

**SUPPORTING STATEMENT FOR ICR 0220.16  
CLEAN WATER ACT 404 STATE-ASSUMED PROGRAMS**

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## **1. Identification of the Information Collection**

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

Clean Water Act Section 404 State-Assumed Program.

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

This information collection request (ICR) describes the cost and burden associated with 40 CFR 233, the regulations that implement Clean Water Act (CWA) section 404(g), including the proposed revisions to 40 CFR 233, as seen in the Proposed Clean Water Act Section 404 Tribal and State Program Rule (Docket ID: EPA-HQ-OW-2020-0276). This is a rulemaking ICR that will function as an ICR renewal.

Under CWA section 404(g), Tribes and States have the ability to assume section 404 permitting authority over certain waters of the United States on behalf of the U.S. Army Corps of Engineers. Proposed revisions to the 404(g) regulations, as described in EPA's *Federal Register* notice, are described throughout this ICR; however, there is estimated minimal burden change associated with these revisions. This ICR incorporates information collected in four different sections, as it relates to new or altered burdens associated with both the overall renewal of this ICR as well as the 2023 proposed 404(g) rulemaking. Changes in burden associated with the renewal and the rulemaking are described separately in Section 6(f).

The Agency is seeking comment on changes in information collection associated with the rulemaking, including comment on how potential policy choices for the final rulemaking could influence burdens associated with the final ICR. The Agency will use information from the public comment period as appropriate to update the burden estimates in the final ICR.

The four categories of information collection are briefly described below.

#### ***A. Request for Program Assumption, Substantial Program Modifications, and Withdrawal Procedures***

This includes information requested by the Environmental Protection Agency (EPA) from Tribes or States at the time of request for program assumption, at the time of revision of an existing assumed program, or during withdrawal of an existing assumed program.

#### ***B. Permit Application Information***

This includes information on the permit applications submitted to the State by permittees, copies of which are made available to EPA; and, as part of its Federal oversight responsibilities, information on or related to a subset of these permit applications which EPA, and potentially other Federal agencies, review.

#### ***C. Annual Reports and Program Information***

This includes information included in the State's annual report about the program, and other information that relates to enforcement and compliance.

***D. Tribes Applying for Treatment in a Similar Manner as a State (TAS)***

This includes information provided by Tribes to EPA in order to apply for TAS under 40 CFR 233.31.

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

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

Section 404(g) of the CWA authorizes Tribes and States to assume the CWA Section 404 permit program for discharges of dredged or fill material into certain waters of the United States. Implementing regulations establish specific information that must be submitted by the Tribe or State to request program assumption (40 CFR 233). EPA is charged with approving or denying a Tribe or State's assumption request and overseeing the Tribal or State program after approval, including revisions to and withdrawal of the program.

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

***A. Request for Program Assumption, Substantial Program Modifications, and Withdrawal Procedures***

*Request for Program Assumption*

Tribes and States must submit required information under 40 CFR 233 Subpart B to be considered for assumption of the Federal permit program for discharges of dredged or fill material into certain waters of the United States. Once EPA has received a complete request, EPA provides a copy of the assumption request to the Corps, U.S. Fish and Wildlife Service (USFWS), and the National Marine Fisheries Service (NMFS) for review and comment, publishes notice of the assumption request, solicits public comments on the assumption request, and holds public hearings on the request. EPA reviews the documentation submitted by the Tribe or State, and considers the comments received from the public and the Federal review agencies, in its determination to approve or deny the assumption request. Program approval will be effective 30 days after publication of the notice of EPA's program approval appears in the *Federal Register*, except where EPA and the Tribe or State have established a later effective date, not to exceed 120 days from the date of notice in the *Federal Register*.

*Substantial Program Modifications*

Tribes and States must submit required information under 40 CFR 233.16 in order to make substantial revisions to existing assumed programs under section 404(g) of the CWA. If, based on materials provided by the Tribe or State, EPA determines the revisions to be substantial, EPA will publish notice, provide opportunities for public hearings, and consult with the Corps, USFWS, and NMFS. Substantial program modifications will become effective upon approval by EPA and publication in the *Federal Register*.

*Withdrawal Procedures*

Under 40 CFR 233.53, a Tribe or State with an existing assumed 404 program or EPA can initiate withdrawal procedures. If the Tribe or State initiates withdrawal procedures, information collected would be used by EPA; prior to withdrawal EPA would publish notice of transfer in the *Federal Register* and circulate notice. If EPA initiates withdrawal procedures, information collected would allow EPA and the public (via public hearing) to assess issues of non-

compliance. If the Administrator makes the determination that the assumed program should be withdrawn, then such determination would be published in the *Federal Register*, and the Administrator shall remove from the CFR, as appropriate, any provision addressing that State's assumed program.

#### ***B. Permit Application and Enforcement and Compliance Information***

Tribes and States must issue permits that comply with all applicable statutory and regulatory requirements, including the CWA 404(b)(1) Guidelines (40 CFR 230). The requirements for a complete permit application are outlined in the Federal regulations (40 CFR 233.30). EPA retains authority to coordinate Federal review of State and Tribal permit applications and related materials. The intent of this review is to ensure that these materials and issued permits comply with CWA requirements, including the CWA 404(b)(1) Guidelines, and that the Tribe or State issues permits that minimize adverse impacts, consider alternatives, and provide for compensation commensurate with the impact.

#### ***C. Annual Reports and Program Information***

EPA is responsible for oversight of assumed Tribal or State programs to ensure that the Tribal or State program follows applicable requirements per the CWA 404(b)(1) Guidelines. Minimum requirements for Tribal or State annual reports are established under 40 CFR 233.52. If a Tribal or State assumed program is not administered in accordance with the regulatory requirements, EPA can revise the provisions for waiver of Federal review of State and Tribal permits and, in extreme situations, initiate withdrawal of the assumed program; adequate oversight and analysis of the Tribal or State program provides a sound basis to initiate such an action. The annual report also provides the Tribe or State the opportunity to evaluate and present their analysis of relevant permit information, identify any problems encountered in administering their programs, and provide recommendations for addressing any problems.

#### ***D. Tribes Applying for TAS***

The information collected is used to determine whether an applicant Tribe is eligible for TAS for purposes of either requesting assumption of program or commenting as a State under the section 404(g) program. The Agency could not make such decisions without the information collected.

### **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.

In most cases, Tribal and State assumption of the Section 404 permit program for discharges of dredged or fill material into certain waters of the United States eliminates duplication. Prior to an approved assumption, a permit applicant may be required to get two separate permits for a proposed project, one from the Corps and one from the Tribal or State agency, if the Tribe or State has a dredged and/or fill regulatory program that applies to that water. Once assumption is approved by EPA, only one permit is required from the appropriate Tribal or State agency; a Federal CWA Section 404 permit is no longer needed for discharges into waters assumed by the Tribe or State. However, Tribes or States may choose to require a separate Tribe/State permit for discharges into those waters as well.

The Tribe or State is the only source of permit data, such as number of permit applications received and final actions by the Tribe or State on these permit applications. CFR 233.52 lists the items that the Tribe or State must include in its annual report. This includes number of applications received, permits issued, denied, modified, and number of enforcement actions taken. This information may also be needed by the Tribe or State for its own purposes such as program evaluation, budget justification, etc. If the Tribe or State prepares this reporting information for its own needs, it may select the period of time covered in the annual report to enable the Tribe or State to use this information for both purposes.

### ***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 will be published in the *Federal Register* notice of proposed rulemaking titled “Clean Water Act Section 404(g) State Assumed Program Rule.” The notice requests comments on the proposed rule and the information collection and burden estimates covered in the ICR. See also Docket ID: EPA-HQ-OW-2020-0276.

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

To update estimates in the ICR for the 2021 renewal, a short questionnaire addressing the burden and costs of the assumed programs was sent to senior points of contact for Michigan and New Jersey, the two States authorized as of the first drafting of this ICR to operate assumed programs. The information provided by these programs informs some of the estimates in the ICR. Because information collected by these two States for their annual reports and other operational or management purposes does not fully correspond to the questions relevant to this ICR, the burden and costs reflected in this ICR are surrogate best estimates. For example, Michigan does not differentiate between permits issued in assumed waters versus permits issued in State waters, nor do they account for staff time per permit. That means EPA could be overestimating the number of permits that are in fact permits for actions in Federal waters. With that said, this ICR does present changes to regulatory text that largely reflect existing practice by the existing programs. As such, burden amounts for much of the new information collection associated with the proposed rule are already incorporated into prior estimates from the 2021 ICR renewal which are tied to the 2020 questionnaire.<sup>1</sup>

For this rulemaking, EPA carried out internal consultations with regional staff on EPA burdens associated with the information collection within this ICR. See Appendix A: Memo to the Record on 404g ICR Regarding Burdens to EPA. Updates to burden estimates were provided for permit reviews. The Agency additionally will use input from the public comment period to inform the assessment of burdens for the final ICR.

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

#### ***A. Request for Program Assumption, Substantial Program Modifications, and***

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<sup>1</sup> 2021 ICR renewal for the CWA Section 404 State-Assumed Program (ICR No: 202106-2040-002, OMB Control No: 2040-0168).

### ***Withdrawal Procedures***

#### ***Request for Program Assumption***

The information needed to request program assumption is submitted only once to EPA at the time of the formal request to assume the Federal permit program. States and Tribes requesting assumption cannot move forward, and EPA may not proceed with approving assumption without the information required by statute and regulations.

#### ***Substantial Modifications to Programs***

Program revisions should be made in the case of significant changes to the program, or actual changes to the Tribe or State's statutory or regulatory authorities, within one year of the promulgation of such regulations or two years if the State must amend or enact statute in order to make the required revisions. It is not expected that any States will seek program revisions in the next three years.

The Agency seeks comments from States with existing assumed programs as to whether upon review of the proposed rule, they believe they may need to initiate program revisions in relation to the rulemaking. Public comment on this matter will be incorporated into the ICR for the Final Rule.

#### ***Withdrawal Procedures***

The requirements for withdrawal procedures are outlined in the proposed rule regulatory text at 40 CFR 233.53. The frequency of use of withdrawal procedures should be a one-time occurrence; although it is possible that withdrawal procedures could be initiated zero times (which has been the case to date), or multiple times. No initiation of withdrawal procedures are expected at this time.

#### ***B. Permit Application and Enforcement and Compliance Information***

Since each permit application is for a specific location, a permit application must be submitted and processed for each project unless authorized by a general permit. The information is needed to evaluate the impacts of the specific project in the particular location in which it is sited. State or Tribal respondents may report more often than quarterly due to the statutory requirement that a copy of each permit be transmitted to EPA.

#### ***C. Annual Reports and Program Information***

The requirements for the annual report are clearly outlined in 40 CFR 233.52. Reporting requirements allow both EPA and the Tribe or State to evaluate the assumed program, identify trends and/or problems, and propose solutions to any identified problems. The current frequency of reporting annually remains appropriate for proper EPA oversight.

#### ***D. Tribes Applying for TAS***

Tribes may seek TAS to obtain or retain benefits pursuant to EPA regulations. EPA has no control over the frequency of this collection.

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

There are no special circumstances that would cause an information collection to be

conducted in a manner that is inconsistent under 5 CFR 1320.5.

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

This information collection request does not require the collection of any information of a confidential nature or status. The information in the four information collections is made available for public review and comment.

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

This information collection request does not require or include collection of any information of a sensitive nature.

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

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

#### ***A. Request for Program Assumption, Substantial Program Modifications, and Withdrawal Procedures***

Tribes and States are the identified respondents since the CWA authorizes only Tribes and States to assume 404 permitting authority. No Tribes have assumed to date. Two States are expected to request program assumption in the next three-year period; no Tribes are expected to request program assumption during this time period. No States are expected to make substantial program modifications in the next three-year period. No States are expected to have withdrawal procedures initiated in the next three-year period.

Most State and Tribal authorities will fall into the following Standard Industrial Classification (SIC) codes.

<b><u>Code</u></b>	<b><u>Industry Title</u></b>
9111	Executive Offices
9199	General Government, Not Elsewhere Classified

#### ***B. Permit Application and Enforcement and Compliance Information***

Permittees are not identified by industry or business. Anyone who proposes a project which involves the discharge of dredged or fill material into waters within the jurisdiction of a Tribal or State assumed program must submit a permit application to either the Tribe or State unless authorized by a general permit. Given the broad range of potential entities nationwide that may be impacted by permitting the SIC code for this ICR EPA is unable to identify the SIC codes. However, the following general sectors would be expected to be highly represented among

respondents.

<b><u>Code</u></b>	<b><u>Industry Title</u></b>
<a href="#">21</a>	<a href="#">Mining</a>
<a href="#">22</a>	<a href="#">Utilities</a>
<a href="#">23</a>	<a href="#">Construction</a>
<a href="#">31-33</a>	<a href="#">Manufacturing</a>

### ***C. Annual Reports and Program Information***

States and Tribes that have assumed 404 programs are required to submit an annual report under CFR 233.52, which is made available to the public.

### ***D. Tribes Applying for TAS***

A Federally recognized Tribe with a reservation may be approved for TAS if it meets certain eligibility criteria. Over 300 Federally recognized Tribes have reservations. As a result of the proposed rule, EPA estimates that 3 of these Tribes will apply for section 404(g) TAS over the next three years for the purpose of commenting on permit applications as downstream States.

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

### ***(i) Data Items, Including Record Keeping Requirements and (ii) Respondent Activities***

#### ***A. Request for Program Assumption, Substantial Program Modifications, and Withdrawal Procedures***

##### ***Request for Program Assumption***

Existing information needed for a complete assumption package is listed at 40 CFR 233.10 in the existing regulations and is as follows:

- 1) A letter from the governor or Tribal equivalent formally requesting program assumption;
- 2) A complete program description (40 CFR 233.11);
- 3) The Attorney General's statement (40 CFR 233.12);
- 4) A Memorandum of Agreement with EPA (40 CFR 233.13);
- 5) A Memorandum of Agreement with Corps (40 CFR 233.14); and,
- 6) Copies of all applicable statutes and regulations.

Under the proposed rule, ***new information*** would be needed for a complete assumption package as follows:

- 1) A complete program description (40 CFR 233.11), which would include new information associated with:
  1. How the permit review criteria would be sufficient to carry out the requirements of

- part 233 subpart C;
  - 2. How State agencies intend to coordinate compliance enforcement;
  - 3. The effective date of program assumption, including a description and schedule of the actions that will be taken following EPA approval for the State to begin administering the program if the State makes a request to assume administration of the program more than 30 days after EPA's approval;
  - 4. How the State will ensure that all permits issued satisfy the substantive standards and criteria for the use of compensatory mitigation consistent with the requirements of 40 CFR 230, subpart J.;
  - 5. A description of the State's program administration and compliance evaluation and enforcement programs, which would newly include staff position descriptions and qualifications as well as program budget and funding mechanisms, sufficient to meet the requirements of Part 233 Subparts C through E; and,
  - 6. The assumed waters and retained waters descriptions.
- 2) A Memorandum of Agreement with EPA (40 CFR 233.13), which newly would include the effective date of program assumption.
  - 3) A Memorandum of Agreement with Corps (40 CFR 233.14); which newly would include certain new information associated with:
    - 1. The retained waters description; and,
    - 2. Joint processing of Federal and State permits associated with retained waters (optional).

*Substantial Program Modifications*

Whenever circumstances have changed that result in significant change to a Tribal or State program, the State shall provide:

- 1) a supplemental Attorney General's statement, and
- 2) program description, or other documents or information necessary to evaluate the program.

Similar to requests for program assumption, potential consultations associated with historic preservation and endangered species statutes and regulations may require additional information and documents at the time of submission of a request for program revisions.

There are no new substantive changes to this process associated with the proposed rule which will require any changes to this portion of the ICR.

*Withdrawal Procedures*

Under 40 CFR 233.53, if a Tribe or State initiates withdrawal procedures, it would provide a transfer plan to EPA and the Corps. EPA and the Corps may determine that additional information is needed for transfer and withdrawal.

Under the proposed rule at 40 CFR 233.53(c), if EPA initiates withdrawal procedures, EPA would request demonstration of compliance or specific remedial actions to be completed for compliance to be met. If such evidence or actions are not completed, withdrawal procedures would continue.

***B. Permit Application and Enforcement and Compliance Information***

States and Tribes with assumed programs are required to issue permits consistent with and no less stringent than the Federal regulatory requirements. Information that is needed for a complete permit application is listed at 40 CFR 233.30 and includes the following items:

- 1) name, address, and phone number of the applicant and adjoining property owners;
- 2) a complete description of the proposed project;
- 3) description of the type, composition, source and quantity of the material to be discharged;
- 4) certification that all the information submitted is true and accurate; and,
- 5) any additional information requested by the Tribe or State to evaluate the project impacts.

Under the proposed rule, there would be **additional information requested** for mitigation instruments and permit applications that potentially impact Tribal rights or interests.

- 1) Under 40 CFR 233.51, if a Federally recognized Tribe, regardless of TAS status, alerts EPA that a permit application potentially affects Tribal rights or interests, including those beyond reservation boundaries, EPA would request a copy of the public notice for the permit application, even if Federal review of the relevant category of discharge has been waived, and proceed to review in accordance with 40 CFR 233.50.
- 2) States with existing programs would need to provide EPA, the Corps, USFWS, NMFS, and applicable relevant State agencies banking, in-lieu-fee, and other similar mitigation instruments for review prior to issuance (40 CFR 233.52).

### ***C. Annual Reports and Program Information***

States and Tribes with assumed programs are required to submit an annual report. Information that must be included in the annual report is listed at 40 CFR 233.52. Items that must be included as per the existing regulation include the following:

- 1) an assessment of the cumulative impacts of the Tribe or State's program on the integrity of the regulated waters;
- 2) identification of areas of concern or interest;
- 3) the number and nature of individual and general permits issued, modified, and denied;
- 4) number of violations identified, and number and nature of enforcement actions taken;
- 5) number of suspected unauthorized activities reported, and number of actions taken;
- 6) an estimate of the extent of activities regulated by general permits; and,
- 7) number of permit applications received but not yet processed.

Under the proposed rule at 40 CFR 233.52(b), the annual reports would also need to provide a description of total acres of mitigation approved and/or completed, and a summary of staffing and training needs for implementing and enforcing the program.

### ***D. Tribes Applying for TAS***

The existing regulations under section 404(g) do not include provisions for Tribes to obtain TAS solely for commenting as a downstream State. The proposed rule adds provisions on how Tribes can obtain TAS for the limited purpose of participating in review of permit applications as downstream States under CWA section 404(g). Where a Tribe has previously qualified for TAS under another program, the Tribe need only provide the required information which has not been submitted in a previous application. Where a Tribe has not previously qualified for TAS, the Tribe is to provide EPA with a description of qualifications as outlined in the proposed rule at 40 CFR 233.31(d).

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

### ***5(a) EPA Activities***

#### ***A. Request for Program Assumption, Substantial Program Modifications, and Withdrawal Procedures***

##### *Request for Program Assumption*

There is a 120-day statutory review period that shall commence on the date of receipt of a complete Tribal or State submission. The Regional Administrator shall approve or disapprove the program based on whether the Tribe or State fulfills the requirements outlined in the regulation. EPA activities associated with review of a Tribal or State assumption request are specified in the existing regulation at 40 CFR 233.15 and include the following actions:

1. Determine if the assumption submission is complete and notify the Tribe or State within 30 days of EPA's determination;
2. Within 10 days, send copy of assumption request to the appropriate Corps, USFWS and NMFS;
3. Provide a public comment period of no less than 45 days;
4. Publish public notice on receipt of assumption request; provide a public hearing to be held not less than 30 days after notice is published in the *Federal Register*;
5. Review public comments received and preparation of a responsiveness summary of significant comments received;
6. Make decision to approve or deny assumption request;
7. Notify other Federal agencies about the decision;
8. Notify the State or Tribe about the decision; and
9. Publish notice of decision in the *Federal Register*.

These tasks are presently associated with existing regulations on the request for program assumption; there is no change to these duties as a result of the proposed rule. Rather, there is simply additional information that EPA considers when carrying out the determination of completeness.

##### *Substantial Program Modifications*

To initiate substantial program revisions, the Director shall provide a modified program description to EPA. If the changes are not substantial, the Regional Administrator shall provide a notice of approval by letter to the Governor or Governor's appointee. If, based on materials provided by the Tribe or State, EPA determines the revisions to be substantial, EPA will publish notice, provide opportunities for public hearings, and consult with the Corps, USFWS, and NMFS. Substantial revisions include, but are not limited to, revisions that affect the area of jurisdiction, scope of activities regulated, criteria for review of permits, public participation, or enforcement capability. Substantial program modifications will become effective upon approval by EPA and publication in the *Federal Register*.

Under the proposed rule, clarification would be added at 40 CFR 233.16 that describes that changes to the retained waters description that do not involve changes to Tribal boundaries do not necessarily constitute substantial program modifications. In such instances, the EPA Regional Administrator would post associated approval letters on the relevant pages of EPA's website.

#### *Withdrawal Procedures*

If the State or Tribe initiates withdrawal, it shall do so by providing a 180-day notice to EPA and the Corps along with a transfer plan. Within 60 days EPA and the Corps must inform the State or Tribe of additional information requests. At least 30 days before the transfer is to occur the Administrator shall publish notice of transfer in the *Federal Register* and in a sufficient number of the largest newspapers in the State to provide statewide coverage, and shall mail notice to all permit holders, permit applicants, other regulated persons and other interested persons on appropriate EPA, Corps and State mailing lists.

Under 40 CFR 233.53(c) of the proposed rule, if EPA initiates withdrawal, it would do so by providing a notice to the Tribe or State. If the Tribe or State fails to prove compliance within 30 days, it must submit an approvable plan to come into compliance within 60 days. If the Tribe or State fails at this, the Administrator would schedule a public hearing, with notice in the *Federal Register*, on EPA's website, and in enough of the largest newspapers and/or news websites in the State to attract statewide attention and mailed or emailed to persons on appropriate Tribal, State, and EPA mailing lists. All interested parties shall be given opportunity to make written or oral presentations on the Tribe or State's program at the public hearing. Following the public hearing, a notice of findings would be provided to the Tribe or State. If EPA finds that the Tribe or State is not in compliance, this notice would provide required remedial actions to be carried out within 90 days. If these actions are not carried out, the Administrator would withdraw program approval and publish such findings in the *Federal Register* and would remove from the CFR any provisions addressing that Tribe or State's assumed program. At any time during these procedures, if the Tribe or State proves compliance, the Administrator would so notify the State in writing and conclude the withdrawal proceedings.

The withdrawal procedures outlined here are more streamlined than in existing regulatory text; however, prior ICRs did not capture the burden associated with withdrawal procedures, nor were withdrawal procedures ever used. Therefore, details on the prior requirements are not provided.

#### ***B. Permit Application and Enforcement and Compliance Information***

The permit applications subject to Federal review tend to be the larger projects with more potential for adverse environmental impacts. Federal review is coordinated by EPA and includes the Corps, USFWS, NMFS, and Advisory Council on Historic Preservation (ACHP) as appropriate. Additional information is sometimes requested by EPA as needed as part of the review process. Under existing practice under 40 CFR 233.51 regarding waiver of review, the MOA with the Regional Administrator shall specify the categories of discharges for which EPA will waive review. Pursuant to this Section, only a portion of permits issued by Tribes or States that have assumed a program are reviewed by EPA. EPA reviews between an estimated one to seven percent of permit applications per year, largely depending on the maturity of the program.

The more established an assumed program is, the lower the percentage of permit applications that EPA reviews. This is not expected to change as a result of the proposed rule.

Under existing practice under 40 CFR 233.50, EPA activities associated with review of a Tribal or State permit application are specified at 40 CFR 233.50 and include the following:

1. A Tribe or State will promptly transmit to EPA a copy of the public notice for any permit application subject to Federal review, except for those for which review has been waived that under 40 CFR 233.51.
2. A copy of a draft general permit whenever a State (or Tribe) intends to issue a general permit will be provided.
3. EPA will provide a copy of the public notice to the appropriate Corps, USFWS, NMFS office for review and comment.
4. If EPA intends to comment on the permit application, EPA will notify the Tribe or State of its intent within 30 days.
5. If the Tribe or State has been notified, the permit shall not be issued until after receipt of the comments, or 90 days from EPA's receipt of the public notice.
6. If the Tribe or State receives comments from EPA, either objecting to the permit or requesting permit modification, the permit shall not be issued until such objections or request for modification are resolved.

EPA activities associated with review of a State or Tribal permit application include the following ***new actions*** under the proposed rule:

1. Under 40 CFR 233.51, review of permit applications, including those which have been waived for review, in instances when Tribes request review due to potential effects to Tribal rights or interests.
2. Review of compensatory mitigation instruments under 40 CFR 233.52 for compliance with 40 CFR 233.11(j) in a manner similar to review of permit applications as outlined above.

### ***C. Annual Reports and Program Information***

Actions associated with collection of information for the annual report are listed at 40 CFR 233.50 and include the following:

- 1) The Tribe or State shall submit a draft annual report to EPA within 90 days of the end of the identified reporting period;
- 2) The Tribe or State shall make the draft report available to the public;
- 3) within 60 days, EPA shall complete review of the draft report and submit comments, questions or request for additional evaluation to the Tribe or State;
- 4) Within 30 days of receipt of EPA's comments, the Tribe or State will finalize the annual report incorporating or responding to EPA's comments; and,
- 5) Upon acceptance of the annual report, EPA will publish notice of availability in the *Federal Register*.

These tasks are presently associated with existing regulations on annual reports and program information. There is no change to these duties as a result of the proposed rule; rather, as

outlined in Section 4(b), there is additional information relating to mitigation and staffing resources that EPA considers when reviewing the annual reports.

#### ***D. Tribes Applying for TAS***

Under the proposed rule, EPA would perform activities associated with reviewing a Tribal application for TAS. These activities include: notifying appropriate governmental entities and others, where appropriate, that a Tribe has applied for TAS, and providing an opportunity for them to comment on the Tribal assertion of authority; and evaluating the Tribal TAS application and relevant comments to determine whether the Tribe meets statutory and regulatory criteria for TAS eligibility; and notifying the Tribe if the application is approved.

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

##### ***A. Request for Program Assumption, Substantial Program Modifications, and Withdrawal Procedures***

###### *Request for Program Assumption*

States or Tribes seeking to assume the 404 program within their boundaries are the only source of this information. Program approval under Federal regulation requires submission to the Regional Administrator of at least three copies of the required elements of a program submission (40 CFR 233.10).

###### *Substantial Program Modifications*

Tribes or States that are seeking substantial modifications to their existing programs are the only source of this information and are the entities which will initiate this procedure through the modified program description. See Section 5(a).

###### *Withdrawal Procedures*

Tribes or States that are either seeking withdrawal or that have had withdrawal procedures initiated by EPA are the only source of this information. If a Tribe or State is seeking withdrawal, it will initiate this procedure through providing notice to EPA and the Corps along with a transfer plan. See Section 5(a).

##### ***B. Permit Application and Enforcement and Compliance Information***

Permits and information on permits in assumed States is collected by Michigan, New Jersey, and Florida, and these State agencies are the only source of information. In all other Tribes and States this information is collected by the Corps.

The permit applicants are the best source of information about proposed projects. Only the applicant knows the purpose and plans for the project. The applicant must complete a permit application form and submit the completed form to the Tribal or State agency administering the assumed program. Information is generally submitted by an applicant once, on a per permit basis. This information is used by the Tribe or State to evaluate the impact of the proposed project and by the Federal review agencies. The information is made available to the public in a public notice if an individual permit is required.

For compensatory mitigation instruments, the Tribe or State Director must transmit copy of every compensatory mitigation instrument to EPA, the Corps, USFWS, NMFS, and applicable

State agencies for review prior to issuance. These entities have 30 days to inform the Director if they plan to comment. The instrument may not be issued until after receipt of such comments or after 90 days of receipt of the proposed instrument by EPA, Corps, USFWS, or NMFS. The Director must respond to comments. If EPA comments that the instrument fails to comply with 233.11(j), the State must not approve the instrument until EPA deems that it does comply.

### ***C. Annual Reports and Program Information***

Under Section 233.52, Tribes and States are required to submit information about their programs in an annual report that addresses a wide range of information – *e.g.*, funding and staffing effort, permit application forms, number of permits processed, number of enforcement actions taken, disposition of these actions, and analysis of cumulative impact of the program. Under 40 CFR 233.39, reporting by electronic means is available to Tribes and States that choose to receive electronic documents that satisfy the requirements of 40 CFR part 3 (Electronic reporting).

### ***D. Tribes Applying for TAS***

Tribes applying for TAS submit their requests to the regional EPA office. EPA has delegated to the EPA Regions the responsibility to review and approve Tribal TAS eligibility. Regional office staff members would work closely with the Tribes in this process. EPA headquarters staff members would provide support to the regional offices in the reviews. This regulation does not specify the form – hardcopy or electronic – for submitting responses under this ICR. EPA is committed to reducing reporting burden through electronic means where feasible.

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

Small entities must apply for a permit if a planned project involves the discharge of dredged or fill material into waters regulated by the assumed program. This is required of any entity or person who proposes to discharge dredged material or fill a regulated aquatic resource. The information required from small entities applying for a permit in an assumed program is the same information that would have been required by the Corps if the Tribe or State had not assumed the program.

EPA's regulations (40 CFR 233.30(d)) provide flexibility for small projects in that the level of detail of information required in the permit application should be commensurate with the type and size of the project and discharge.

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

#### ***A. Request for Program Assumption, Substantial Program Modifications, and Withdrawal Procedures***

The Tribe or State's assumption request, substantial program modifications, and withdrawal procedures are all one-time events. The timing of the request for program assumption is determined by the Tribe or State. Revisions, when substantial changes take place, can be initiated by either the Tribe or State or EPA. Withdrawal procedures will likely be initiated by EPA as the Agency deems necessary.

#### ***B. Permit Application and Enforcement and Compliance Information***

A permit application is submitted each time a permit applicant plans to do work that involves the discharge of dredged or fill material into waters of the United States.

### ***C. Annual Reports and Program Information***

The Tribe or State must submit an annual report to EPA assessing its program operations. The yearly period reported on in the annual report can be set by the Tribe or State.

### ***D. Tribes Applying for TAS***

Tribes may seek TAS to obtain or retain benefits pursuant to EPA regulations. EPA has no control over the frequency of this collection.

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

A summary of burden hours and costs associated with the collection of information for the section 404 program can be found in Table 1: Burden and Cost Overview.

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

#### ***A. Request for Program Assumption, Substantial Program Modifications, and Withdrawal Procedures***

##### *Request for Program Assumption*

***EPA estimates that a State will need a total of 970 hours*** to prepare the documentation for EPA to determine that a State's assumption request is complete. The time associated with carrying out feasibility studies, applying for grants, coordinating with Federal, State and/or Tribal agencies is not factored into the time to produce the documents associated with the request for assumption. Of the 970 hours, allotted for meeting requirements under 40 CFR 233.15, 770 hours are derived from a questionnaire that New Jersey and Michigan completed for the 2021 ICR renewal for the CWA Section 404 State-Assumed Program (ICR No: 202106-2040-002, OMB Control No: 2040-0168). An additional 200 hours have been added here to account for new materials that EPA is requesting to be submitted as part of the request for program assumption as a part of the proposed rule. These materials were historically provided by States with existing programs; therefore, this value may be an overestimate. The Agency seeks comment on these burden hour estimates. EPA estimates that two States may request program assumption over the next three years. If two States were to assume the Section 404 program, the total one-time burden of ***1,940 hours*** would be divided over the next three years to calculate the ***annual burden of 647 hours***.

##### *Substantial Program Modifications*

EPA estimates that a State will need a total of 127 hours to prepare the documentation for EPA associated with non-substantial program modifications under 40 CFR 233.16 of the proposed rule. This is equivalent to one-eighth of the burden hours associated with requesting program assumption. EPA estimates that substantial program modifications under 40 CFR 233.16 will require a total of 253 hours per request, which is equivalent to one-quarter of the burden hours associated with requesting program assumption. ***Program modifications are not expected to occur in the next three years.***

##### *Withdrawal Procedures*

EPA estimates that a State will need a total of 127 hours to prepare documentation associated with 40 CFR 233.53. This estimate is equivalent to one-eighth of the burden hours associated

with requesting program assumption. ***Withdrawal procedures are not expected to be used in the next three years.***

### ***B. Permit Application and Enforcement and Compliance Information***

EPA estimates that the average time needed to review a permit application is 12.7 hours based on data provided by Michigan and New Jersey for the 2021 ICR renewal. The actual time to review a permit application will vary greatly depending on the size and location of a project. Small projects will require less time, while large, complex projects could require significantly more time. Based on recent annual reports provided by Florida<sup>2</sup>, the data provided by Michigan and New Jersey for the 2021 ICR renewal, and the average number of permits per year and per State for States that do not have assumed programs, ***EPA estimates that the average assumed program will process 1,699 permits a year.*** This results in a burden of ***21,577 burden hours annually per assumed program for States.*** This figure will vary with the assumed program. It is likely that some States will have significantly fewer permit applications requested each year; others may have more. The number of permit applications may also vary annually. ***The total estimate for five assumed programs is 107,887 burden hours annually.***

The burden to permittees associated with filing a permit in Michigan, New Jersey, and Florida can be estimated annually at ***70,389 hours for these three States.*** For this calculation, the estimated time for a permittee to complete an application is 11 hours; this estimate is consistent with the current Corps ICR estimate. Although permit application requirements can be different under an assumed program versus that with the Corps, this estimate of 11 hours represents the best available information. (ICR No: 202202-0710-002, OMB Control No: 0710-0003.)<sup>3</sup> Additionally, the average annual number of permit applications submitted in Michigan, New Jersey, and Florida is 2,133, which is higher than the average estimated for five programs. This is due to the lower average number of permit applications estimated for the two additional programs, which are excluded here. Permittee burden associated with States assuming a program in the next three years are now accounted for in the Corps ICR; hence, including them in this estimate would result in double counting permittee burden. Once States complete the process to assume the 404 program over the next three years covered by this ICR, the estimated burden for permittees within those States that is currently reported by the Corps would transfer the permitting authority from the Corps to that State under 40 CFR 233. The burden for those newly approved States will subsequently be included in future versions of EPA's 404(g) ICR.

EPA does not expect new substantive burden to existing or future States with assumed programs due to changes in the proposed rule relating to the review of additional permits associated with requests by Tribes relating to resource rights.

The proposed rule would require States to provide mitigation instruments to EPA and other Federal agencies for review, and it would require States to respond to comments from EPA and other Federal agencies. This would not impact practices in the State of Michigan or the State of

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<sup>2</sup> Florida Annual Report Florida Department of Environmental Protection. (2022). *Draft State 404 Program Annual Report July 1, 2021 – June 30, 2022.*

<sup>3</sup> [https://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=202202-0710-002](https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202202-0710-002)

Florida. The State of New Jersey would be required to begin this practice. EPA estimates that such a burden would likely be less than 10 hours annually, and this additional burden is reflected in the total annual burden presented above.

### ***C. Annual Reports and Program Information***

EPA estimates that a State will need 110 hours to collect and analyze the information and prepare the annual report required by the regulations. Similar to the broad array in volume and complexity that permit applications have, annual reports also can vary in length and detail. As such, the time needed to collect and analyze information will vary. Because three States have already assumed the program, and EPA expects two additional States to assume the program, five reports per year are the total estimated number developed by States at ***an estimated total burden of 550 hours per year***.

There is no new substantive burden to existing or potential future States with assumed programs due to changes in the proposed rule, including the requirement to report mitigation and staffing statistics as a part of the annual report. Existing programs already report these and further statistics. As the 110 hours estimate is derived from the 2020 questionnaire to these programs, it is a reliable value for covering this and additional voluntary information.

### ***D. Tribes Applying for TAS***

To estimate the burden for tribal applications for TAS, EPA relies on data from a related ICR, Revised Interpretation of CWA Tribal Provisions (EPA ICR number 2515.02). In preparing EPA ICR 2515.02, EPA consulted with eight Tribes that have been approved for TAS to administer the Water Quality Standards Program. The information requested included the number of tribal staff hours spent on the application process, and the amount of tribal funds spent on contractor support for the process. The Water Quality Standards Program estimated that six Tribes every year would apply for TAS.

EPA assumes fewer Tribes will apply for TAS for section 404(g) without also applying for TAS for the Water Quality Standards Program. Additionally, there will likely need to be time to inform Tribes of the opportunity to apply for TAS solely for section 404(g). Therefore, EPA estimates one Tribe every year will apply to participate in the 404(g) process, for a total of three Tribes over three years.

Based on estimates from previous related ICRs, EPA estimates that Tribes would expend ***113 staff hours and \$3,074 on contractor costs to develop applications for section 404(g) annually***.<sup>4</sup> As the 404(g) program has not implemented this information collection to date, this burden estimate is based on similar information collections under separate regulatory programs, and it may be an overestimate. The estimate will be updated in future ICR renewals as new information becomes available via implementation of this information collection. The Agency is seeking

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<sup>4</sup> The Water Quality Standard Program estimated that Tribes would annually expend 1,607 hours and \$43,920 in contractor costs to develop applications for TAS (OMB Control No. 2040-0049). The Clean Water Act 303(d) Program estimated that Tribes would expend 17% of the staff hours and contractor costs of the Water Quality Standards Program on Tribal applications (OMB Control No. 2040-0290). For the section 404(g) program, EPA estimates that Tribes will expend 7% of the staff hours and contractor costs of the Water Quality Standards Program on Tribal applications for TAS.

comment on the estimated staff hours and contractor costs associated with this information collection.

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

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

#### **A. Request for Program Assumption, Substantial Program Modifications, and Withdrawal Procedures**

##### *Request for Program Assumption*

EPA estimates that a State will need 970 hours to prepare the documentation for a submission to EPA, including any additional documentation included on a voluntary basis. EPA estimates that \$69,107 (i.e., the starting salary of a GS-11, “Rest of U.S.” locality for 2023<sup>5</sup>) is a representative State employee salary for a typical work year of 2,080 hours per year.<sup>6</sup> This equates to an hourly wage of \$33.22. **This results in a one-time cost of \$32,228 per program assumption.** EPA estimates that two States may request program assumption over the next three years. This results in a total salary cost for two programs of \$64,456. Adding a 1.6 overhead factor<sup>7</sup> results in a cost of **\$103,129 for two States.**

##### *Substantial Program Modifications*

It is estimated that non-substantial program modifications will require an equivalent of one-eighth of the costs associated with a request for program assumption. This equates to a total of \$6,751 per request. It is estimated that substantial program modifications will require an equivalent of one-quarter of the costs associated with a request for program assumption. This equates to a total of \$13,449 per request. **Program revisions are not expected in the next three years.**

##### *Withdrawal Procedures*

It is estimated that withdrawal procedures will require an equivalent of one-eighth of the burden and costs associated with a request for program assumption. This equates to a total of \$6,751 per request. **Withdrawal procedures are not expected to be used in the next three years.**

#### **B. Permit Application Information**

The average annual hourly burden to existing State programs for this task is 21,577 hours. EPA estimates that a \$33.22 hourly wage (starting point of a GS-11 “Rest of U.S.” locality) is an appropriate average hourly wage for State employees involved in EPA coordination on permit and enforcement review. **This results in an approximate annual salary cost per State of \$716,798. Adding a 1.6 overhead factor results in a cost of \$1,146,876 for one program, and \$5,734,383 for five programs annually.**

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<sup>5</sup> <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2023/RUS.pdf>, accessed January 2023.

<sup>6</sup> Use of GS-11 as a proxy for state and local level wage information is consistent with existing EPA ICR supporting statements.

<sup>7</sup> An overhead factor is used to estimate total compensation (wages and employment benefits).

The burden hours for permittees in Michigan, New Jersey, and Florida is estimated at 70,389 hours. EPA relies on the hourly wage rate for permittees in the Corps ICR, Application for Department of the Army Permit and Nationwide Permit Pre-Construction Notification Forms (ICR No: 202202-0710-002, OMB Control No: 0710-0003.); this rate is \$27.07. **A total estimate of cost to permittees in New Jersey, Michigan, and Florida is \$3,048,688, with overhead.** Burden and cost to States that may assume the program during the period of this ICR are currently captured by the Corps ICR.

### ***C. Annual Reports and Program Information***

Based on information provided by Michigan and New Jersey as a part of the 2021 ICR Renewal for the CWA Section 404 State-Assumed Program, EPA estimates that a State will need 110 hours to collect and analyze the information and prepare the annual report. EPA estimates that a \$33.22 hourly wage (starting point of a GS-11 “Rest of U.S.” locality) is an appropriate average hourly wage for State employees involved in production of annual reports and program information. With an overhead factor of 1.6, this results in an approximate salary cost of \$5,847 to prepare an individual annual report. **The annual total cost for five reports is \$29,234.**

### ***D. Tribes Applying for TAS***

Based on the annual burden of 113 hours for three tribal applications for TAS, the equivalent of a GS-11 hourly wage of \$33.22, and an additional \$3,074 in contractor costs, the estimated annual costs for section 404(g) applications for TAS is \$6,828. With a 1.6 overhead factor applied, the **total annual costs associated with Tribes applying for TAS is \$10,925.**

#### ***(ii) Estimating Capital and Operations and Maintenance Costs***

None are anticipated.

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

None are anticipated.

#### ***(iv) Annualizing Capital Costs***

Not applicable to these programs.

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

#### ***A. Request for Program Assumption, Substantial Program Modifications, and Withdrawal Procedures***

##### ***Request for Program Assumption***

Burden to Federal agencies is estimated at 400 hours (approximately 1/5<sup>th</sup> of a work year) to review and provide comments to EPA on the adequacy of the submission of request for program assumption and for EPA to determine to either approve or deny the assumption request. **With a total of 400 burden hours** for one State and with a Federal salary of \$98,496, or a \$47.35 hourly wage (starting point of a GS-13 “Rest of U.S.” locality) applied, the Federal salary cost equates

to \$18,942 per assumption request. With a 1.6 overhead factor, this results in a **total salary cost for two States of \$60,613.**

#### *Substantial Program Modifications*

EPA estimates that the Agency will need a total of 55 hours to review documentation provided by States for non-substantial program modifications under 40 CFR 233.16 of the proposed rule. This is equivalent to one-eighth of the burden hours associated with processing requests for program assumption. EPA estimates that substantial program modifications under 40 CFR 233.16 will require a total of 111 hours per request, which is equivalent to one-quarter of the burden hours associated with requesting program assumption.

With a salary rate of a GS-13 (locality rest of U.S. starting salary hourly wage of \$47.35) applied to the above hours with a 1.6 overhead factor, the Agency estimates the cost of a general program revision to cost the Agency \$4,167, and a substantial program modification to cost the Agency \$8,410. **Substantial program modifications are not expected to occur in the next three years.**

#### *Withdrawal Procedures*

EPA estimates that the Agency will need a total of 111 hours to review documentation provided by States for program withdrawal procedures under 40 CFR 233.53 of the proposed rule. This is equivalent to one-eighth of the burden hours associated with processing requests for program assumption. With a salary rate of a GS-14 (locality rest of U.S. starting salary of \$116,393) applied to the above hours with a 1.6 overhead factor, the Agency estimates the cost of program withdrawal to cost the Agency \$9,938. **Withdrawal procedures are not expected to be used in the next three years.**

### ***B. Permit Application and Enforcement and Compliance Information***

EPA regional staff were consulted for estimates on annual permit application reviews for both number of permit applications and hours per permit application. See Appendix A. The three existing programs have very different burdens associated with permit application reviews due in part to the amount of retained waters in a given State, the types of impacts associated with waters, and the age of the assumed program. For example, EPA staff reviewing section 404 permit applications for the Florida assumed waters program are presently reviewing more permit applications and requiring more time for review due largely to the nascency of the Florida assumed program. Table 4 summarizes these findings.

EPA models for two additional State programs to assume the section 404 program in the next three years. To do so, EPA uses the average number of annual permits from 2013-2018 for States that do not have assumed programs (1,049)<sup>8</sup> and multiply that value by the percent of permits being reviewed in Florida presently (6.98%)<sup>9</sup>, which leads these two hypothetical States to each have 73 permit applications reviewed annually, with each permit application assumed to require 20 hours of review. This leads to 2,920 burden hours for the hypothetical programs.

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<sup>8</sup> See Appendix A of the Economic Analysis for the Proposed Rule.

<sup>9</sup> See Appendix A of this Supporting Statement.

The result is an **annual burden of 6,682 hours**. At the rate of a starting GS-12 (starting salary of \$82,830; which equates to an hourly salary of \$39.82), the **total cost with an overhead factor of 1.6 is \$425,724 for five programs**.

Table 1: EPA Staff Permitting Burden				
Program Being Reviewed	Burden Hours	Salary	Cost without Overhead Factor	Cost with Overhead Factor
Florida	2,500	\$ 39.82	\$ 99,550	\$ 159,280
Michigan	1,250		\$ 49,775	\$ 79,640
New Jersey	12		\$ 478	\$ 765
New Programs	2,920		\$ 116,274	\$ 186,039
Total	6,682	\$ 39.82	\$ 266,077	\$ 425,724
See Appendix A for details				

### C. Annual Reports and Program Information

EPA estimates that review of each State annual report will take approximately 40 hours. At the rate of a GS-12 (starting salary of \$82,830), this translates into a salary cost of approximately \$1,593 per annual report. This results in a total salary cost of \$7,964 for five reports. Adding a 1.6 overhead factor results in a **total cost of \$12,742**.

### D. Tribes Applying for TAS

Consistent with the previous related ICR for the Water Quality Standards Program (ICR number 2515.02), EPA estimates that reviewing a typical TAS application requires approximately 205 Agency hours from regional and headquarters offices.

**With a total of 205 hours** for one Tribe and a Federal salary of \$98,496, or a \$47.35 hourly wage (starting point of a GS-13 “Rest of U.S.” locality) applied for staff review, the Federal salary cost equates to \$9,707 per Tribal request for TAS. With a 1.6 overhead factor, this results in a **total EPA annual cost for review and processing of one Tribal application for TAS status of \$15,531**.

### 6(d) Estimating the Respondent Universe and Total Burden and Annual Costs

Table 2: Burden and Cost Overview		
IC and associated variables	Respondent Burden & Cost	Agency Burden & Cost
A: Program Assumption Request (2 States)	State Requests for Assumption	Agency Review of Request
Modifications/Withdrawals	0	0

Application Hours per Request	970	400
Total Hours Requested	1,940 (647 annually)	800 (267 annually)
Current OMB Inventory (Hours)	2,024	884
TAS Request for Tribes if Any Were to Assume	0 (No Tribes expected to assume)	0 (No Tribes expected to assume)
<b>Cost per Request</b>	\$32,228	\$18,942
<b>Cost per Request with Overhead</b>	\$51,564	\$30,306
<b>Total Cost</b>	<b>\$103,129</b>	<b>\$60,613</b>
<b>B. 1: Permit Review (5 States)</b>	<b>State Review of Permits</b>	<b>Agency Review of Permits</b>
Permit Applications Reviewed per State Annually	1,699	See Table 1
Application Hours per Permit	12.7	
Total Hours per State	19,888	
Total Hours Requested for 5 State Assumed Programs	99,441	6,682
Current OMB Inventory (Hours)	143,224	10,000
<b>Cost per Program</b>	\$716,798	\$53,215
<b>Cost per Program with Overhead</b>	\$1,146,877	\$85,145
<b>Total Annual Cost with Overhead for 5 State Assumed Programs</b>	<b>\$5,734,383</b>	<b>\$425,724</b>
<b>B. 2: Permittee Information</b>	<b>Public Burden</b>	N/A
Permit Applications submitted per State Annually	2,133	
Application Hours per Permit	11	
Total Hours for MI, NJ, and FL applicants	70,389	
Current OMB Inventory (Hours)	74,432	
<b>Total Cost to Permittees in MI, NJ, &amp; FL with overhead</b>	<b>\$3,048,688</b>	
<b>C: Annual Report</b>	<b>State Development of Annual Report</b>	<b>Agency Review of Annual Report</b>
Number of States That Have Assumed the Program	5	5
Hours per Report	110	40
Total Hours Requested	550	200
Current OMB Inventory (Hours)	550	200
<b>Cost per Report</b>	\$3,654	\$1,593
<b>Total Cost with Overhead</b>	<b>\$29,234</b>	<b>\$12,742</b>
<b>D: Tribes Applying for TAS</b>	<b>Tribal Application</b>	<b>Agency Review and Processing</b>
Number of Tribes Expected to Apply Annually	1	1
Hours per Application	113	205
Consultation Costs to Tribe	\$3,074	N/A

<b>Cost per Application</b>	<b>\$6,828</b>	<b>\$9,707</b>
<b>Total Cost with Overhead</b>	<b>\$10,925</b>	<b>\$15,531</b>

**6(e) Bottom Line Burden Hours and Cost Tables**

**i. Respondent Tally**

The total average annual burden to Tribes and States for assumed section 404 permit programs is **109,197 hours**. This number was derived by adding one-third of the labor from section A to reflect that a State submits one request to assume a program and this request could be during one calendar year or stretched over several years, plus the total annual labor from sections B, C and D in the table above. This was done to reflect the annual burden as required by OMB.

**The total annual estimate of costs to Tribes and States is \$5,808,918.** This number was derived by adding one-third of the cost from section A to reflect that a State submits one request to assume a program and this request could be during one calendar year or stretched over several years, plus the total annual cost to Tribes and States from sections B, C and D in the table above. This was done to reflect the annual burden as required by OMB. There are no capital or operation and maintenance costs.

EPA is calculating the burden and cost to permittees. This estimate includes costs to Michigan, New Jersey, and Florida permittees alone because States that may assume the program during the period of this ICR are accounted for in the Corps ICR. **The total annual cost to permittees in these three States is estimated at \$3,048,688.**

**ii. Agency Tally**

**The burden to EPA for related activities is 7,354 hours.** The cost from section A of the table was divided by three and added to sections B, C and D to estimate an **annual burden cost equal to \$474,201.**

**iii. Variations in the Annual Bottom Line**

Annual variations are dependent upon how many States submit assumption requests, if any States have substantial program modifications or withdrawal procedures initiated, and how many permit applications a given State processes in a year.

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

*Renewal related changes*

The CWA 404 State-Assumed Programs ICR Renewal in 2021 included burden associated with EPA carrying out consultations under the Endangered Species Act, the National Historic Preservation Act and Magnuson-Stevens Act. As these consultations are tied to separate regulatory programs from the section 404(g) program, the burden of collection under these acts should not be included in this ICR. Removing consultation burdens lowered the annual burdens associated with the requests for program assumption by 161 hours. This decrease in burden is offset by the increase in burden associated with the rulemaking (see below).

The number of permit applications processed by States was updated in this ICR based on recent annual reports from the States of Florida<sup>10</sup> and an assessment of average Corps permits per year based on Corps data from 2013-2018<sup>11</sup>. The prior numbers were based on the 2020 questionnaire sent to Michigan and New Jersey and did not include information from the State of Florida, nor did they consider national trends in permitting. Incorporating this information provides for a more accurate estimate, which is lower than the prior ICR estimate. This lowered the burden for States and permittees. *See Table 2* for more details.

Similarly, the number of permit applications reviewed by EPA and hours required to review each permit application were updated based on input from EPA regional staff. While the estimated number of permit applications reviewed by EPA has increased from prior estimates, the estimated number of hours to review these applications has decreased substantially, and the outcome is the total burden hours have decreased. *See Table 1* and Appendix A.

Throughout this ICR, wages have been updated to reflect the most current values.

***The overall changes to burden hours associated singularly with the renewal process for this ICR are 35,365 fewer burden hours to States, 4,043 fewer burden hours to permittees, and 3,346 hours fewer burden hours to EPA. The majority of this change is due to the assessment of permit application review hours.***

#### *Rulemaking related changes*

There are several new pieces of information that would formally need to be included with the information collections outlined within this document – particularly for program assumption requests. Prior burden estimates for both States and EPA potentially included burden associated with this information. However, EPA is providing for an additional 200 burden hours to Tribes and States and to EPA for information collection associated with program assumption requests. This is an equivalent of 1/10<sup>th</sup> of a work year being added to each of these requests for States and Tribes and for EPA. This results in an ***additional 133 burden hours annually to Tribes and States and an additional 133 burden hours annually to EPA ((200 hrs\*2 states)/3 years =133 hrs)***. However, these increases in burden are tempered by the decrease in burden associated with the consultation burden hours that have been removed as part of the renewal process (*see above*).

The new information collection associated with Tribes applying for TAS also increases burden in this ICR. ***The total burden hours to Tribes for this specific information collection is 113 hours, and a total annual cost to Tribes is estimated at \$10,925. The total burden hours to EPA for this specific information collection is 205 hours, and a total annual cost to EPA is estimated at \$15,531.***

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

This collection of information is separated into four parts. The annual public reporting and record keeping burden for this collection is estimated to average 970 hours to request program

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<sup>10</sup> Florida Annual Report Florida Department of Environmental Protection. (2022). *Draft State 404 Program Annual Report July 1, 2021 – June 30, 2022*.

<sup>11</sup> See Appendix A in the Economic Analysis for the Proposed Rule (Docket ID: EPA-HQ-OW-2020-0276).

assumption (spread over three years), 12.7 hours for a State to review a permit application, 11 hours for a permittee to complete a permit application, 110 hours for a State to prepare the annual report, and 113 hours for a Tribe to apply for TAS status.

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; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

To comment on the Agency'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, EPA is using the rulemaking public docket for this ICR under Docket ID Number EPA-HQ-OW-2020-0276, which is available for online viewing at <http://www.regulations.gov>, or in person viewing at the Office of Water Docket in the EPA Docket Center (EPA/DC), WCJ West, Room 3334, 1301 Constitution Ave., NW, Washington, D.C. EPA/DC Public Reading Room is open from 8 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 RCRA Docket is (202) 566-0270. We encourage the public to submit comments via <https://www.regulations.gov/> or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>. An electronic version of the public docket is available at <http://www.regulations.gov>. This site can be used to submit or 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 No. EPA-HQ-OW-2020-0276. Also, you can send comments to the Office of Management and Budget at [oir\\_submission@epa.gov](mailto:oir_submission@epa.gov), Attention: Desk Office for EPA. Please include the EPA Docket ID Number EPA-HQ-OW-2020-0276 and OMB Control Number 2040-0168 in any correspondence.

## Appendix A

### Permit application reviews associated with assumed programs under CWA section 404(g)

In January 2023, regional EPA staff that oversee compliance and enforcement of assumed programs in Michigan, New Jersey, and Florida provided input on workload associated with permit application reviews. As a part of this discussion, the following information was provided.

Florida: Due in part to how new the Florida assumed program is, EPA staff are reviewing around 125 permit applications per year, which require 20 hours of review each. These values are derived from the following information provided by EPA staff: it is estimated that in total, permit application reviews in Florida equate to 60% of the workload of two EPA staff members, although there are more than two EPA staff members working on these reviews. On average, the time for reviewing each application is 20 hours.

$2 \times 0.6 \times 2080 \approx 2500$  burden hours.  $2500/20 = 125$  permits.

Michigan: Approximately 45 permits are reviewed a year, which require 25 hours of review each. There may be an additional 5 permit applications that will need to be reviewed as a result of the changes in the proposed rule associated with tribal considerations.

$50 \times 25 = 1250$  burden hours.

New Jersey: Because the Corps in New Jersey has retained permitting authority over much of the waters in the State, and because the State of New Jersey has moved over time to issuing more general permits than individual permits, EPA staff review on average only 2 permit applications a year, which take approximately 6 hours each to review.

$2 \times 6 = 12$  burden hours.

Additionally, the burden estimates for EPA reviews of permit applications assumes two new States will be granted assumed programs in the next three years. To calculate the EPA burden hours associated with these two States, EPA assumes that the percent of permit application reviews will be comparable to those seen in Florida presently. However, the number of permits will differ. To calculate the number of permit reviews that will need to occur, EPA uses the average annual number of permit applications in non-assumed States (1,049), multiplied by the percent of permit application reviews that have occurred in Florida (0.0698). The Agency estimates that each of these permit applications will require on average 20 hours to review.

$1049 \times 0.0698 = 73$  permit applications.

$2 \times 73 \times 20 = 2920$  burden hours.

Separately from EPA burden, using the 1,049 value, the average number of permit applications that individual State programs have to process annually can be summarized.

Michigan average number of permits: 3792<sup>12</sup>

Florida average number of permits: 1790<sup>13</sup>

New Jersey average number of permits: 817<sup>14</sup>

Hypothetical States average number of permits: 1049 each

$(3792 + 1790 + 817 + 1049 + 1049)/5 = 1,699$  permit applications processed

For the average number of permit applications provided by permittees, however, only burden associated with Michigan, Florida, and New Jersey can be considered, as other States are presently covered by Corps ICRs.

$(3792 + 1790 + 817)/3 = 2,133$  permit applications submitted

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<sup>12</sup> 2021 ICR renewal for the CWA Section 404 State-Assumed Program (ICR No: 202106-2040-002, OMB Control No: 2040-0168).

<sup>13</sup> Florida Annual Report Florida Department of Environmental Protection. (2022). *Draft State 404 Program Annual Report July 1, 2021 – June 30, 2022*.

<sup>14</sup> 2021 ICR renewal for the CWA Section 404 State-Assumed Program (ICR No: 202106-2040-002, OMB Control No: 2040-0168).