

**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**

**OMB Control No. 2020-0033, EPA ICR No. 2243.09**

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## **LIST OF ACRONYMS**

CE	Categorical Exclusion
CEQ	Council on Environmental Quality
EA	Environmental Assessment
EID	Environmental Information Document
EIS	Environmental Impact Statement
EPA	Environmental Protection Agency
FONSI	Finding of No Significant Impact
ICR	Information Collection Request
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
ROD	Record of Decision
STAG	State and Tribal Assistance Grants

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**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 (40 CFR Part 6) OMB Control Number 2020-0033; EPA ICR Number 2243.09.

**1(b) Abstract**

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321-4347, establishes a national policy for the environment. The Council on Environmental Quality (CEQ) oversees the NEPA implementation. The CEQ's NEPA implementation regulations at 40 CFR parts 1500 - 1508 set the standard for NEPA compliance. CEQ's NEPA regulations also require agencies to establish their own NEPA implementing procedures. The EPA's procedures for implementing NEPA are found in 40 CFR part 6. Through 40 CFR part 6, the EPA adopted the CEQ regulations and supplemented those regulations for actions proposed by the EPA that are subject to the NEPA requirements. The EPA actions subject to NEPA include the award of wastewater treatment construction grants under Title II of the Clean Water Act, the 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, the EPA actions involving EPA facilities construction, and certain grants awarded for projects authorized by Congress through the Agency's annual appropriations act.

Compliance of the EPA's actions subject to 40 CFR part 6 is the responsibility of the 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 the 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<sup>1</sup> 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 the 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 CE and request a determination by the Responsible Official. If the applicant-proposed action is not eligible for a CE, 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 the 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). The EPA's Executive Order 12114 procedures further the purpose of NEPA and provide that the EPA may be guided by its NEPA procedures to the extent they are applicable.<sup>2</sup> Therefore, when the 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 the EPA's Responsible Officials and for applicant-proposed actions, applicants may be required to provide environmental information to the 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.

This request renews the "Procedures for Implementing the National Environmental Policy Act and Assessing the Environmental Effects Abroad of EPA Actions" ICR by updating the

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<sup>1</sup> Certain actions eligible for a categorical exclusion may require the Responsible Official to document the determination that a categorical exclusion applies. See 40 CFR 6.204 for documentable and non-documentable categorical exclusions.

<sup>22</sup> The courts have determined, and the 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 Order 12114, Section 3-1].

information contained in the previously approved ICR for 40 CFR part 6. The overall respondent burden has decreased from the previous ICR by 8,010 hours due to an adjustment change in the size of the respondent universe.

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

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

The CEQ NEPA 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 NEPA regulations that are applicable to the EPA actions. Additionally, 40 CFR part 6 includes the EPA's environment review procedures implementing Executive Order 12114. The 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**

The EPA's NEPA regulations apply to the actions of the 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, the EPA's issuance of new source National Pollutant Discharge Elimination System (NPDES) permits, certain research and development projects, the 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. The EPA actions subject to NEPA that are based on applicant proposals may include any of these except the EPA actions for construction of special purpose facilities or facility renovations of EPA facilities. The 40 CFR part 6 also include the 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 Federal Activities published a Notice in the *Federal Register* (84 FR 50032) on September 24, 2019 for this ICR renewal. The notice requested public comments on the Agency's need for the information outlined in this ICR, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques. The EPA did not receive any public comments.

The EPA established a public docket for this ICR renewal under Docket ID number EPA-HQ-OA-2019-0296. The EPA requested that any comments related to this ICR renewal be submitted to the EPA. The EPA's docket is available online at [regulations.gov](https://www.regulations.gov) and through the EPA Docket Center – Public Reading Room, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, D.C. 20004. The public may use the public docket to obtain a copy of the ICR including the Supporting Statement, review 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.

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

Four respondents were contacted by phone and/or email to obtain their input on the ICR renewal. The EPA received feedback from two respondents related to the burden hour estimates. Both respondents stated that they felt that the amount and frequency of information required was appropriate. They did not provide suggestions of how the Agency can enhance the quality, utility and clarity of information, or suggestions of how to minimize the burden on the public.



- Respondent: Carl Castro, Grants Administrator  
Phone: 670-664-4282 ext 349; email: [carl.castro@cucgov.org](mailto:carl.castro@cucgov.org)  
Affiliation: Commonwealth Utilities Corporation, CNMI
- Respondent: Prudencio Aguon  
Phone: 671-300-6065; Email: [prudencio@guamwaterworks.org](mailto:prudencio@guamwaterworks.org)  
Affiliation: Guam Waterworks Authority

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

Under 40 CFR part 6, respondents submit project-specific information only for the 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 the 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 the 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 1320.5(d)(2). For an applicant-proposed action, the applicant (e.g., grantee or permit applicant) submits information to the 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 includes the EPA officials who must comply with NEPA or Executive Order 12114, and certain grant or permit applicants who must submit an EID to the 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).

The EPA actions generally subject to NEPA include: wastewater treatment construction grants, issuance of new source NPDES permits by the EPA, certain research and development grants, the 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. The EPA actions subject to NEPA that are based on applicant proposals may include any of these except the 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 the EPA as part of the environmental review process.

The 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 the EPA,<sup>3</sup> Wastewater Treatment Construction Grant

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<sup>3</sup> This may include such actions as the 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.*).

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 the EPA.

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

Further, certain actions subject to the EPA's Executive Order 12114 implementing procedures are not subject to the EPA's NEPA implementing procedures. As with the EPA's current part 6 regulations, the 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 the 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 the EPA, is addressed in this ICR. The EPA's Executive Order 12114 implementing procedures further the purpose of NEPA and provide that the EPA may be guided by the CEQ regulations to the extent they are applicable. Therefore, when the EPA conducts an EA pursuant to its Executive Order 12114 procedures, the Agency generally follows the CEQ regulations and the procedures in the 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 the EPA's NEPA implementing procedures.

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

- Grant applicants applying to the 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.<sup>4</sup>
- Permit applicants applying to the EPA for issuance of new source NPDES permits under section 402 of the Clean Water Act.<sup>5</sup> Because of the large number of facilities requiring permits, the 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 the 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 the 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.<sup>6</sup>

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<sup>4</sup> Approximately 75% of the 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).

<sup>5</sup> The EPA issues new source NPDES permits in areas where the 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.

<sup>6</sup> 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

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.<sup>7</sup> Table 1 summarizes the information to be submitted by an applicant for a 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.

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EISs are generally more complex than EAs in terms of the issues to be addressed and the associated analyses, it has generally been the EPA's experience that grantees and permit applicants will enter into third-party agreements with the EPA for preparation of the EIS and supporting documents.

<sup>7</sup> 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.

Table 1. Summary of Information Submitted by Applicants for CEs, EAs/FONSI, 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 the 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 CE 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 the 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 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 the 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 the EPA's Responsible Officials. For applicant-proposed actions, grantees or permit applicants must submit environmental information to the 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 the 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 40 CFR 6.202); and (2) the public participation process associated with actions other than those categorically excluded<sup>8</sup> (see 40 CFR 6.203). 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 40 CFR 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). The EPA maintains file records for each action.

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

The information collected under this ICR is one-time only for applicant-proposed actions; e.g., actions proposed by grantees seeking funding assistance from the EPA or for an NPDES permit application initiated by the permit applicant. In either case, the 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 the EPA to further the applicant's business interests). Nonetheless, if the applicant cannot afford to provide the required environmental information to the EPA, then the EPA would

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<sup>8</sup> The Responsible Official must make a copy of the determination document, if required, available to the public upon request.



undertake the environmental review without input from the applicant.<sup>9</sup> Further, grantees may be grant-eligible for certain costs associated with providing environmental information to the EPA.<sup>10</sup> Permit applicants are not eligible for the EPA financial assistance.

The EPA has reduced the burden on small entities (including businesses and government jurisdictions) through the following provisions in the 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 the 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 the EPA. (For grantees, certain third-party contractor costs may be eligible for cost reimbursement; see footnote 10. However, new source NPDES permit applicants are not eligible for the EPA financial assistance.)

## 5(d) Collection Schedule

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<sup>9</sup> Applicants would normally be requested to demonstrate financial hardship, including inability to provide the requested environmental information. If so demonstrated, then the EPA would undertake the environmental review necessary for the grant or permit action.

<sup>10</sup> Under appropriate grant conditions, grantees generally may use the 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. However, it has been the EPA's experience that applicants often use in-house engineering contractors for preparing CE and EA-related environmental documents usually without seeking cost reimbursement.

Information must be submitted by an applicant only for the EPA actions subject to NEPA that are based on applicant proposals unless the 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 the 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 the EPA financial assistance generally may be used to prepare an EID but not to prepare a draft EA and supporting documents (see footnote 10). New source NPDES permit applicants are not eligible for the 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.

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 10). New source NPDES permit applicants are not eligible for the 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 the EPA's experience that applicants will enter into a third-party agreement with the EPA for preparation of the EIS and supporting documents.

### **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, the 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<sup>11</sup> 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.

An estimation of the hours per document type is provided below and is included in Section 6(d), Table 4.

- For CEs, the EPA estimates that applicants may use 50 hours per project to prepare any supplemental information requested by the EPA to prepare the CE documentation.
- For EAs, the EPA estimates that applicants may use 260 hours per project to prepare any supplemental information or EID requested by the EPA for the EA documentation.
- For EISs, the EPA estimates that applicants may use 2,840 hours per project to prepare any supplemental information or EID requested by the EPA for the EIS documentation.

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<sup>11</sup> 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.

The number of respondents by application type are presented below.

Table 2. The number of annual respondents by application type.

Type of Information	Number of Grant Respondents	Number of Permit Respondents
CE	20	2
EA/FONSI	2	1
EIS/ROD	1*	1*
<b>TOTALS</b>	23	4

\* The EPA estimates one project will have an EIS/ROD completed during the three-year life of this ICR. For this table, the number of respondents for an EIS/ROD has been calculated annually.

## 6(b) Estimated Respondent Costs

### 6(b)(i) Estimating Labor Costs

Grantee applicants are assumed to be state and local government or federally-recognized Indian tribes. Permit applicants are assumed to be civilian worker applicants. Using the national mean wage estimates for management and professional occupations derived from the Bureau of Labor Statistics, the EPA estimated wage for grant and permit applicants is as follows:

- Applicant Wage Rate:<sup>12</sup>  $\$58.44 \times 1.43 = \$83.57$  per hour

### 6(b)(ii) Estimating Capital and Operations and Maintenance Costs

Start-up costs for the NEPA documentation for the EPA grant or permit applications and associated forms are minimal and are part of customary and usual recipient business expenses.

<sup>12</sup> \$58.44 represents the average wage rate of several occupations expected to apply for STAG grants and permits. This information is derived from the Bureau of Labor Statistics; Occupational Employment and Wages, May 2018. This figure was derived from the median hourly wage for the Bureau of Labor Statistics "Occupational Employment and Wages: Management Occupations" available at <https://www.bls.gov/oes/current/oes110000.htm> (accessed 8/29/2019). 1.43 represents a 43% rate for benefits.

There are no capital costs related to the NEPA documentation for the EPA grant or permit applications and related reporting requirements.

#### 6(b)(iii) Capital/Start-up Operating and Maintenance Costs

There are no capital costs related to the NEPA documentation for the EPA grant or permit applications and related reporting requirements. There are no operating and maintenance costs required.

#### 6(b)(iv) Annualizing Capital Costs

This subsection is not applicable.

### **6(c) Estimated Agency Burden and Cost**

For the EPA actions subject to NEPA that are based on grant or permit applicant proposals, the EPA may: (1) prepare the NEPA documents without assistance from the applicant; or (2) prepare the NEPA documents based on information submitted by the applicant (and any other supplemental information).

- The EPA Wage Rate:<sup>13</sup> \$52.26 per hour
- For CEs, the EPA estimates it prepares CE documentation based on the information in the grant or permit application and supplemental information gathered directly by the EPA using about 50 hours per project.
- For EAs, the EPA estimates it prepares the documentation based on the information in the grant or permit application and supplemental information gathered directly by the EPA using an estimated 120 hours.
- For EISs, the EPA estimates it prepares the documentation based on the information in the grant or permit application and supplemental information gathered directly by the EPA using an estimated 530 hours. The EPA estimated that one EIS/ROD may be required during the three-year life of this ICR.

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<sup>13</sup> Office of Personal Management; 2019 General Schedule (GS) Base (Hourly Rate) for GS 11, Step 9 (\$32.66). Available at [https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/GS\\_h.pdf](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/GS_h.pdf) (accessed 8/29/2019). This was fully burdened (x60%), yielding a wage rate of \$52.26.

Table 3. One-Time, Annual Estimated Burden and Cost for the EPA

EPA	Information Type	HOURS AND COST PER RESPONDENT			TOTAL HOURS AND COSTS		
		EPA Hours/Year	Labor Cost/Year	O & M Cost	Number of Respondents	Total Hours/Year	Total Costs/Year
<b>Grants</b>	CE	50	\$2,613	\$0	20	1,000	\$52,260
	EA/FONSI	120	\$6,271	\$0	2	240	\$12,542
	EIS/ROD*	530	\$27,598	\$0	1	530	\$27,598
<b>Permits</b>	CE	50	\$2,613	\$0	2	100	\$ 5,226
	EA/FONSI	120	\$6,271	\$0	1	120	\$ 6,271
	EIS/ROD*	530	\$27,598	\$0	1	530	\$27,598
<b>Subtotals</b>		1,400	\$72,964	\$0	27	2,520	\$131,495

\* The EPA estimates one project will have an EIS/ROD completed during the three-year life of this ICR. For this table, the cost and hour estimates have been calculated annually.

#### 6(d) Estimated Respondent Universe and Total Burden and Costs

The information collected under this ICR is one-time only for the EPA actions subject to NEPA that are based on applicant proposals. Grantees or permit applicants must submit environmental information to the 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 the EPA, then the EPA would undertake the environmental review without input from the applicant (see footnote 9). Further, grantees may be grant-eligible for certain costs associated with providing environmental information to the EPA (see footnote 10); permit applicants are not eligible for the EPA financial assistance.

- For CEs, the EPA estimates that applicants may use 50 hours per project to prepare any supplemental information requested by the EPA to prepare the CE documentation.
- For EAs, the EPA estimates that applicants may use 260 hours per project to prepare any supplemental information or EID requested by the EPA for the EA documentation.

- For EISs, the EPA estimates that applicants may use 2,840 hours per project to prepare any supplemental information or EID requested by the EPA for the EIS documentation.

**Grant Applicants:** Respondents are those who apply to the 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 are authorized by Congress, and subsequently awarded by the EPA. As of 2010, Special Appropriations Act Program (SAAP) grants have not been awarded. Based on the elimination of awarding SAAP grants and information collected in the EPA's NEPA Compliance Database [<https://cdxnodengn.epa.gov/cdx-enepa-II/public/action/nepa/search>], the EPA anticipates that approximately 66 NEPA documents will be completed for STAG grants during the three-year life of this ICR, with approximately 22 requiring documentation completed annually. The EPA estimates that 20 of the STAG projects will be documented with a CE, and about two projects with an EA/FONSI. The EPA has not issued an EIS/ROD for a STAG grant in the past ten years and assumes no EIS will be prepared in the next three years. However, for purposes of this ICR, the EPA estimated that one EIS/ROD may be required during the three-year life of this ICR.

**Permit Applicants:** Respondents are those who also apply to the EPA for issuance of new source NPDES permits under Section 402 of the Clean Water Act. The 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 the EPA. Initially, these projects are documented with EAs/FONSIs. Actions involving re-issuance of a NPDES permit for a new source may be categorically excluded providing the conclusions of the original NEPA document remain valid (including the appropriate mitigation), there will be no degradation of the receiving waters, and the permit conditions do not change or are more environmentally protective (see 40 CFR 6.205(a)(1)(iv)). As such, the EPA anticipates that 10 NEPA documents will be completed for new-source NPDES permits during the three-year life of this ICR. For the three-year life of this ICR, the EPA estimates that annually that two projects will be documented by a CE; one project will be documented with an EA/FONSI. The EPA estimated that one EIS/ROD may be required during the three-year life of this ICR.

Table 4. One-Time, Annual Estimated Burden Hours and Costs for Grant and Permit Applicants

Respondent	Information Type	HOURS AND COSTS PER RESPONDENT			TOTAL HOURS AND COSTS		
		Respondent Hours/Year	Labor Cost/Year	O & M Cost	Number of Respondents	Total Hours/Year	Total Costs/Year
<b>Grants</b>	CE	50	\$4,179	\$0	20	1,000	\$83,580
	EA/FONSI	260	\$21,728	\$0	2	520	\$43,456
	EIS/ROD*	2,840	\$237,339	\$0	1	2840	\$237,339
<b>Permits</b>	CE	50	\$4,179	\$0	2	100	\$8,358
	EA/FONSI	260	\$21,728	\$0	1	260	\$21,728
	EIS/ROD*	2,840	\$237,339	\$0	1	2840	\$237,339
<b>Subtotals</b>		6,300	\$526,492	\$0	27	7,560	\$631,800

\*The EPA estimates one project will have an EIS/ROD completed during the three-year life of this ICR. For this table, the cost and burden hour estimates have been calculated annually.

#### 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 the EPA actions subject to NEPA that are based on applicant proposals. Grantees or permit applicants submit environmental information to the 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 the EPA's experience, most projects annually will be documented with a CE. In addition, the EPA estimates that one project will have an EIS/ROD completed during the three-year life of this ICR.



Table 5. Summary of Aggregate Total Annual Estimated Costs and Hours for Applicants and the EPA

	<i>Burden Hours</i>	<i>Cost</i>
<b>Respondents</b>	7,560	\$631,800
<b>EPA</b>	2,520	\$131,459

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

The overall respondent burden has decreased from the previous ICR by 6,117 hours (from 13,677 hours to 7,560 hours). This adjustment occurred due to a change in size of the respondent universe. The EPA carefully reviewed the grant and permit programs covered by this ICR to obtain an accurate reflection of the number of projects that required NEPA documentation (CE, EA/FONSI, EIS/ROD). This information was collected from the EPA program offices, the EPA NEPA compliance database [<https://cdxnodengn.epa.gov/cdx-enepa-II/public/action/nepa/search>], and the EPA EIS database [<https://cdxnodengn.epa.gov/cdx-enepa-II/public/action/eis/search>]. Based on this review, there has been an overall decrease in the award of grants and permits issued by the EPA that required NEPA documentation. Part of this decrease is due to the elimination of awarding the SAAP grants. The review also showed that most grant projects and re-issuance of NPDES permit for a new source are being completed with CEs. An applicant is not required to prepare an EID when the action has been categorically excluded. Since the EPA typically prepares the documentation for the CE without an additional collection request from the applicant, the net result is a decrease in respondent hours.

**6(g) Burden Statement**

The annual public reporting and recordkeeping burden for this collection of information is estimated at 7,560 hours. This burden reflects an annual one-time submission of documentation for an anticipated 27 applicant-proposed projects that may be documented with a CE, or an EA/FONSI, or an EIS/ROD. Under the ICR renewal, the EPA assumes there will be approximately 22 grantee projects annually with about 20 of these projects documented with a CE, and about two with an EA/FONSI. For permit applicants, the EPA assumes there will be approximately four projects annually with about two documented with a CE, one documented with an EA/FONSI, and one project will have an EIS/ROD once every three-years. 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 the EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA has established a public docket for this ICR under Docket ID Number EPA-HQ-OA-2019-0296 (previously EPA-HQ-OECA-2005-0062), which is available for online viewing at [www.regulations.gov](http://www.regulations.gov), or in person viewing at the 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](http://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. Also, you can send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, D.C. 20503, Attention: Desk Officer for EPA. Please include the EPA Docket ID Number EPA-HQ-OA-2019-0296 and OMB Control Number 2020-0033 in any correspondence.

**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 the 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), the 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 the 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 the 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 (11<sup>th</sup> 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 (8<sup>th</sup> 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.

#### *The EPA's Voluntary NEPA Policy and Procedures*

In 1974, the 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 the 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.