor technical assistance during the review process for EAs. For CEs, EPA estimates 5 hours, for EAs 40 hours, and for EISs 180 hours.
3. Meet with the applicant on the need for any revisions to the environmental information and supporting documents, and review any revised documentation; for CEs, EPA estimates 5 hours, for EAs 10 hours, and for EISs 50 hours.
4. Consult with the applicant, when appropriate, on a third-party agreement. EPA assumes this will generally be done only for an EIS and estimates 40 hours for this task.
5. Complete the required environmental review and NEPA documentation before rendering a final decision regarding the applicant’s proposed action; for CEs, EPA estimates 15 hours, for EAs 40 hours, and for EISs 180 hours.
6. Maintain files; for CEs, EPA estimates 5 hours, for EAs 10 hours, and for EISs 20 hours.

On occasion, EPA may prepare the NEPA documentation without assistance from the applicant for an applicant’s project, using an EPA contractor for technical assistance with preparation of EAs/FONSIs and EISs/RODs. EPA tasks, and the estimated hours for these tasks, generally include the following:

1. Issue a Statement of Work for the project; for CEs EPA estimates 0 hours, for EAs 30 hours, and for EISs 60 hours.
2. For EPA’s direct consultations for CEs, and for coordination with the contractor and/or for direct consultations during EA or EIS preparation, on issues related to consulting with federal agencies, states or federally-recognized Indian tribes regarding extraordinary circumstances and/or potential impacts; for CEs EPA estimates 23 hours, for EAs 40 hours, and for EISs 100 hours.
3. Review the contractor-prepared documents; for CEs EPA estimates 0 hours, for EAs 50 hours, and for EISs 180 hours.
4. Complete the required NEPA review and documents; for CEs EPA estimates 25 hours, for EAs 40 hours, and for EISs 200 hours.
5. Maintain files; for CEs EPA estimates 2 hours, for EAs 10 hours, and for EISs 30 hours.

There are no one-time capital/start-up costs for EPA, and the O&M hours for maintaining files are included in the EPA hours estimate.

For EPA actions subject to NEPA that are based on applicant proposals with applicants submitting environmental information, EPA’s annual and three-year estimated contractor costs and hours are summarized in Table 8 for grantee projects and Table 9 for permit applicant projects. Table 10 summarizes EPA’s annual and three-year estimated contractor costs and hours for preparation of CE, EA and EIS documentation by EPA without assistance from the applicant and with EIS preparation based on adoption of another federal agency’s EIS or supplementation of another EIS. For purposes of this Supporting Statement, EPA assumes its contractor rate is $75/hour for CE’s, $95/hour for EA/FONSI’s (except for contractors for permit applicants which have a $155/hr for EA/FONSIs) and $155/hour for EIS’s which includes consolidated wages for all personnel working on a project, project expenses and profit. EPA’s hourly salary rate of about $65 is based on the pay for a GS-12, step 10, with 70% overhead, including benefits, O&M and other overhead expenses; see federal wages at: http://www.opm.gov. For this Supporting Statement, O&M is listed as a zero line item in the tables for ease of comparison to the applicant tables; specific O&M expenses are not included as these are included in EPA’s overhead.

Table 8. Grantee Projects - Annual and 3-Year Estimated Costs and Hours Per Document Type for EPA

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ***Respondent*** | ***CE Projects*** | ***EA/FONSI Projects*** | ***EIS/ROD Projects*** | ***Totals*** |
| Grantees - Annual  Number of Projects  Contractor Hours  Contractor Costs  EPA Hours  EPA Direct Labor Costs  O&M  Totals on One-Time Project Basis | 38 projects  0  $0  38 proj x 40 hrs/proj = 1,520 hours  1,520 hrs x $65/hr = $98,800  $0  0hrs + 40hrs = 40 hrs  $0 + (40hrs x $65/hr) + $0 = $2,600 | 12 projects  25% x 12 proj x 70 hrs/proj = 210 hours  25% x 12 proj x $5,000/proj = $15,000  12 proj x 120 hrs/proj = 1,440 hours  1,440 hrs x $65/hr =  $93,600  $0  70hrs + 120hrs = 190 hours  $5,000 + (120hrs x $65/hr) + $0 = $12,800 | (None annually, one on a 3-year basis)  (None annually, one on a 3-year basis)  (None annually, one on a 3-year basis)  (None annually, one on a 3-year basis)  (None annually, one on a 3-year basis)  (None annually, one on a 3-year basis | 50 projects  210 hours  $15,000  2,960 hours  $192,400  $0 |
| Grantees -  3-Yr Total:  Number of Projects  Contractor Hours  Contractor Costs  EPA Hours  EPA Direct Labor Costs  O&M  Totals on One-Time Project Basis | 3 yrs x 38 proj/yr = 114 proj  3 yrs x 0 hours/yr =  0  3 yrs x $0 =$0  3 yrs x 1,520 hrs/yr =  4,560 hours  3 yrs x $98,800/yr = $296,400  3 yrs x $0/yr = $0 | 3 yrs x 12 proj/yr =  36 projects  3 yrs x 210 hours/yr =  630 hours  3 yrs x $15,000/yr = $45,000  3 yrs x 1,440 hrs/yr =  4,320 hours  3 yrs x $93,600/yr =  $280,800  3 yrs x $0/yr = $0 | 1 project on a 3-yr basis  1 proj x 0 hrs/yr =  0 hours  1 proj x $0 = $0  1 proj x 530 hours = 530 hours  530 hrs x $65/hr = $34,450  $0  0 + 530hrs = 530hrs  $0 + $34,450 + $0 = $34,450 | 151 projects  630 hours  $45,000  9410 hours  $611,650  $0 |

a Project assumed to be under third-party contract with no technical support by EPA’s contractor.

Table 9. Permit Applicant Projects - Annual and 3-Year Estimated Costs and Hours Per Document Type for EPA

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ***Respondent*** | ***CE Projects*** | ***EA/FONSI Projects*** | ***EIS/ROD Projects*** | ***Totals*** |
| Permitees - Annual  No. Projects  Contractor Hours  Contractor Costs  EPA Hours  EPA Direct Labor Costs  O&M  Totals on One-Time Project Basis | None  None  None  None  None  None  (None) | 11 projects/year  50% x 11 proj x 135 hr/proj =  743 hours  50% x 11 proj x $10,000/proj = $55,000  11 proj x 120 hrs/pr= 1,320 hrs  1,320 hrs x $65/hr = $85,800  $0  135 hrs + 120 hrs = 255 hours  $10,000 + (120 hr x $65/hr) + $0 = $17,800 | 1 project/year  1 proj x 0 hr/proj = 0 hours  1 proj x $0/proj = $0  1 proj x 530hrs/proj = 530 hours  530 hrs x $65/hr = $34,450  $0  0 hrs + 530 hrs = 530 hours  $0 + $34,450 + $0 =  $34,450 | 12 projects  743 hours  $55,000  1,850 hours  $120,250  $0 |
| PERMITEES - 3-Yr Total:  No. Projects  Contractor Hours  Contractor Costs  EPA Hours  EPA Direct Labor Costs  O&M | None  None  None  None  None  None | 3 yrs x 11 proj/yr = 33 projects  3 yrs x 743 hrs/yr = 2,229 hours  3 yrs x $55,000/yr = $165,000  3 yrs x 1320 hrs/yr = 3,960 hrs  3 yrs x $85,800/yr = $257,400  3 yrs x $0/yr = 0 | 3 yrs x 1 proj/yr = 3 proj  3 yrs x 0 hrs/yr = 0 hours  3 yrs x $0/yr = $0  3 yrs x 530 hrs/yr = 1,590 hrs  3 yrs x $34,450/yr = $103,350  3 yrs x $0/yr = $0 | 36 projects  2,229 hours  $165,000  5,550 hours  $360,750  $0 |

a Project assumed to be under third-party contract with no technical support by EPA’s contractor.

Table 10. Annual and 3-Year Estimated Costs and Hours by Document Type for Direct Preparation of Documents by EPA for Applicant Projects

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ***Respondent*** | ***CE Projects*** | ***EA/FONSI Projects*** | ***EIS/ROD Projects*** | ***Totals*** |
| Annually  No. Projects -  Grantees only  Contractor Hours  Contractor Costs  EPA Hours  EPA Direct Labor Costs  O&M  Totals on One-Time Project Basis | 5 projects  0  $0  5 proj x 50 hrs/proj = 250 hrs  250 hrs x $65/hr = $16,250  $0  0 + 50hrs = 50 hrs  $0 + (50hr x $65/hr) + $0 = $3,250 | (None annually, one on a 3-year basis)  (None annually, one on a 3-year basis)  (None annually, one on a 3-year basis)  (None annually, one on a 3-year basis)  (None annually, one on a 3-year basis)  (None annually, one on a 3-year basis) | (None annually, one on a 3-year basis)  (None annually, one on a 3-year basis)  (None annually, one on a 3-year basis)  (None annually, one on a 3-year basis)  (None annually, one on a 3-year basis)  (None annually, one on a 3-year basis | 5 projects  0  $0  250 hours  $16,250  $0 |
| 3-Yr Total  No. Projects  Grantees and Permitees  Contractor Hours  Contractor Costs  EPA Hours  EPA Direct Labor Costs  O&M  Totals on One-Time Project Basis | 3 yrs x 5 proj =  15 proj  3 yrs x 0 hrs/yr =  0 hours  3 yrs x $0/yr = $0  3 yrs x 250 hrs/yr = 750 hours  3 yrs x $16,250/yr = $48,750  3 yrs x $0/yr = $0 | 1 proj/3-yrs = 1 project  1 proj x 670 hours/proj = 670 hours  1 proj x $62,000/proj = $62,000  1 proj x 170 hrs/yr =  170 hours  170 hrs x $65/hr =  $11,050  $0  670hr + 170hr = 840 hrs  $62,000 + $11,050 + $0 = $73,050 | 1 proj/3-yrs = 1 project  1 proj x 670 hours/proj = 670 hours  1 proj x $50,000/proj = $50,000 (adopt/supplement)  1 proj x 570 hrs/proj =  570 hrs  570 hours x $65/hr =  $37,050  $0  670hrs + 570hrs = 1,240 hrs  $50,000 + $34,450 + $0 = $87,050 | 17 projects  1,340  $112,000  1,490 hours  $96,850  $0 |

As discussed in Section 5, the information collected under this ICR is one-time only for EPA actions subject to NEPA that are based on applicant proposals. Grantees or permit applicants submit environmental information to EPA as part of the environmental review process unless the Responsible Official decides to prepare the NEPA documents without assistance from the applicant. Table 11 summarizes the one-time total estimated EPA costs, including contractor hours and costs and EPA hours and direct labor costs for preparation of a CE, or an EA/FONSI, or an EIS/ROD. For this Supporting Statement, O&M is listed as a zero line item in the table for ease of comparison to the applicant tables; specific O&M expenses are not included as these are included in EPA’s overhead. Based on EPA’s experience and information in the EPA NEPA Compliance Database, EPA anticipates that for grantees there will be approximately 50 projects with about 75% of the projects documented with a CE, and about 25% with an EA/FONSI. In addition, EPA estimates one project (less than one percent of the total annual grantee projects) will have an EIS/ROD completed during the 3-year life of this ICR. For permit applicants, EPA assumes there will be approximately 12 projects annually with about 11 of the projects documented with an EA/FONSI and one project will have an EIS/ROD. None will be documented initially with a CE.

Table 11. Summary of Estimated One-Time Total Costs and Hours for EPA

|  |  |
| --- | --- |
| ***Respondent*** | ***One-Time Total Costs and Hours***  ***CE EA/FONSI EIS/ROD*** |
| Grant Applicant Projects  Contractor Hrs/Cost  Direct Hrs/Labor Cost  O&M  Total | Hours Cost Hours Cost Hours Cost  0 $ 0 70 $ 5,000 0 $ 0  40 2,600 120 7,800 530 34,450  $ 0 $ 0 $ 0  40 $2,600 190 $12,800 530 $34,450 |
| Permit Applicant Projects  Contractor Hrs/Cost  Direct Hrs/Labor Cost  O&M  Total | Hours Cost Hours Cost Hours Cost  None None 135 $10,000 0 $ 0  None None 120 7,800 530 34,450  None None $ 0 $ 0  None None 255 $17,800 530 $34,450 |
| Prepared Directly by EPA  Contractor Hrs/Cost  Direct Hrs/Labor Cost  O&M  Total | Hours Cost Hours Cost Hours Cost  0 $ 0 670 $62,000 670 $50,000  50 3,250 170 11,050 570 37,050  $ 0 $ 0 $ 0  50 $3,250 840 $73,050 1,240 $87,050 |

The information collected under this ICR is one-time only for EPA actions subject to NEPA that are based on applicant proposals (see Section 5). For purposes of this ICR, Table 12 summarizes the total annual and 3-year estimated EPA costs, including contractor hours and costs and EPA hours and direct labor costs for the three-year period of this ICR. For this Supporting Statement, O&M is listed as a zero line item in the table for ease of comparison to the applicant tables; specific O&M expenses are not included as these are included in EPA’s overhead. Based on EPA’s experience, EPA anticipates there will be approximately 50 grantee projects annually with about 75% of these projects documented with a CE, and about 25% with an EA/FONSI. In addition, EPA estimates that one project (less than one percent of the total annual grantee projects) will have an EIS/ROD completed during the 3-year life of this ICR. For permit applicants, EPA assumes there will be approximately 12 projects annually with about 11 of the projects documented with an EA/FONSI and one project will have an EIS/ROD. None will be documented initially with a CE.

Table 12. Summary of Total Annual and 3-Year Estimated Costs and Hours for EPA for Applicant-Proposed Projects

|  |  |  |
| --- | --- | --- |
| ***Respondent*** | ***Annual*** | ***3-Year*** |
| Grant Applicant Projects  Contractor Hrs/Cost  Direct Hrs/Labor Cost  O&M  Number of Projects  Sub-Totals | Hours Cost  210 $ 15,000  2,960 192,400  $ 0  50  50 3,170 $207,400 | Hours Cost  630 $ 45,000  9,410 611,650  $ 0  151  151 10,040 $656,650 |
| Permit Applicant Projects  Contractor Hrs/Cost  Direct Hrs/Labor Cost  O&M  Number of Projects  Sub-Totals | Hours Cost  743 $ 55,000  1,850 120,250  $ 0  12  12 2,593 $175,250 | Hours Cost  2,229 $165,000  5,550 360,750  $ 0  36  36 7,779 $525,750 |
| Prepared Directly by EPA  Contractor Hrs/Cost  Direct Hrs/Labor Cost  O&M  Number of Projects  Sub-Totals | Hours Cost  0 $ 0  250 16,250  $ 0  5  5 250 $ 16,250 | Hours Cost  1,340 $ 112,000  1,490 96,850  $ 0  17  17 2,830 $ 208,850 |
| Totals | 67 6,013 $398,900 | 204 20,649 $1,391,250 |

6(d) Estimated Respondent Universe and Total Burden and Costs **:**

As discussed in Sections 5, 6(a) and 6(b), the information collected under this ICR is one-time only for EPA actions subject to NEPA that are based on applicant proposals. Grantees or permit applicants must submit environmental information to EPA as part of the environmental review process unless the Responsible Official decides to prepare the NEPA documents without assistance from the applicant. If the applicant cannot afford to provide the required environmental information to EPA, then EPA would undertake the environmental review without input from the applicant (see footnote 11). Further, grantees may be grant-eligible for certain costs associated with providing environmental information to EPA (see footnote 12); permit applicants are not eligible for EPA financial assistance. Table 13 summarizes the aggregate one-time total estimated applicant and EPA costs, including contractor hours and costs, direct labor hours and costs, and O&M for documentation to support a CE, or an EA/FONSI, or an EIS/ROD. For any specific project, only one of these levels of documentation is generally prepared. Based on experience, EPA anticipates that for grantees there will be approximately 50 projects with about 75% documented with a CE, and about 25% with an EA/FONSI. In addition, EPA estimates that one project (less than one percent of the total annual grantee projects) will have an EIS/ROD completed during the 3-year life of this ICR. For permit applicants, EPA assumes there will be approximately 12 projects annually with about 11 of the projects documented with an EA/FONSI and one project will have an EIS/ROD. None will be documented initially with a CE.

Table 13. Summary of Aggregate One-Time Estimated Costs and Hours for Applicants and EPA

|  |  |
| --- | --- |
|  | ***One-Time Total Costs and Hours***  ***CE EA/FONSI EIS/ROD***  ***Hours Cost Hours Cost Hours Cost*** |
| Grant Applicants  Permit Applicants  EPA  Grant Applicant Projects  Permit Applicant Projects  Prepared Directly by EPA | 45 $3,366 260 $23,118 2,840 $402,132  One per 3-years  None None 460 $67,198 2,840 $410,052  One annually  40 $2,600 190 $12,800 530 $ 34,450  One per 3-years  None None 255 $17,800 530 $ 34,450  One annually  50 $3,250 840 $73,050 1,240 $ 87,050 |
| Totals | 135 $9,216 2,005 $193,966 7,980 $968,134  “Third-Year” calculation represents  maximum hours/costs in a year |

6(e) Bottom Line Burden Hours and Costs Tables **:**

The information collected under this ICR is one-time only on a per-project basis for EPA actions subject to NEPA that are based on applicant proposals. Grantees or permit applicants submit environmental information to EPA as part of the environmental review process unless the Responsible Official decides to prepare the NEPA documents without assistance from the applicant. The NEPA review for a project may result in a CE, or an EA/FONSI, or an EIS/ROD. For any specific project, only one of these levels of documentation is generally prepared. Based on EPA’s experience, under the final rule, EPA anticipates there will be approximately 50 grantee projects annually with about 75% of these projects documented with a CE, and about 25% with an EA/FONSI. In addition, EPA estimates that one project (less than one percent of the total annual grantee projects) will have an EIS/ROD completed during the 3-year life of this ICR. For permit applicants, EPA assumes there will be approximately 12 projects annually with about 11 of the projects documented with an EA/FONSI and one project will have an EIS/ROD. None will be documented initially with a CE. Table 14 summarizes the aggregate total annual and 3-year estimated applicant and EPA hours and costs, including contractor hours and costs, direct labor hours and costs, and O&M for documentation to support a CE, or an EA/FONSI, or an EIS/ROD.

Table 14. Summary of Aggregate Total Annual and 3-Year Estimated Costs and Hours for Applicants and EPA

|  |  |  |
| --- | --- | --- |
| ***Respondents and EPA*** | ***Annual***  ***Projects Hours Cost*** | ***3-Year***  ***Projects Hours Costs*** |
| Respondents  Grant Applicants  Permit Applicants  Sub-Totals | 50 4,830 $405,324  12 7,900 1,149,230  62 12,730 $1,554,554 | 151 17,330 $1,618,104  36 23,700 3,417,855  187 41,030 $5,065,794 |
| EPA  Grant Applicant Projects  Permit Applicant Projects  Prepared Directly by EPA  Sub-Totals | 50 3,170 $207,400  12 2,593 175,250  5 250 16,250  67 6,013 $398,900 | 151 10,040 $ 656,650  36 7,779 525,750  17 2,830 208,850  204 20,649 $ 1,391,250 |
| Totals | 129 18,743 $1,953,454 | 391 61,679 $6,457,044 |

**6(f) Reasons for Change in Burden** **::**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | Currently Approved Hours | Requested Hours | Change | Currently Approved Labor & O&M Costs | Requested Labor & O&M Costs | Change |
| Grant Applicants-CE | 9,178 | 1,710 | -7,468 | $752,175.00 | $127,908.00 | -$624,267.00 |
| Grant Applicants-EA | 19,500 | 3,120 | -16,380 | $1,715,625.00 | $277,416.00 | -$1,438,209 |
| Grant Applicants-EISb | 947 | 947 | 0 | $133,457.33 | $134,044.00 | +$586.67 |
| Permit Applicants-EA | 5,060 | 5,060 | 0 | $733,205.00 | $739,178.00 | +$5973.00 |
| Permit Applicants-EIS | 2,840 | 2,840 | 0 | $406,080.00 | $410,052.00 | +$3972.00 |
| Total | 37,525 | 13,677 | -23,848 | $3,740,542.33 | $1,688,598.00 | -$2,051,944.33 |

bApproximately 1 EIS is completed every three years; for this table, the cost and hour estimates have been annualized.

Under the current ICR, EPA estimated that approximately 75% of the annual 300 grant projects would be documented with a CE, and 25% with an EA. Under the renewal ICR, we expect the burden to be reduced due to fewer NEPA documents being completed following the elimination of awarding SAAP grants in 2010. This is further supported by information posted online in EPA’s NEPA Compliance Database on NEPA documents for its own actions that require documentation.

**6(g) Burden Statement**  **:** EPA is collecting information from certain applicants as part of the process of complying with either NEPA or Executive Order 12114. EPA’s procedures further the purpose of NEPA and provide that EPA may be guided by these procedures to the extent they are applicable. Therefore, when EPA conducts an environmental assessment pursuant to its Executive Order 12114 procedures, the Agency generally follows its NEPA procedures. For this ICR, applicant-proposed projects subject to either NEPA or Executive Order 12114 (and that are not addressed in other EPA programs’ ICRs), are addressed through the NEPA assessment process.

Those subject to 40 CFR Part 6 include EPA officials who must comply with NEPA and certain grant and permit applicants who must submit environmental information to EPA for their proposed projects. The EPA Responsible Official is responsible for the environmental review process, including any categorical exclusion determination or the scope, accuracy, and contents of an EA or EIS and any supporting documents. The applicant contributes by submitting environmental information to EPA as part of the environmental review process. The information collected from grant or permit applicants is one-time only on a per-project basis for EPA actions subject to NEPA that are based on applicant proposals. Grantees (primarily grants for special projects identified in EPA’s annual Appropriations Act) or permit applicants (for new source NPDES permits issued by EPA) are required to provide environmental information to EPA as part of the environmental review process unless the EPA Responsible Official decides to prepare the NEPA documents without assistance from the applicant. If the applicant cannot afford to provide the required environmental information to EPA, then EPA would undertake the environmental review without input from the applicant. Further, certain grantees may be grant-eligible for certain costs associated with providing environmental information to EPA; permit applicants are not eligible for EPA financial assistance.

The NEPA review for a project may result in a categorical exclusion (CE), or an EA documented with a FONSI, or an EIS documented with a record of decision (EIS/ROD). (EPA assumes a project may be documented with a CE only for grantee-proposed projects. EPA does not anticipate that an initial new source NPDES permit application would be documented with a CE.) For any specific project, only one of these levels of documentation is generally prepared. Applicants may submit an environmental information document (EID) to EPA as part of the environmental review process. Alternately, an applicant may submit a draft EA or a draft EIS and supporting documents. Applicants may prepare and submit the information directly, or may enter a third-party contract agreement with EPA for preparation of an EA or EIS and supporting documentation. For purposes of determining the maximum costs to applicants for this ICR, EPA assumed that grant and permit applicants would expend time and contractor costs to submit: (1) information to support application of a CE with environmental information prepared directly by the applicant’s contractor; or (2) a draft EA and supporting documents prepared directly by the applicant’s contractor; or (3) a draft and final EIS and supporting documents prepared by the applicant’s contractor under a third-party contract agreement with EPA.

Based on experience and information collected in EPA’s NEPA Compliance Database, EPA anticipates there will be approximately 50 grantee projects annually with about 75% of these projects documented with a CE, and about 25% with an EA/FONSI. In addition, EPA estimates that one project (less than one percent of the total annual grantee projects) will have an EIS/ROD completed during the 3-year period of this ICR. For permit applicants, EPA assumes there will be approximately 12 projects annually with about 11 of the projects documented with an EA/FONSI and one project will have an EIS/ROD. None will be documented initially with a CE. EPA estimated the one-time costs for applicants to prepare the environmental documentation by including contractor hours and costs, direct labor hours and costs, and O&M for documentation submitted to EPA to support a CE determination, or an EA/FONSI, or an EIS/ROD. For a grantee, EPA estimates an applicant’s one-time costs for submitting environmental information will be: 45 hours and $3,366 for CE documentation, or 260 hours and $23,118 for EA/FONSI documentation, or 2,840 hours and $402,132 for EIS/ROD documentation. For a permit applicant, EPA estimates an applicant’s one-time costs for submitting environmental information will be: 460 hours and $67,198 for EA/FONSI documentation, or 2,840 hours and $410,052 for EIS/ROD documentation. These figures may vary depending on the complexity of issues associated with the project and the availability of relevant information, particularly for EISs. (For example, EPA’s experience with a limited number of EISs has included one-time costs ranging from nominal for information submitted by letter to supplement an existing oil and gas extraction EIS to over a million dollars for new EISs for a mining project and an oil and gas extraction project with multiple complex issues.) EPA believes the calculations for this ICR are representative of most projects.

Burden Statement: The total annual public reporting and recordkeeping burden for this collection of information is estimated at 13,677 hours and $1,688,598 for contractor hours and costs, direct labor hours and costs, and O&M costs. This burden reflects an annual one-time submission of documentation for an anticipated 62 applicant-proposed projects that may be documented with a CE, or an EA/FONSI, or an EIS/ROD. Under the ICR renewal, EPA assumes there will be approximately 50 grantee projects annually with about 75% of these projects documented with a CE, and about 25% with an EA/FONSI. In addition, EPA estimates that one project will have an EIS/ROD completed during the 3-year period of this ICR. For permit applicants, EPA assumes there will be approximately 12 projects annually with about 11 documented with an EA/FONSI and one project will have an EIS/ROD. None will be documented initially with a CE. Over the 3-year period of this ICR, EPA anticipates 187 applicant-proposed projects with a 3-year total burden estimate of 41,030 hours and $5,065,794. 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; research 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.

EPA has established a public docket for this ICR under Docket ID Number EPA-HQ-OECA-2005-0062, which is available for online viewing at www.regulations.gov, or in person viewing at EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue 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. An electronic version of the public docket is available at www.regulations.gov. This site can be used to 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.

**PART B OF THE SUPPORTING STATEMENT**

**STATISTICAL SURVEY**

This collection of information does not use or is otherwise based on a statistical survey.

**ATTACHMENT 1 TO THE SUPPORTING STATEMENT**

**Exemptions from NEPA for Certain EPA Actions and**

**EPA’s Voluntary NEPA Policy and Procedures**

*Exemptions from NEPA for Certain EPA Actions*

Certain EPA actions are exempt from the procedural requirements of NEPA, including the CEQ Regulations. Congress has provided specific statutory exemptions for certain EPA actions taken under the Clean Water Act (CWA) and all EPA actions taken under the Clean Air Act (CAA). Specifically, under CWA Section 511(c)(1), EPA is exempt from preparing EISs for all actions taken under the CWA except for issuance of NPDES permits under CWA Section 402 for “new sources” as defined in Section 306, and for Federal financial assistance provided for assisting construction of publicly owned treatment works under CWA Section 201 (33 U.S.C. 1371(c)). Under the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 793(c)(1)), all actions taken under the CAA are deemed not to be major federal actions significantly affecting the environment.

Further, the courts have exempted certain EPA actions from the procedural requirements of NEPA through the functional equivalence doctrine. Under the functional equivalence doctrine, courts have found EPA to be exempt from the procedural requirements of NEPA for certain actions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Resource Conservation and Recovery Act (RCRA), the Toxic Substances Control Act (TSCA), the Safe Drinking Water Act (SDWA), and the Marine Protection, Research, and Sanctuaries Act (MPRSA). The courts reasoned that EPA actions under these statutes are functionally equivalent to the analysis required under NEPA because they are undertaken with full consideration of environmental impacts and opportunities for public involvement. See, e.g., *EDF v. EPA*, 489 F.2d 1247 (D.C. Cir. 1973) (FIFRA); *State of Alabama v. EPA*, 911 F. 2d 499 (11th Cir. 1990) (RCRA); *Warren County v. North Carolina*, 528 F. Supp. 276 (E.D. N.C. 1981) (TSCA); *Western Nebraska Resources Council v. US EPA*, 943 F.2d 867 (8th Cir. 1991) (SDWA); *Maryland v. Train*, 415 F. Supp. 116 (D. Md. 1976) (MPRSA).

Agency actions exempt from the requirements of NEPA remain exempt under this final rule. If a question arises regarding the applicability of the NEPA requirements to certain actions, the Responsible Official should consult with the NEPA Official and the Office of General Counsel.

*EPA's Voluntary NEPA Policy and Procedures*

In 1974, EPA Administrator Russell Train determined that the Agency could voluntarily prepare EISs for certain regulatory activities that were exempt from NEPA. In 1998, Administrator Carol Browner amended this policy to permit the preparation of non-EIS NEPA documents for certain EPA regulatory actions. The Agency’s current "Notice of Policy and Procedures for Voluntary Preparation of National Environmental Policy Act (NEPA) Documents" (see 63 FR 58045) sets out the policy and procedures EPA uses when preparing environmental review documents under the Voluntary NEPA Policy. This final rule does not make any changes to the voluntary NEPA policy and procedures. However, the final rule can serve as a framework for the preparation of voluntary NEPA documents.

**ATTACHMENT 2 TO THE SUPPORTING STATEMENT**

List of Tables

Table 1-1. Estimated Hours for Applicants and EPA for Preparation of NEPA Documentation

Table 1-2. Summary of NEPA Documents for STAG Awards by Region for 2013-2016 uploaded into EPA’s NEPA Compliance Database Online

Table 1-1. Estimated Hours for Applicants and EPA for Preparation of NEPA Documentation

|  |  |  |  |
| --- | --- | --- | --- |
|  | ***CE Documents Project*** | ***EA/FONSI Documents Project*** | ***EIS/ROD Documents Project*** |
| Applicants | assume 5 hours | 120 hrs for EPA/2 = 60 hours | Assume 440hours |
| EPA | Applicant submits info: 40 hours  Direct preparation: 50 hours | Applicant submits info: 120 hours  Direct preparation: 170 hours | Applicant submits info:440 hours  Direct preparation:570 hours |

Table 1-2. Summary of NEPA documents for STAG Awards by Region for 8/2013-8/2016 uploaded into EPA’s NEPA Compliance Database online

|  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Region** | | | | | | | | | | | | |
|  |  |  |  |  |  |  |  |  |  |  |  |  |
| **Year** | **1** | **2** | **3** | **4** | **5** | **6** | **7** | **8** | **9** | **10** | **HQ** | **Total** |
|  |  |  |  |  |  |  |  |  |  |  |  |  |
| **8/2013-8/2014** | 0 | 14 | 4 | 12 | 4 | 9 | 0 | 4 | 14 | 0 |  | 61 |
| **8/2014-8/2015** | 0 | 12 | 0 | 1 | 6 | 8 | 0 | 5 | 17 | 0 |  | 49 |
| **8/2015-8/2016** | 0 | 9 | 0 | 1 | 0 | 5 | 0 | 1 | 3 | 0 |  | 19 |

1. Certain actions eligible for a categorical exclusion may require the Responsible Official to document the determination that a categorical exclusion applies. See 40CFR Part 6.204 for documentable and non-documentable categorical exclusions. [↑](#footnote-ref-1)
2. 1The courts have determined, and CEQ has issued guidelines, that NEPA does not apply to Federal agency actions significantly affecting the environment of the global commons or the environment of a foreign nation not participating with the United States and not otherwise involved in the action. The Executive Order is “... solely for the purpose of establishing internal procedures for Federal agencies to consider the significant effects of their actions on the environment outside the [U.S.], its territories and possessions ...” [Executive 0rder 12114, Section 3-1] [↑](#footnote-ref-2)
3. This may include such actions as EPA-issued permits for hazardous waste treatment, storage, or disposal facility under section 3005 of the Resource Conservation and Recovery Act (42 U.S.C. 6925), NPDES permits under section 402 of the Clean Water Act (33 U.S.C. 1342), and prevention of significant deterioration approvals under Part C of the Clean Air Act (42 U.S.C. 7470 *et seq.*). [↑](#footnote-ref-3)
4. Approximately 75% of EPA’s grants are under the STAG appropriations account. Certain line items in the STAG appropriations account are not subject to NEPA (see Attachment 1). Grantee actions subject to NEPA are predominately under the STAG appropriations account (including consideration of the Wastewater Treatment Construction Grants Program and other actions subject to NEPA, including those under the Agency’s Environmental Programs and Management (EPM) account). [↑](#footnote-ref-4)
5. EPA issues new source NPDES permits in areas where EPA is the NPDES permitting authority, which includes four states (Idaho, Massachusetts, New Hampshire, and New Mexico), Washington, D.C., all U.S. territories except the Virgin Islands, most Indian Country lands, federal facilities in four additional states (Colorado, Delaware, Vermont, and Washington), and a few additional areas as specified on the [Specific State Program Status](https://www.epa.gov/npdes/npdes-state-program-information) page at <https://www.epa.gov/npdes/npdes-state-program-information>. All other states have the authority to issue permits. [↑](#footnote-ref-5)
6. If an EA or EIS is to be prepared for an action subject to NEPA, the Responsible Official and the applicant may enter into an agreement whereby the applicant engages and pays for the services of a third-party contractor to prepare an EA or EIS and any supporting documents. The Responsible Official has sole authority for approval and modification of the statements, analyses, and conclusions of the EA or EIS and any supporting documents. Because EISs are generally more complex than EAs in terms of the issues to be addressed and the associated analyses, it has generally been EPA’s experience that grantees and permit applicants will enter into third-party agreements with EPA for preparation of the EIS and supporting documents. [↑](#footnote-ref-6)
7. For example, a grantee action for renovation of an existing wastewater treatment or drinking water supply system may be categorically excluded. An EA may be required for a grantee action to construct a new sewage treatment system in a small governmental jurisdiction; or to assess a new source NPDES permit for a discharge from a confined animal feedlot operation for chickens, cattle, hogs or pigs. An EIS may be required for a grantee action to construct a new sewage treatment plant with potential for significant impacts to wetlands, or cultural or archaeological features; or to assess a new source NPDES permit for discharges from an oil and gas extraction facility, or mining operation, or a confined animal feedlot operation with potential for significant impacts to wetlands, or cultural or archaeological features, or threatened or endangered species. [↑](#footnote-ref-7)
8. The Responsible Official must make a copy of the determination document, if required, available to the public upon request. [↑](#footnote-ref-8)
9. EPA’s Peer Review Guidelines recognize the public review process for NEPA documents. Also, EPA’s Quality Assurance System may apply to certain information gathering activities undertaken directly by EPA. [↑](#footnote-ref-9)
10. Information, including quoted material, taken from: "ICR Handbook, EPA's Guide to Writing Information Collection Requests Under the Paperwork Reduction Act of 1995, U.S. Environmental Protection Agency, Office of Environmental Information Collection Strategies Division Division, revised October 2009. [↑](#footnote-ref-10)
11. Applicants would normally be requested to demonstrate financial hardship, including inability to provide the requested environmental information. If so demonstrated, then EPA would undertake the environmental review necessary for the grant or permit action. [↑](#footnote-ref-11)
12. Under appropriate grant conditions, grantees generally may use EPA financial assistance to prepare an EID but not to prepare a draft EA and supporting documents. Third-party contract costs for an EID may also be grant-eligible. For grantee contractor costs to be reimbursable, grantees must meet certain contractor requirements, including procurement criteria. [↑](#footnote-ref-12)
13. It has been EPA’s experience that applicants often use in-house engineering contractors for preparing CE- and EA-related environmental documents usually without seeking cost reimbursement. [↑](#footnote-ref-13)
14. EPA believes the calculations for this ICR are representative of most projects. EPA’s experience with a limited number of EISs has included one-time costs ranging from nominal for information submitted by letter to supplement an existing oil and gas extraction EIS to over a million dollars for new EISs for a mining project and an oil and gas extraction project with multiple complex issues. [↑](#footnote-ref-14)
15. For purposes of this ICR: 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; research data sources; complete and review the collection of information; and transmit or otherwise disclose the information. [↑](#footnote-ref-15)
16. Due to a lack of a congressional passed budget, the number of grants awarded could only be calculated through 2010. [↑](#footnote-ref-16)
17. One-time capital/start-up costs usually include any produced physical good needed to provide the necessary information. Start-up capital must be purchased for the specific purpose of satisfying EPA's reporting or recordkeeping requirements. Capital goods include computers, machinery, or equipment. Start-up capital costs are usually incurred at the beginning of an information collection period and are usually incurred only once. [↑](#footnote-ref-17)
18. EPA actions for construction of special purpose facilities or facility renovations of EPA facilities are actions undertaken directly by EPA and do not involve applicants. [↑](#footnote-ref-18)