

**SUPPORTING STATEMENT A FOR
PAPERWORK REDUCTION ACT SUBMISSION**

**Requests for Drain Tile Setback (50 CFR 25)
OMB Control Number 1018-New**

Terms of Clearance: None. This is a request for a new control number in conjunction with a proposed rule (RIN 1018-BG80), "Drain Tile Setbacks."

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.

The National Wildlife Refuge System Administration Act of 1966 (Administration Act, 16 U.S.C. 668dd–668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997, governs the administration and public use of refuges. Amendments enacted by the Improvement Act were built upon the Administration Act in a manner that provides an "organic act" for the Refuge System, similar to organic acts that exist for other public Federal lands. The Improvement Act serves to ensure that we effectively manage the Refuge System as a national network of lands, waters, and interests for the protection and conservation of our Nation's wildlife resources. The Administration Act states first and foremost that we focus our Refuge System mission on conservation of fish, wildlife, and plant resources and their habitats. The Administration Act states that, "In administering the System, the Secretary shall... ensure effective coordination, interaction, and cooperation with owners of land adjoining refuges..." This is one of 14 directives to the Secretary contained within the Refuge Administration Act. The Administration Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act.

The U.S. Fish and Wildlife Service (Service, we) prepared a proposed regulation (RIN 1018-BG80) pertaining to wetland easements to bring consistency, transparency, and clarity for both easement landowners and the agency in the administration of conservation easements. The regulation will codify the process by which the Service establishes drain tile setbacks for land covered by wetland easement contracts. Setback distances will be calculated based upon the best available science considering soil characteristics, tile diameter, the depth of the tile below the surface, and/or topography sufficient to the easement contract's standard of protection that ensures no drainage of adjacent protected wetland areas.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection. Be specific. If this collection is a form or a questionnaire, every question needs to be justified.

Upon the request of a landowner (via submission of FWS Form 3-2554), the Service will provide setback distances for the placement of drain tile on lands covered by wetland easements. The setback distances will be based on best available science and must be adequate to ensure protected wetland areas are not drained. Information collected via Form 3-2554 includes basic contact information for the landowner, along with the easement number(s) for the specific land covered by the wetland easement.

The Service will provide guidance to landowners about what materials should be submitted as part of a request and will provide setback distances to landowners within a Service-provided

timeframe. When a landowner coordinates their tile planning with the Service in accordance with this guidance and adheres to the Service-provided drain tile setback distances, the Service will not seek legal redress if it is later determined that Service-provided drain tile setback distance failed to protect the wetland areas from drainage, provided that drain tile has not been modified, enhanced, or replaced.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden and specifically how this collection meets GPEA requirements.

The electronic submission of forms will be permitted. In addition, a landowner can call a field office to request a drain tile setback and Service staff can fill out the collection form on the landowner's behalf over the phone. The landowner, at their discretion, will have the option to provide the needed information via mail, email, or phone at their discretion.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

We collect only the minimum information necessary to identify the landowner and easement to provide the requested setback distances.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

We collect only the minimum information necessary to provide setback distances for the placement of drain tile on lands covered by wetland easements. We do not expect this information collection to impact small businesses or other small entities.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

If we do not collect the information, or if we collect the information less frequently, we would be unable to provide landowners with the requested setback distances which would potentially expose the landowner to legal redress if they failed to protect the wetland areas from drainage, provided that drain tile has not been modified, enhanced, or replaced.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- * requiring respondents to report information to the agency more often than quarterly;
- * requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- * requiring respondents to submit more than an original and two copies of any document;
- * requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;

- * in connection with a statistical survey that is not designed to produce valid and reliable results that can be generalized to the universe of study;
- * requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- * that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- * requiring respondents to submit proprietary trade secrets, or other confidential information, unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

There are no special circumstances requiring collection of the information in a manner inconsistent with OMB guidelines.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and in response to the PRA statement associated with the collection over the past three years, and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years — even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

On April 28, 2023, we published a proposed regulation ([88 FR 26244](#)) to codify the process by which the Service establishes drain tile setbacks for land covered by wetland easement contracts. The proposed rule solicits public comment on the new information collection requirements described in this supporting statement for a period of 60 days, ending on [date]. We provided a copy of the published proposed rule in ROCIS.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

We do not provide payments or gifts to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

We do not provide any assurance of confidentiality. Information may be disclosed in accordance the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. § 552a) and the routine uses listed in the System of Records Notice (SORN) [FWS-5, National](#)

[Wildlife Refuge Special Use Permits](#) - 64 FR 29055 (May 28, 1999); modification published 73 FR 31877 (June 4, 2008) and [FWS-21, Permits System](#) - 68 FR 52610 (September 4, 2003); modification published 73 FR 31877 (June 4, 2008).

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

We do not ask questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- * **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- * **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.**
- * **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here.**

We estimate that we will receive **150 responses** totaling **39 annual burden hours** for this information collection. The total dollar value of the annual burden hours is approximately **\$1,607** (rounded).

We used table 1 from the of Bureau of Labor Statistics (BLS) News Release [USDL-22-1176](#), June 16, 2022, Employer Costs for Employee Compensation—March 2022, to calculate the total annual burden.

- Individuals – Table 1 lists the hourly rate for all workers as \$40.90, including benefits.
- Private Sector – Table 1 lists the hourly rate for all workers as \$38.61, including benefits.
- Government – Table 1 lists the hourly rate for all workers as \$55.47, including benefits.

	Number of Annual Respondents	Number of Responses Each	Total Annual Responses	Average Completion Time (Hours)	Total Annual Burden Hours*	\$ Value of Annual Burden Hours
Request for Drain Tile Setback (FWS Form 3-2554)						
Individuals	146	1	146	5 mins (Reporting) 10 mins (Recordkeeping)	37	\$ 1,513.30
Private Sector	2	1	2	5 mins (Reporting) 10 mins (Recordkeeping)	1	38.61
State/Local/Tribal Govt	2	1	2	5 mins (Reporting)	1	55.47

TOTALS:	150	150	10 mins (Recordkeeping)	39	\$ 1,607.38
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*Rounded to match ROCIS

13. Provide an estimate of the total annual non-hour cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected in item 12.)

- * The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information (including filing fees paid for form processing). Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.
- * If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.
- * Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

There is no annual non-hour cost burden associated with this collection.

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.

We estimate the total cost to the Federal Government to administer this information collection will be **\$10,280** (rounded).

We estimate a GS-12/05 staff member will spend approximately 15 minutes reviewing and processing each submission associated with this information collection. To calculate the burden, we used Office of Personnel Management Salary Table [2022-RUS](#) which lists an hourly rate of \$ 43.10. In accordance with BLS News Release [USDL-22-1176](#), June 16, 2022, Employer Costs for Employee Compensation—March 2022, we multiplied the hourly rate by 1.59 to calculate the fully burdened rate (\$43.10 x 1.59 = \$68.53). The resulting cost to the Federal government to administer this collection is \$10,279.50 (\$68.53 hourly x 150 annual submissions).

15. Explain the reasons for any program changes or adjustments in hour or cost burden.

This is a request for a new OMB control number in conjunction with our proposed rule under RIN 1018-BG80.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

This information collection will not be published.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

We will display the OMB control number and expiration date.

18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."

There are no exceptions to the certification statement.