

**SUPPORTING STATEMENT  
ENVIRONMENTAL PROTECTION AGENCY**

**1. Identification of the Information Collection**

**1(a) Title of the Information Collection**

ICR Supporting Statement Information Collection Request for the Clean Water Act Section 401 Certification Rule, EPA ICR Number 2603.05, OMB Control Number 2040-0295.

**1(b) Short Characterization/Abstract**

This Information Collection Request (ICR) describes the estimated cost and burden associated with the revisions to 40 CFR 121, promulgated in the Clean Water Act Section 401 Certification Rule. These revisions update and modernize the EPA's 1971 certification regulations<sup>1</sup> at 40 CFR 121 (36 FR 22487, Nov. 25, 1971; redesignated at 37 FR 21441, October 11, 1972; further redesignated at 44 FR 32899, June 7, 1979) and make them consistent with the current text and structure of the Clean Water Act (CWA). These revisions are also intended to provide clarity on procedures so that the EPA can promote more consistent implementation of section 401 and streamline the federal licensing and permitting process.

Under section 401, a federal agency may not issue a permit or license that may result in any discharge into waters of the United States unless the certifying authority where the discharge would originate issues a section 401 water quality certification verifying that the discharge will comply with certain water quality requirements or waives the certification requirement. Certifying authorities are states, tribes with treatment as a state (TAS) authorization, and in limited circumstances, the EPA. To obtain a CWA section 401 certification, project proponents must submit a certification request, which includes project specific information to certifying authorities. Certifying authorities may act on the certification request by either granting, granting with conditions, denying, or waiving section 401 certification. To demonstrate it has acted on the certification request, the certifying authority must provide a decision document (*see* sections 121.7 and 121.9 of the final rule) to the relevant federal licensing or permitting agency. If the certifying authority fails or refuses to act on a certification request within a reasonable period of time (which shall not exceed one year) after receipt, the requirement to obtain certification is waived. Under section 401(a)(2), the EPA is responsible for coordinating input from certain neighboring jurisdictions (states or authorized tribes) whose water quality may be affected by a discharge from a federally licensed or permitted project. Information collected directly by the EPA under section 401 in support of the section 402 permit program is already captured under an existing ICR (OMB Control Number 2040-0004) and is therefore not included in this analysis.

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<sup>1</sup> These regulations were redesignated in 1972 and 1979 under the CWA, but no substantive change to the regulatory text has been made since 1971 notwithstanding changes to the relevant statutory text in the 1972 CWA. Therefore, throughout this supporting statement, the Agency refers to these regulatory provisions as the "1971 certification regulations."

The revisions in the final rule clarify the information that project proponents must provide in a certification request and introduce a pre-filing meeting request requirement for project proponents. Under the 1971 certification regulations, the EPA could request additional information to assess potential impacts of a certified project on the water quality of neighboring jurisdictions; the final rule does not include this provision and thus removes this information requirement for project proponents. The final rule also clarifies the supporting information that must be included in a decision document when a certifying authority acts on a certification request and clarifies that the scope of the supporting information is limited to evaluating whether the discharge from the proposed project will comply with water quality requirements. The final rule also removes all information requirements related to certification modifications. The EPA expects these revisions to provide greater clarity on section 401 requirements, reduce the overall burden associated with the certification process, including preparation time spent by a project proponent on certification requests and review time for certifying authorities.

## **2. Need for and Use of the Collection**

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

To obtain a CWA section 401 certification, project proponents must submit a certification request, which includes project specific information, to the appropriate certifying authority. Certifying authorities are states and tribes with TAS authorization where the discharge originates. The EPA also acts as a certifying authority for tribes without TAS and on lands of exclusive federal jurisdiction. Certifying authorities may act on the certification request by either granting, granting with conditions, denying, or waiving section 401 certification. To demonstrate it has acted on the certification request, the certifying authority must provide a decision document (*see* section 121.7 and section 121.9 of the final rule) to the relevant federal licensing or permitting agency. If the certifying authority fails or refuses to act on a certification request, within a reasonable period of time (which shall not exceed one year) after receipt, the requirement to obtain certification is waived and the federal license or permit may be issued. Under section 401(a)(2), the EPA is responsible for coordinating input from certain neighboring jurisdictions (states or authorized tribes) whose water quality may be affected by a discharge from a federally licensed or permitted project. Information collected directly by the EPA under section 401 in support of the section 402 permit program is already captured under an existing ICR (OMB Control Number 2040-0004) and is therefore not included in this analysis.

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

The information collected under section 401 is used by the certifying authorities for reviewing potential effects of a discharge to a water of the United States from a proposed project that requires a federal license or permit.

## **3. Non-duplication, Consultations, and Other Collection Criteria**

### **3(a) Non-duplication**

The information collected under this section may not be systematically collected or made available elsewhere, nor is it currently available elsewhere.

### **3(b) Public Notice Required Prior to ICR Submission to OMB**

In compliance with the Paperwork Reduction Act of 1995 (PRA), public notice for this information collection request was published in the *Federal Register* notice of proposed rulemaking titled “Updating Regulations on Water Quality Certification Proposed Rule” (August 22, 2019; 84 FR 44080). The notice requested comments on the proposed rule and the information collection and burden estimates covered in the ICR. The public comment period was open from August 22, 2019 through October 21, 2019. The EPA received over 125,000 public comments in response to this notice but did not receive specific comments on the ICR burden estimates.

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

As part of the process to update the certification regulations at 40 CFR 121, the EPA received helpful input from a variety of sources to assist the Agency in refining its understanding of the proposed information collection. Those sources included state and tribal meetings, meetings with federal agencies, and public comments received on a notice of proposed rulemaking (Docket ID No. EPA-HQ-OW-2019-0405).

Additionally, during the renewal of the information collection request for the 1971 water quality certification regulations<sup>2</sup>, the EPA communicated with nine (9) certifying authorities<sup>3</sup> directly to collect more information on their respective water quality certification programs operated under the 1971 certification regulations, including the types and content of certification requests received. Eight (8) certifying authorities responded.<sup>4</sup> This additional information has been assessed and used to inform the estimates presented in this supporting statement. The additional information provided more information on the potential number of responses submitted by project proponents and the time that certifying authorities spend reviewing information under the 1971 certification regulations. As the baseline information to characterize practices under the 1971 certification regulations, this information has been included in calculating certain hour and cost burden estimated ranges for the final rule in section 6.

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

To satisfy the requirements of the statute, certifying authorities must collect information necessary to determine whether a potential discharge into a water of the United States from a federally licensed or permitted activity will comply with water quality requirements. A federal agency may not issue a license or permit before a certifying authority acts on a request for certification. If the certifying authority fails or refuses to act on a request for certification, within

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<sup>2</sup> EPA ICR Number 2603.03.

<sup>3</sup> States: Florida, Louisiana, Ohio, Kansas, Massachusetts, Nevada, and New York. Tribe: Ute Mountain Ute. Territory: Puerto Rico.

<sup>4</sup> The State of Ohio did not respond to the information request.

a reasonable period of time (which shall not exceed one year) after receipt of such request, the requirement to obtain certification is waived.

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

There are no special circumstances that would cause an information collection to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.5.

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

Federal licensing and permitting agencies are responsible for following statutory and regulatory requirements regarding the collection and handling of any confidential business information. The EPA and other federal agencies will handle requests from the public for release of information under standard Freedom of Information Act procedures.

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

This ICR does not require the collection of any information of a sensitive nature.

## **4. The Respondents and the Information Requested**

### **4(a) Respondents/SIC Codes**

Participants in the information collection and recordkeeping activities described by this ICR are primarily project proponents and certifying authorities. Any entity that requires a federal license or permit for a proposed project that has the potential to discharge into waters of the United States could be a project proponent. Given the broad range of potential respondents, the EPA is unable to comprehensively catalogue their particular North American Industry Classification System (NAICS) or Standard Industrial Classification (SIC) codes. However, the following general sectors would be expected to be represented among respondents.

<b>Code</b>	<b>Industry Title</b>
21	Mining
22	Utilities
23	Construction
31-33	Manufacturing

Most certifying authorities will fall into the following SIC codes.

<b>Code</b>	<b>Industry Title</b>
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<a href="#">9111</a>	Executive Offices
9199	General Government, Not Elsewhere Classified

#### **4(b) Information Requested**

##### **(i) Data Items & Respondent Activities**

The final regulations at 40 CFR 121.4 require project proponents to request pre-filing meetings from certifying authorities, which is a new requirement. This new burden is mandatory for project proponents. Accepting the meeting request is voluntary for certifying authorities, so any associated burden is voluntary and not within the scope of the Paperwork Reduction Act.

The final regulations at 40 CFR 121.5(b) and (c) list the information a project proponent must submit when requesting a certification for individual licenses and permits and the issuance of general licenses and permits. This information collection does not capture information beyond what is required in a certification request that may be requested of the project proponent by the certifying authority during the certification process. The final rule does not identify what further information, if any, may be needed for a certifying authority to act on a request for certification.

The final regulations at 40 CFR 121.7 and 40 CFR 121.9 specify the supporting information certifying authorities must include in a decision document on a certification request. The final regulations specify that all actions to explicitly waive, grant, grant with conditions, or deny certification must be in writing and within the scope of certification, as provided in the final rule. The regulations explicitly discuss information requirements when a certification is granted with conditions or denied in sections 121.7(d) and (e), respectively. The scope of certification in the final rule is limited to evaluating whether the *discharge* from the proposed project will comply with water quality requirements. This is a change from the 1971 certification regulations at 40 CFR 121.2(a)(3), which stated that the certifying authority’s decision document must include a “statement that there is reasonable assurance that the *activity* will be conducted in a manner which will not violate applicable water quality standards” (emphasis added). Changing the scope of certification from activity to discharge limits the amount of information certifying authorities may request, review, and rely upon to act on a certification request, reducing the burden associated with the overall process.

The 1971 certification regulations at 40 CFR 121.2(b) stated that certifying authorities could modify certifications as agreed upon by the certifying authority, federal agency, and the EPA. The final rule does not allow certifying authorities to modify certifications after a certification is issued.

The 1971 certification regulations at 40 CFR 121.12 also allowed the EPA to request additional information to assess potential impacts of a certified project on the water quality of neighboring jurisdictions. The final rule does not include this provision and thus removes this information requirement for project proponents.

## **5. The Information Collected: Agency Activities, Collection Methodology, and Information Management**

### **5(a) Agency Activities**

Under the final regulations at 40 CFR 121.13-121.15, the EPA acts as a certifying authority on behalf of federally recognized tribes without TAS authority and for lands of exclusive federal jurisdiction. On average, the EPA estimates it issues 54 CWA section 401 water quality certification decisions per year for projects on tribal lands where the tribe does not have TAS. The EPA rarely performs section 401 water quality decisions on lands of exclusive federal jurisdiction.

On rare occasions, a Regional EPA office notifies a neighboring jurisdiction that the discharge from a certified project originating in one jurisdiction may affect the water quality of a neighboring jurisdiction, in accordance with the final regulations at 40 CFR 121.12.

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

Through the water quality certification process, project proponents must submit a certification request, including project specific information, to certifying authorities. Certifying authorities may then act on this information by either granting, granting with conditions, denying, or waiving the requirement to obtain certification.

The certifying authority collecting the information determines the information collection technique and may require either physical or electronic submission of information.

The information collected under the final rule may be published provided that it is not proprietary or confidential business information. The determination as to whether to publish or not is made by the certifying authority or federal licensing or permitting agency collecting the information.

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

Although information collected under the final rule could be furnished by small entities, small entities are more likely to qualify for general permit authorizations for which section 401 certification may already be granted (e.g., CWA section 404 nationwide general permits). The EPA cannot further minimize the burden to small entities because section 401 requires all project proponents to submit a certification request.

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

Information is generally submitted by a respondent once, on a per permit basis.

## **6. Estimating the Burden and Cost of the Collection**

### **6(a) Estimating Respondent Burden**

Detailed data on all certification request submittals by project proponents is not currently available. The estimates presented in this supporting statement are based on information from sources including state and tribal meetings, meetings and communication with federal agencies, direct communication with eight (8) certifying authorities, public comments received on a notice of proposed rulemaking (Docket ID No. EPA-HQ-OW-2019-0405), and other publicly available information sources.

### i) Certifying Authorities

Table 1 presents the annual average number of issued federal licenses and permits estimated based on data from five (5) licensing/permitting category types.

**Table 1: Federal License/Permit Summary**

<b>License/Permit Type</b>	<b>Annual Average # Licenses/Permits Issued</b>
CWA Section 404	50,159 general; <sup>5</sup> 2,511 <sup>a</sup> individual
Rivers and Harbors Act Section 10	8,607 general; 1,670 <sup>b</sup> individual
Rivers and Harbors Act Section 9	30-35
Federal Energy Regulatory Commission license	47 <sup>c</sup>
Nuclear Regulatory Commission license	3-4 <sup>d</sup>
<b>Estimated Total Annual Average # Licenses/Permits Issued</b>	<b>63,032</b>

a) Estimate based on the annual average number of 404 permits issued from 2013-2018.

b) Estimate based on the annual average number of section 10 permits issued from 2013-2018.

c) Estimate based on annual average licenses issued for hydropower facilities/major natural gas pipelines from 2013-2018.

d) Estimate based on annual average number of licenses issued for operating nuclear power reactors from 2013 to 2018. From 2013 to 2018, only one new operating license was issued, and 20 renewals were issued, or approximately 3.5 per year over the six-year period.

The EPA estimates that 119 certifying authorities<sup>6</sup> serve as respondents for this information collection. EPA received information relevant to this ICR from six (6) states that responded to an EPA questionnaire and from a public comment submitted to the docket for the proposed rule from the State of Maryland. Based on this information, the average number of certification requests reviewed by these states annually is 2,618 requests per state. The EPA received questionnaire responses from one tribe and one territory, but did not include those responses in this average because they were much lower than the state estimates and, if used, could underestimate the overall burden figures. To establish a high burden estimate, the EPA multiplied the average of this small data set by all 50 states, resulting in an estimate of 131,000 certifying authority responses per year. To establish a low burden estimate, EPA assumed that, at a minimum, one certification request is reviewed and acted on for each federal license/permit that is issued per year, resulting in an estimate of 63,000 certification requests reviewed per year.

<sup>5</sup> An individual 404 permit covers one discharge with more than minimal adverse effects; a general 404 permit covers discharges that have only minimal adverse effects based on activity category.

<sup>6</sup> The 50 states, Washington, DC, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and 62 tribes with TAS for section 401.

The midpoint of the two values is 97,000.

The low estimate in Table 1 captures only those federal licenses and permits that are issued, which may not accurately reflect the full number of certification requests reviewed by certifying authorities or submitted by project proponents per year. The high estimate is based on an average of data collected from a limited number of states and is not expected to be representative of the whole population of certifying authorities. Use of the midpoint is justified to address the incomplete nature of both estimates.

**Table 2: Number of Certification Requests on General and Individual Permit Range Estimates for Certifying Authorities**

<b>Permit Type<sup>a</sup></b>	<b>Low Estimate</b>	<b>Midpoint</b>	<b>High Estimate</b>
General Permits	19,000	29,000	39,000
Individual Permits	44,000	68,000	92,000
<b>Total</b>	<b>63,000</b>	<b>97,000</b>	<b>131,000</b>

a) Ratio of General to Individual permits based on the EPA's direct communication with certifying authorities.

b) The estimates in this table are rounded.

In the ICR for the 1971 certification regulations, the EPA also estimated a midpoint of 97,000 certification requests, and that ICR estimated an hour burden for certifying authorities of 679,000 hours annually. However, the final rule removes two information requests that were in the 1971 regulations and establishes that the scope of certification extends only to potential discharges into waters of the United States that are associated with federally permitted activities, as compared to the overall activity or project that would have been evaluated under the 1971 certification regulations.

The reduction in information requests and the change in scope of certification under the final rule are expected to reduce the burden hours associated with processing certification requests under the final rule, as compared to practices under the 1971 certification regulations. As discussed in section 4(b)(i) above, the scope of the supporting information in a decision document on a certification request is limited to evaluating whether the discharge from a proposed project will comply with water quality requirements. Because the scope of the supporting information in a decision document under the 1971 certification regulations extended to the activity as a whole, the scope of review under state practice and some state regulations extended to the activity. For instance, West Virginia's section 401 regulations state that "[w]hen issuing certification, the Department may consider the proposed *activity's* impact on water resources, fish and wildlife, recreation, critical habitats, wetlands, and other natural resources under the Secretary's jurisdiction" (WV Code of State Rules section 47-5A-3.1) (emphasis added). Maryland's section 401 regulations state that "[i]f the Department determines the proposed *activities* will not cause a violation of applicable State water quality standards, the Department shall issue the water quality certification" (Code of Maryland Regulations section 26.08.02.10.E(1)) (emphasis added). Since information beyond the effects of the discharge would be considered beyond the scope of certification under the final rule, certifying authorities should not need to request or review such information to support their decision documents.

The definition of "discharge" in the final rule further narrows the scope of certification as compared to state practices and regulations under the 1971 certification regulations. The final



rule defines “discharge” as “from a point source into a water of the United States.” Some certifying authorities under the 1971 certification regulations considered effects of the overall project or activity on non-point source discharges to non-federal waters, as well as effects on air quality, transportation, and other non-water quality impacts. For instance, Colorado’s section 401 regulations provide that the state should consider groundwater regulations in certification decisions (5 Colorado Code of Regulations section 1002-82.5(A)(1)(b)). Because such information is beyond the scope of certification in the final rule, the Agency expects certifying authorities may request and review less additional information from project proponents under the final rule as compared to the 1971 certification regulations.

In the currently approved ICR for the 1971 regulations, the EPA used a range of hours to estimate the burden for certifying authorities to review certification requests (Table 3). The low estimate was based on data from the section 402 permit program’s currently approved ICR (OMB Control Number 2040-0004), and the high estimate was based on data from six states that provided direct information to the EPA. Based on the changes in the final rule, the EPA expects that the burden for review will fall lower on the hourly burden range, between the low estimate and midpoint. As explained above, the scope of review under the final rule is limited to assuring that point source discharges into waters of the United States will comply with water quality requirements. This scope is similar to that which would be considered under the section 402 permit program (but does not require a discharge of pollutants), which informed the low estimate in Table 3. This scope is different from what certifying authorities were considering across all license and permit types under the 1971 regulations, including section 404 permits, which informed the high estimate in Table 3. Under the final rule, the hourly per-certification request burden for certifying authorities to review general and individual permits are 5.5 and 7 hours, respectively, under this new expectation that the hourly burden will fall between the low estimate and midpoint in Table 3. These estimates would produce total hour burden reductions from the currently approved ICR of 20% - 30%. The EPA conservatively estimates a 20% burden reduction from the currently approved ICR for the 1971 regulations attributable to the final rule.

**Table 3: 1971 Regulation ICR Per-Certification Request Review Burden (Hours)**

<b>Permit Type</b>	<b>Low Estimate</b>	<b>Midpoint</b>	<b>High Estimate</b>
General	4	7	10
Individual	4	10	16

Table 4 shows the estimated certifying authority certification request annual hour burden. The 1971 burden estimates were reduced by 20% to produce estimates for the final rule. The average estimated total burden associated with certification request review under the final rule for certifying authorities ranges from 353,000 to 734,000 hours per year, with a midpoint of 543,000 hours per year. This midpoint is 136,000 hours lower than that of the currently approved ICR for the EPA’s 1971 certification regulations. Dividing the midpoint of 543,000 hours per year by the midpoint of 97,000 requests per year results in an average per-certification request burden of six (6) hours for certifying authorities under the final rule, which is within the range identified above.

**Table 4: Estimated Certifying Authority Certification Request Review Annual Hour Burden**

<b>Burden Estimate</b>	<b>Low Estimate</b>	<b>Midpoint</b>	<b>High Estimate</b>
1971 Burden	441,000	679,000	917,000
Final Rule Burden Reduction	(88,000)	(136,000)	(183,000)
<b>Final Rule Total Hour Burden</b>	<b>353,000</b>	<b>543,000</b>	<b>734,000</b>

a) The estimates in this table are rounded.

Certifying authorities may also choose to waive certification for a project. Waivers may or may not involve review by the certifying authority and are often issued without incurring any measurable associated burden.

The final regulations include no specific recordkeeping requirements for certifying authorities.

## ii. Project Proponents

The low estimate of 63,000 certification requests submitted per year is based on the EPA’s assumption that, at a minimum, each project proponent submits one certification request for each federal license/permit issued per year. However, the annual average licenses and permits issued may not capture the totality of information submissions made by project proponents. For example, if burden estimates only relied on issued licenses and permits, then it would not account for certification requests that may be denied by certifying authorities or withdrawn by project proponents. The estimates in this supporting statement are also based on information made available to the EPA from direct communication with eight (8) certifying authorities and public comments to Docket ID No. EPA-HQ-OW-2019-0405. The average annual estimated number of certification requests reviewed by the eight (8) certifying authorities that responded to EPA’s direct communication is 2,618 requests. Multiplying the average of this small data set by all 50 states gives a high estimate of 131,000 project proponent responses per year. While this number could underestimate project proponent requests that are submitted but not reviewed, the number could also overestimate the number of unique proponent requests that are resubmitted by project proponents without substantial changes. The midpoint of the low and high estimates is 97,000.

**Table 5: Number of Certification Request Range Estimates for Project Proponents**

<b>Low Estimate</b>	<b>Midpoint</b>	<b>High Estimate</b>
63,000	97,000	131,000

a) The estimates in this table are rounded.

In the ICR for the 1971 certification regulations, the EPA estimated an hour burden for certification requests for project proponents of 388,000 hours annually. Similar to the burden reduction described in section 6.a.(i) above, the more limited scope of certification in the final rule is expected to reduce the burden on project proponents, compared to the 1971 regulations. This estimated burden reduction offsets the estimated additional burden, discussed below, for the new information request (pre-filing meeting request).

The final rule requires that project proponents request a pre-filing meeting with the appropriate certifying authority at least 30 days in advance of submitting a certification request.

This is a new requirement in the final regulation, though pre-filing meetings are, in some cases, already held between certifying authorities and project proponents. Acceptance of this meeting is not mandatory for certifying authorities. The certifying authority collecting the information determines the information collection technique and may require either physical or electronic submission of the meeting request.

Based on subject matter expertise, the EPA considers the level of burden associated with this response to be low, since little or no technical information would be required for merely requesting a meeting. Because this new burden is offset by the more limited scope of certification described above, the EPA has not estimated an increase in burden from the pre-filing meeting request requirement, and instead relies on the unchanged estimated burden from the 1971 regulations.

The EPA assumes an average per-certification request burden estimate for the section 401 requirements equal to what is presented in the collection request for the EPA’s 1971 regulations (EPA ICR No. 2603.03). An average burden on project proponents related to submission of information to the EPA is four (4) hours per certification request in the 1971 regulation collection request.<sup>7</sup>

The EPA multiplied the certification request estimates from Table 5 by the per-request project proponent burden of four (4) hours to estimate that the average burden associated with certification requests for project proponents ranges from 252,000 to 524,000 hours per year, with a midpoint of 388,000 hours per year. This estimate is unchanged from that of the currently approved ICR.

**Table 6: Estimated Certification Request Annual Hour Burden for Project Proponents**

Low Estimate	Midpoint	High Estimate
252,000	388,000	524,000

a) The estimates in this table are rounded.

The regulations include no specific recordkeeping requirements for project proponents.

## **6(b) Estimating Respondent Costs**

### **(i) Estimating Labor Costs**

#### **1. Certifying Authorities**

The EPA estimates that \$30.67 (starting point of a GS-11 “Rest of U.S.” locality<sup>8</sup>) is an appropriate average hourly wage for a certifying authority employee.<sup>9</sup> Adding a 1.6 overhead

<sup>7</sup> Section 6(a) (ii), EPA ICR No. 2603.03, *Water Quality Certification Regulations*.

<sup>8</sup> [https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/20Tables/html/RUS\\_h.aspx](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/20Tables/html/RUS_h.aspx), accessed February 2020.

<sup>9</sup> Use of GS-11 as a proxy for state and local level wage information is consistent with existing EPA ICR supporting statements.

factor<sup>10</sup> results in an estimated hourly wage for a certifying authority employee of \$49. The EPA multiplied the hourly wage of \$49 by the annual estimated hourly burden range presented in Table 4 to arrive at an estimated annual dollar burden range of \$17.0 million to \$36.0 million per year, with a midpoint of approximately \$27.0 million per year. The burden attributable to the final rule is \$7.0 million lower than the currently approved ICR associated with the 1971 regulations.

**Table 7: Estimated Certifying Authority Annual Cost Burden (Millions)<sup>11</sup>**

<b>Burden Estimate</b>	<b>Low Estimate</b>	<b>Midpoint</b>	<b>High Estimate</b>
1971 Burden	\$22.0	\$33.0	\$45.0
Final Rule Burden Reduction	(\$4.0)	(\$7.0)	(\$9.0)
<b>Final Rule Total Dollar Burden</b>	<b>\$17.0</b>	<b>\$27.0</b>	<b>\$36.0</b>

a) The estimates in this table are rounded.

## 2. Project Proponents

Certification request document preparation and pre-filing meeting request preparation are likely performed by one or more employees with a range of skills. For the purposes of this burden estimate, the EPA consulted the Bureau of Labor Statistics website for wage information related to engineering services.<sup>12</sup> The median hourly wage for all occupations under engineering services for May 2018, the most recent available, is \$37. Adding a 1.6 overhead factor results in a median hourly wage of \$59. The EPA multiplied this hourly wage by the hourly burden for project proponents in Table 6 to arrive at the estimated cost burden. The average estimated total cost burden associated with certification requests for project proponents ranges from \$15.0 million to \$31.0 million per year, with a midpoint of approximately \$23.0 million per year. This estimate is unchanged from that of the currently approved ICR.

**Table 8: Estimated Project Proponent Certification Request Annual Cost Burden (Millions)**

<b>Low Estimate</b>	<b>Midpoint</b>	<b>High Estimate</b>
\$15.0	\$23.0	\$31.0

a) The estimates in this table are rounded.

There are no specific record keeping requirements in the EPA’s certification regulations.

## (ii) Estimating Capital/Startup and Operation and Maintenance Costs

### 1. Fees

In some cases, project proponents may pay fees for certification requests. Not all certifying authorities require payment of fees for section 401 water quality certifications. Twenty states in addition to the District of Columbia do not charge fees, while the remainder may charge fees but the structure under which they are assigned varies from state to state. Some fees are flat,

<sup>10</sup> An overhead factor is used to estimate total compensation (wages and employment benefits).

<sup>11</sup>

<sup>12</sup> [https://www.bls.gov/oes/current/naics5\\_541330.htm](https://www.bls.gov/oes/current/naics5_541330.htm), accessed February 2020.

meaning each submission is assigned the same fee, while others vary depending on project characteristics (i.e. project activity, permit type, project size, etc). Detailed data on all project proponent submissions associated with these fee structures is not currently available. A per-certification request range of fees was estimated based on state fee structures and is presented in , where the high estimate is the average fee for those states with available information on fees.

**Table 9: Per-Certification Request Fee Estimates**

<b>Permit Type</b>	<b>Low Estimate</b>	<b>Midpoint Estimate</b>	<b>High Estimate</b>
General Permit	\$0	\$35	\$69
Individual Permits	\$0	\$430	\$859

a) The estimates in this table are rounded.

The per-certification request fee estimates were multiplied by the estimated number of certification requests submitted by project proponents presented in Table 5 to provide a total estimate of potential fees charged to project proponents. Based on a review of the fee structures for certifying authorities that do charge fees, the larger or more complicated the project the more likely it requires a fee be submitted for review by the certifying entity. The estimates in Table 10 are likely an overestimate as these estimates are based solely on one dimension of a certification request, i.e., whether it is for a general or individual permit. Additionally, some fees are assigned for certifying authority review, but may not be solely for review of the section 401 elements of a request. Other certifying authorities may receive fees during a one-time payment for a request submission. The estimated fees paid by project proponents for certification requests ranges from \$0 to \$16.0 million, with a midpoint of \$8.0 million. This estimate is unchanged from that of the currently approved ICR.

**Table 10: Estimated Certification Request Fees Paid by Project Proponents (Millions)**

<b>Permit Type</b>	<b>Low Estimate</b>	<b>Midpoint</b>	<b>High Estimate</b>
General Permits	\$0.0	\$4.0	\$8.0
Individual Permits	\$0.0	\$4.0	\$8.0
<b>Total</b>	<b>\$0.0</b>	<b>\$8.0</b>	<b>\$16.0</b>

a) The estimates in this table are rounded.

### 6(c) Estimating EPA’s Burden and Cost

The EPA estimates that \$43.71 (starting point of a GS-13 “Rest of U.S.” locality<sup>13</sup>) is an average hourly federal government employee wage for an EPA regional employee tasked with acting on certification requests on behalf of tribes. Adding a 1.6 overhead factor results in an estimated average hourly employee wage of \$70.

In the ICR for the 1971 certification regulations, the EPA estimated an hour burden for the EPA of 162 hours annually. The two fewer information requests and the more limited scope of certification under the final rule are expected to reduce the burden hours associated with processing certification requests under the final rule, as compared to practices under the 1971 regulations, as discussed in section 6(a) above. The Agency does not have sufficient data to

<sup>13</sup> [https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/20Tables/html/RUS\\_h.aspx](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/20Tables/html/RUS_h.aspx), accessed February 2020.

quantify precise estimates of reduced burden under the final rule compared to the 1971 regulations. However, the Agency has taken a conservative approach and estimates, similar to the burden under the final rule for certifying authority review, that the EPA’s burden associated with the final rule will be at least 20 percent less than the burden estimated under the 1971 regulations. That estimated burden reduction results in an hour burden for EPA of 130 hours per year. The estimated annual hourly burden multiplied by an estimated hourly wage of \$70 provides an estimated total annual cost burden of \$9,072. This estimate is lower than that of the currently approved ICR by 32 hours and \$2,268.

**Table 11: Estimated Federal Government Certification Request Annual Hour and Cost Burden**

<b>Burden Estimate</b>	<b>Estimated Annual Hour Burden</b>	<b>Estimated Annual Dollar Burden</b>
1971 Burden	162	\$11,340
Final Rule Burden Reduction	(32)	(\$2,268)
<b>Final Rule Total Dollar Burden</b>	<b>130</b>	<b>\$9,072</b>

a) The estimates in this table are rounded.

### **6(d) Estimating the Respondent Universe**

Participants in the information collection activities described by this ICR are generally project proponents or certifying authorities. The EPA estimates that there are 97,000 project proponents that serve as a respondent for this information collection. This estimate reflects the midpoint of estimated certification requests received annually (see Table 5 above). The EPA estimates that the 119 certifying authorities<sup>14</sup> serve as respondents for this information collection.

The total respondent universe is estimated at 97,119.

### **6(e) Bottom Line Burden Hours and Costs**

The detailed burden hour and cost calculations for the respondents and the EPA are shown above in Error: Reference source not foundTable 4 through Table 11 and summarized below.

#### **(i) Respondent Tally**

This ICR estimates 194,000<sup>15</sup> annual responses from 97,119<sup>16</sup> respondents. Total annual burden for respondents (project proponents and certifying authorities) are anticipated to be 931,000 hours with the associated annual labor costs being approximately \$50 million. There are \$8 million estimated non-labor costs associated with this collection attributed entirely to potential fees paid by project proponents.

<sup>14</sup> The 50 states, Washington, DC, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and 62 tribes with TAS for section 401.

<sup>15</sup> 97,000 estimated annual responses for project proponents + 97,000 estimated annual responses for certifying authorities.

<sup>16</sup> 97,000 estimated annual project proponent respondents + 119 certifying authorities.

## **(ii) The Agency Tally**

The total annual burden for the EPA is anticipated to be 130 hours. Activities related to maintaining this collection are expected to cost the EPA approximately \$9,072 each year.

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

There is a decrease in the estimated labor burden when compared to the estimates presented in the approved ICR for the 1971 regulations. The burden decrease associated with the final rule requirements is 136,000 hours. There is no estimated change in the non-labor burden.

### **6(g) Burden Statement**

The annual public reporting and recordkeeping burden for this collection of information is estimated to average 10 hours per response (6 hours for certifying authorities and 4 hours for project proponents). “Burden” means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information either to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB Control Number. The OMB Control Numbers for EPA regulations are listed at 40 CFR Part 9 and 48 CFR Chapter 15.

To comment on the EPA’s need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, the EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OW-2019-0566. An electronic version of the public docket is available at <http://www.regulations.gov/>, which may be used to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the 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 in this document. The documents are also available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), WJC West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the docket center is (202) 566-1752. Also, you can send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention: Desk Officer for EPA. Please include the EPA Docket ID Number EPA-HQ-OW-2019-0566 and OMB Control Number 2040-0295 in any correspondence.

## **Part B of the Supporting Statement**

This part is not applicable because no statistical methods were used in collecting this information.