

INFORMATION COLLECTION REQUEST SUPPORTING STATEMENT

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Water Quality Certification Regulations**

SEPTEMBER 2023

SUPPORTING STATEMENT ENVIRONMENTAL PROTECTION AGENCY

1. Identification of the Information Collection

1(a) Title of the Information Collection

Information Collection Request for ICR Supporting Statement Information Collection Request for Water Quality Certification Regulations, EPA ICR Number 2603.08, OMB Control Number 2040-0295.

1(b) Short Characterization/Abstract

This Information Collection Request (ICR) describes the cost and burden associated with final revisions to 40 CFR part 121, the regulations that implement Clean Water Act (CWA) section 401. The changes in burden and costs are discussed relative to the previous collection (OMB Control No. 2040–0295, EPA ICR Number 2603.07). Under CWA section 401, a Federal agency may not issue a license or permit to conduct any activity that may result in any discharge into “waters of the United States” unless the state or authorized tribe where the discharge would originate either issues a CWA section 401 water quality certification “that any such discharge will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307” of the CWA, or waives certification. 33 U.S.C. 1341(a)(1). Under these regulations, project proponents must submit specific project information to certifying authorities. Certifying authorities then may act on project-specific information by granting, granting with conditions, denying, or waiving CWA section 401 certification. If the certifying authority does not act on a request for certification within the reasonable period of time after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application. The final rule also clarifies that EPA is responsible for coordinating input from certain neighboring states and authorized Tribes affected by a discharge from a federally licensed or permitted project under CWA section 401(a)(2).¹

Revisions to the 2020 Rule for CWA section 401, as described in EPA’s *Federal Register* notice, serve as the basis for estimating the regulatory burden in this ICR supporting statement. Information requirements in EPA’s final rule include: 1) a requirement for project proponents to request a pre-filing meeting with the certifying authority at least 30 days prior to submitting a certification request, which request can be waived or the time period shortened by the certifying authority, 2) a requirement for project proponents to provide information in a “request for certification,” 3) requirements for Federal agencies to notify EPA on “may affect” findings, and 4) Tribal applications for treatment in a similar manner as a state (TAS) for section 401 or section 401(a)(2).

2. Need for and Use of the Collection

¹ Information collected directly by EPA under CWA section 401 in support of the section 402 permit program is already captured under an existing ICR (OMB Control Number 2040-0004). It is therefore not included in this analysis.

2(a) Need/Authority for the Collection

CWA section 401 requires project proponents to submit specific information to certifying authorities. Certifying authorities may then act on project-specific information by granting, granting with conditions, denying, or waiving CWA section 401 certification. Certifying authorities include all states and Tribes with treatment in a similar manner as a state (TAS) authorization for CWA section 401. EPA has the authority to implement CWA section 401 certification programs on behalf of states and Tribes without the authority to issue certifications, including Tribes without TAS for CWA section 401 and on lands of exclusive Federal jurisdiction. Federal agencies are responsible for providing notification to EPA after receiving an application for a Federal license or permit and a certification under CWA section 401(a)(2). EPA is also responsible for providing notification to neighboring states and authorized Tribes potentially affected by a discharge from a federally licensed or permitted project under CWA section 401(a)(2). In EPA's notification, EPA requires neighboring states and authorized Tribes to respond if they have plans to object to the license or permit along with justification for objecting. CWA section 401 requires certifying authorities to submit information to the project proponent to indicate the action taken on a request for certification. If the certifying authority fails or refuses to act on a request for certification within a reasonable period of time (which shall not exceed one year) after receipt of such request, the requirement to obtain certification is waived, and the Federal license or permit may be issued.

CWA section 518(e) authorizes EPA to treat eligible federally recognized Indian Tribes in a manner similar as states for purposes of administering section 401 and certain other provisions of the CWA. EPA has promulgated regulations establishing a process for federally recognized Tribes to obtain TAS for several provisions of the CWA, including TAS authority to adopt water quality standards under CWA section 303(c). If EPA determines that a Tribe is eligible for TAS authority under section 303(c), the Tribe is automatically eligible for TAS for CWA section 401 unless the Tribe elects not to seek such eligibility. 40 CFR 131.4(c).² The CWA does not require Tribes to administer regulatory programs. However, Tribes seeking section 401 or section 401(a)(2) TAS authorization must apply for and be found eligible for TAS through the procedures described in the final regulation.³ The information a Tribe submits represents a collection of information that is necessary for EPA to fulfill the Agency's responsibilities under CWA section 518(e) in a reasonable and timely manner.

2(b) Practical Utility/Users of the Data

The information collected under CWA section 401 is used by the certifying authorities

² Information collected directly by EPA under CWA section 518(e) in support of the process for Tribes to obtain TAS for CWA section 303(c) and section 401 is already captured under an existing ICR (OMB Control Number 2040-0049). It is therefore not included in this analysis.

³ Per 40 CFR 121.11(a), the Tribe must be federally recognized; the Tribe must have a governing body carrying out substantial governmental duties and powers; the water quality certification program must be administered for water resources within the borders of an Indian reservation or legal equivalent; and, the Tribe must reasonably be expected to be capable of carrying out the functions of an effective water quality certification program under the Act. Per 40 CFR 121.11(d), a Tribe may submit a Tribal application for purposes of administering only the section 401(a)(2) portion of a water quality certification program.

for reviewing proposed projects that require a Federal license or permit and have the potential for a discharge into waters of the United States. The information collected is used to determine whether an applicant Tribe is eligible for TAS to administer the section 401 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, nor is it currently available elsewhere. Information collected directly by EPA under CWA section 401 in support of the section 402 permit program is already captured under an existing ICR (OMB Control Number 2040-0004). It is therefore not included in this analysis.

A Tribe may obtain TAS for CWA section 401 when it obtains TAS for purposes of CWA section 303(c); this collection does not account for Tribes that opt to obtain CWA section 401 TAS simultaneously with CWA section 303(c). See OMB Control Number 2040-0049. To avoid requiring Tribes to submit duplicate information, EPA's final regulations specify that a Tribe need only provide the required information that has not been submitted in a previous application.

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

In compliance with the Paperwork Reduction Act of 1995 (PRA), public notice for this information collection request was published in the *Federal Register* notice of proposed rulemaking titled "Clean Water Act Section 401 Water Quality Certification Improvement Rule." See 87 FR 35318 (June 9, 2022). The notice requested comments on the proposed rule and the information collection and burden estimates covered in the ICR.

A commenter from the public comment period said that the hourly burden of four hours is a low estimate. The commenter asserted that the proposed request for certification provisions were open-ended and added that it is not a reasonable assumption for the hourly burden to be the same as the 2020 Rule. EPA disagrees with both of the commenter's points. First, the Agency disagrees that the request for certification provision is open-ended. The final rule identifies minimum contents for all requests for certification. Additionally, the final rule provides important limiting principles for additional contents in a request for certification, such as emphasizing that additional contents must be water quality-related and identified prior to when the request for certification is made. Second, the Agency maintains that the same average hourly burden as under the 2020 Rule is reasonable, because it is an average estimate and the final rule includes similar levels of requirements as the 2020 Rule (e.g., pre-filing meeting requests, minimum contents of requests for certification) with some added flexibility. Additionally, the minimum contents in a request for certification should be readily available and already developed as part of the license or permit application process. Furthermore, not all requests for certification will involve the same associated burden. The requests for certification for small projects can be prepared by the project proponent with relatively little associated burden. The

requests for certification for larger, more complex projects may require significantly more associated burden to prepare.

3(c) Consultations

As part of a concurrent process to update the certification regulations at 40 CFR part 121, EPA received input from various sources that has been useful in helping the Agency refine its understanding of the previous collection (EPA ICR Number 2603.07). Those sources include stakeholder meetings, written pre-proposal input received on the Notice of Intention to Reconsider and Revise the Clean Water Act Section 401 Certification Rule (Docket ID No. EPA-HQ-OW-2021-0302), and the 2022 proposed rule (Docket ID No. EPA-HQ-OW-2022-0128).

Additionally, during the renewal of the information collection request for the 1971 water quality certification regulations (2603.03), EPA communicated with nine jurisdictions⁴ directly to collect more information on their respective water quality certification programs, including the types and content of certification requests received. Eight jurisdictions responded.⁵ This additional information, along with public comments on the 2019 proposed rule (EPA-HQ-OW-2019-0405), were assessed in the previous ICR to characterize paperwork burden and is used to inform the estimates presented in this supporting statement. The additional information provided more specific details on the potential number of responses submitted by project proponents and the time that certifying authorities spend reviewing information. This information has been included in the ranges used when calculating estimated hour and cost burdens in some cases, which are discussed in section 6. These estimates have been augmented to include additional data provided in pre-proposal input (EPA-HQ-OW-2021-0302) and public comments on the 2022 proposed rule (EPA-HQ-OW-2022-0128).

3(d) Effects of Less-Frequent Collection

To satisfy the requirements of CWA section 401, certifying authorities must collect information necessary to determine whether a federally licensed or permitted activity which may discharge into waters of the United States will comply with water quality requirements. Project proponents cannot move forward, and a Federal agency may not proceed with issuing a license or permit, before a certifying authority acts on a request for certification. If the certifying authority fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the requirement to obtain certification is waived.

Tribes may seek TAS to administer CWA programs pursuant to EPA regulations. EPA has no control over the frequency of this collection.

3(e) General Guidelines

⁴ States: Florida, Louisiana, Ohio, Kansas, Massachusetts, Nevada, and New York. Tribe: Ute Mountain Ute. Territory: Puerto Rico.

⁵ The State of Ohio did not respond to the information request.

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

3(f) Confidentiality

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

3(g) Sensitive Questions

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

4. The Respondents and the Information Requested

4(a) Respondents/NAICS Codes

Participants in the information collection and recordkeeping activities pursuant to CWA section 401 administration described by this ICR are generally project proponents or certifying authorities. Any entity that requires a Federal license or permit and has the potential to discharge into “waters of the United States” could be a project proponent. Given the broad range of potential respondents, EPA is unable to comprehensively catalogue their particular North American Industry Classification System (NAICS) codes. However, the following general sectors would be expected to be highly represented among respondents.

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

Most certifying authorities will fall into the following NAICS codes.

<u>Code</u>	<u>Industry Title</u>
921110	Executive Offices
921190	Other General Government Support

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, and of these, as of May 2023, 83 Tribes have been approved for section 401 TAS with section 303(c) TAS. This leaves over 219 Tribes that could still apply for TAS for section 401. EPA estimates that six of these Tribes will apply for section 401 TAS and 12 of these Tribes will apply for section 401(a)(2) TAS over the next three years.⁶

4(b) Information Requested

(i) Data Items & Respondent Activities

Under this final rule, the Agency maintains some of the information collection requirements established under the 2020 Rule and also introduces additional information collection requirements for project proponents and Federal agencies.⁷ EPA notes that this information collection does not capture information that may be requested by the certifying authority during the certification process after an initial request is received. EPA does not mandate what further information, if any, may be needed for a certifying authority to act on a request for certification. The final rule specifies the information requirements, and the information collection is summarized below.

The final rule retains a requirement for early engagement in the 2020 Rule. EPA is retaining the requirement for project proponents to request a pre-filing meeting with the certifying authority at least 30 days prior to submitting a request for certification. However, under the final rule, certifying authorities may waive or shorten this pre-filing meeting request requirement and direct the project proponent to submit a request for certification.

The final rule includes information collection requirements for project proponents. Under the 2020 Rule, the Agency defined the contents of all certification requests, and the list of required components depended on whether the certification request was for an individual license or permit or a general license or permit. The Agency is defining minimum contents of a request for certification for all certifying authorities and defining additional contents of a request for certification for EPA when it acts as the certifying authority or for states or authorized Tribes who do not define “request for certification” in their regulations.

The 2020 Rule removed the 1971 provision that certifying authorities may modify a certification that is agreed upon by the certifying authority, licensing or permitting agency, and

⁶ The Water Quality Standards Program estimated 18 Tribes will apply to administer the Water Quality Standards program over the next three years (OMB Control No. 2040-0049), and the CWA section 303(d) Program estimated five tribes would submit section 303(d) TAS applications (OMB Control No. 2040-0290). Based on these estimates, EPA assumes section 401 TAS applications submitted will be in this range. Additionally, there will likely need to be time to inform Tribes of the opportunity to apply for TAS solely for section 401. Therefore, EPA estimates that two Tribes every year will apply to administer section 401 certification, for a total of six Tribes over the next three years. EPA also assumes that additional Tribes will be interested in participating in the section 401(a)(2) process, based on stakeholder feedback and public comments.

⁷ If the certifying authority fails or refuses to act on a request for certification, within a reasonable period of time after receipt of such request, the information requirements of this subsection shall be waived with respect to such Federal application.

the Regional Administrator. The Agency is bringing back the certification modification process, allowing certifying authorities and Federal agencies to coordinate when circumstances warranting certification modification arise. However, the Agency assumes that the burden associated with a modification is already implicitly included in the burden for the original grant of certification since the contents of the modification may have been included in the original grant of certification itself. Moreover, there are a small number of incidences of modification; therefore, the Agency assumes the number of certifications reasonably captures the burden associated with the number of modifications.

Neither the 1971 Rule nor the 2020 Rule included provisions for Tribes to obtain TAS solely for section 401. The final rule adds provisions on how Tribes can obtain TAS solely for CWA section 401, as well as provisions on how Tribes can obtain TAS for the limited purpose of participating as a neighboring jurisdiction under CWA section 401(a)(2). Where a Tribe has previously qualified for TAS under another program, the Tribe need only provide the required information that has not been submitted in a previous TAS application.

Occasionally, EPA notifies a neighboring jurisdiction that a discharge originating in another jurisdiction may affect that neighboring jurisdiction, according to current regulations at 40 CFR 121.13. The 2020 Rule defined the contents of a notification from a neighboring jurisdiction objecting to a Federal project. The Agency is retaining a definition of the contents of a notification from a neighboring jurisdiction to EPA, the Federal agency, and the certifying authority in the final rule.

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

5(a) Agency Activities

Under the final rule, the Agency retains some of the information collection requirements established under the 2020 Rule and introduces additional information collection requirements for Federal agencies. These final requirements are described in the preamble to the final rule and are summarized below. Information collected directly by EPA under CWA section 401 in support of the section 402 permit program is already captured under an existing ICR (OMB Control Number 2040-0004, EPA ICR No. 0229.23) and is therefore not included in this analysis.⁸

The 2020 Rule required specific information to be included in requests for certification, and the list of required components depended on whether the request for certification was for an individual license or permit or a general license or permit. The final rule defines minimum contents of a request for certification for all certifying authorities and additional contents when EPA is acting as the certifying authority or when state and Tribal certifying authorities have not established definitions for a request for certification.

The 2020 Rule defined the contents that EPA provides in CWA section 401(a)(2) notifications. The 2020 Rule did not define the contents of a CWA section 401(a)(2) notification

⁸ Section A.1.9.1, EPA ICR No. 0229.23.

from a Federal agency to EPA. In the final rule, the Agency is defining the contents of a notification from a Federal agency to EPA.

EPA acts as a certifying authority on behalf of federally recognized Tribes that lack TAS for CWA section 401 and for lands of exclusive Federal jurisdiction (areas where the Federal government retains jurisdiction over the land, such as Denali National Park). On average, EPA estimates it performs 117 CWA section 401 water quality certification decisions per year. EPA rarely performs CWA section 401 water quality decisions on lands of exclusive Federal jurisdiction.

EPA also performs 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; 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

Project proponents must submit project-specific information to certifying authorities through the water quality certification process. Certifying authorities may then act on project-specific information by granting, granting with conditions, denying, or waiving CWA section 401 certification.

The certifying authority collecting project-specific information from project proponents determines the information collection method and may require physical or electronic submission of information.

The information collected under CWA section 401 may be published if it is not proprietary or confidential business information. The determination as to whether to publish is made by the certifying authority or Federal licensing or permitting agency collecting the information. The certifying authority may choose to collect information using a fillable form or by other correspondence. A certifying authority's applicable submission procedures are typically found on its website.

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 work closely with the Tribes in this process. EPA headquarters staff members 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

Information collected under CWA section 401 could be furnished by small entities. However, small entities often qualify for general permit authorizations for which CWA section

401 certification is already granted (e.g., CWA section 404 nationwide general permits). States and Tribal governments are not considered small governments under the Regulatory Flexibility Act.

In several areas, the final rule codifies existing practices that have been widely implemented consistent with nearly 50 years of case law and Agency guidance on the 1971 Rule. As such, the final rule's impacts on small governmental jurisdictions, businesses, and organizations are expected to be minimal. Key changes under the final rule may reduce the burden on project proponents (that may be considered small entities) by promoting early project coordination and transparency among parties and increasing flexibility when establishing the reasonable period of time to respond to requests for certification.

5(d) Collection Schedule

Under section 401, information is generally submitted by a respondent once, on a per permit basis. The final rule brings back a certification modification process, which adds the potential for additional information to be submitted as warranted. EPA expects that the burden estimates of the original application are sufficient to cover the modest information associated with modifications since the contents of the modifications may have been included in the original certifications.

6. Estimating the Burden and Cost of the Collection

6(a) Estimating Respondent Burden

(i) Administrative Burden for Certifying Authorities and Project Proponents

Detailed data on all certification request submittals by project proponents are not currently available. The estimates presented in the supporting statement from a previous collection included a questionnaire that was presented to nine certifying authorities. Eight certifying authorities responded to the questionnaire and provided data. These estimates have been augmented to include additional data provided in pre-proposal input (EPA-HQ-OW-2021-0302) and public comments on the 2019 and 2022 proposed rules (EPA-HQ-OW-2019-0405 and EPA-HQ-OW-2022-0128). Collectively, the data reviewed provided more specific information on the potential number of responses submitted by project proponents and the time that certifying authorities spend reviewing information. This new information has been included, where appropriate, in the ranges used when calculating estimated hour and cost burdens.

(1) Certifying Authorities

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

Table 1: Federal License/Permit Summary

License/Permit Type	Annual Average # Licenses/Permits Issued
CWA Section 404	45,725 general; ⁹ 1,898 ^a individual
Rivers and Harbors Act Section 10	7,600 general; 1,391 ^b individual
Rivers and Harbors Act Section 9	40
Federal Energy Regulatory Commission license	44 ^d
Nuclear Regulatory Commission license	2 ^e
Estimated Total Annual Average # Licenses/Permits Issued	56,700

a) Estimate based on the annual average number of 404 permits from 01/01/2010 – 09/01/2020 based on counts provided by the Corps.

b) Estimate based on the annual average number of section 10 permits from 01/01/2010 – 09/01/2020 based on counts provided by the Corps.

c) Estimate based on personal communication with Bridge Permits and Policy Division, Coast Guard Bridge Program

d) Estimate based on annual average license issuance for hydropower facilities/major natural gas pipelines from 01/01/2010 – 09/01/2020

e) Estimate based on annual average license issuance for operating nuclear power reactors (full-power operating licenses and combined operating licenses) from 01/01/2010 – 09/01/2020

EPA estimates that 140 certifying authorities¹⁰ serve as respondents for this information collection. The estimates from the previous collection included information made available to EPA through eight questionnaire responses (six states, one Tribe, one territory). The estimates in the previous collection also accounted for additional data provided in public comments on the 2019 proposed rule (EPA-HQ-OW-2019-0405). These estimates have been augmented to include additional data provided in pre-proposal input (EPA-HQ-OW-2021-0302) and public comments on the 2022 proposed rule (EPA-HQ-OW-2022-0128). To estimate the high number of certifying authority responses per year, EPA averaged the number of annual requests provided by six states in the questionnaire,¹¹ six additional states in pre-proposal input letters,¹² one state (Maryland) in public comments received for the 2019 proposed rule, and two states (Michigan and Utah) in public comments received for the 2022 proposed rule. The average number of annual requests across 15 states, based on numbers reported via the questionnaire, pre-proposal input letters, and public comments, was 1,947 requests per state. Multiplying the resulting average by all 50 states gives a revised high estimate of approximately 97,000 certifying authority responses per year. The low estimate is based on the approximately 57,000 annual issued licenses and permits presented in Table 1; EPA assumes that, at a minimum, there is one certification request and one response required by a certifying authority per license/permit issued. The midpoint of the two values is 77,000.

The Federal license/permit summary in Table 1 captures only those licenses and permits

⁹ An individual 404 permit covers one discharge with more than minimal adverse effects; a general 404 permit covers discharges that have only minimal adverse effects based on activity category.

¹⁰ The 50 states, Washington, DC, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and 83 Tribes with treatment as a state for CWA section 401.

¹¹ EPA did not include questionnaire response estimates provided by the Tribe and territory in this state average because the smaller values were not representative of state averages.

¹² Pre-proposal input letters reported the average annual number of certification requests received for Colorado, New Mexico, North Carolina, Pennsylvania, Tennessee, and Washington.

that are issued, which may not accurately reflect the full number reviewed by certifying authorities or submitted by project proponents. The high estimate is based on a limited number of states and is not expected to be representative of the whole population of certifying authorities. The use of the midpoint is justified to address the incomplete nature of both estimates. To estimate the number of general and individual permits across the low, midpoint, and high estimates, EPA applied the proportions from the license/permit summary in Table 1 (94% general, 6% individual).

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

Permit Type	Low Estimate	Midpoint	High Estimate
General Permits	54,000	72,500	91,000
Individual Permits	3,000	4,500	6,000
Total	57,000	77,000	97,000

In the previous collection, EPA updated the high estimate, and consequently the midpoint estimates for the burden for certifying authorities to review requests for certification. EPA has maintained these estimates for this final rule, and the estimates in Table 3 are consistent with the previous collection.

Table 3: Per-Certification Request Review Burden (Hours)

Permit Type	Low Estimate	Midpoint	High Estimate
General	4	7	10
Individual	4	10	16

Using the midpoint estimates of seven and 10 hours per review for general and individual permit or license requests, respectively, multiplied by the midpoint number of requests in Table 2, the midpoint estimated annual burden associated with certification request review for certifying entities is 552,500 hours per year. Based on the low and high permit estimates in Table 2 and the low and high hourly burden estimates in Table 3, the low and high burden estimates are 228,000 and 1,006,000 hours per year, respectively.

Table 4: Estimated Certifying Authority Annual Hour Burden

Permit Type	Low Estimate	Midpoint	High Estimate
General Permits	216,000	507,500	910,000
Individual Permits	12,000	45,000	96,000
Total	228,000	552,500	1,006,000

Not all certification request reviews necessitate the same associated burden. The certifications for small projects can be reviewed by the certifying authority with relatively little associated burden. The certifications for larger, more complex projects may require significantly more associated burden to review. Certifying authorities may also choose to waive certification for a project. Waivers may or may not involve review by the certifying authority and are often issued without incurring any measurable associated burden. Dividing the midpoint of 552,500 hours per year by the midpoint of 77,000 requests per year results in an average per-certification

request burden of seven hours for certifying authorities under the final rule, which is within the range identified above.

The regulations include no specific recordkeeping requirements for certifying authorities.

(2) Project Proponents

The annual average of licenses and permits issued (Table 1) may not capture the totality of information submissions made by project proponents. For example, if burden estimates only relied on issued licenses and permits, then it would not account for certification requests that may be denied by certifying authorities or withdrawn by project proponents. The estimates in this supporting statement were reformulated to incorporate additional data provided in pre-proposal input (EPA-HQ-OW-2021-0302) and public comments on the 2022 proposed rule (EPA-HQ-OW-2022-0128). The average number of reviewed requests across 15 states, based on numbers reported via the questionnaire, pre-proposal input letters, and public comments, was 1,947 requests per state. Multiplying the resulting average by all 50 states gives a revised high estimate of 97,000 project proponent responses per year. While this number could underestimate project proponent requests that are submitted but not reviewed, the number could also overestimate the number of unique project proponent requests that are resubmitted by project proponents without substantial changes. The low estimate is based on the 57,000 annual issued licenses and permits presented in Table 1; EPA assumes that, at a minimum, there is one certification request and one response required by a project proponent per license/permit issued. The midpoint of the two values is 77,000.

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

Low Estimate	Midpoint	High Estimate
57,000	77,000	97,000

EPA assumed an average per-certification request baseline burden estimate for the CWA section 401 requirements equal to what is presented in the collection request for EPA’s section 402 permit program (EPA ICR No. 0229.23). An average burden on project proponents related to submission of information to EPA is four hours per certification request in the section 402 permit program collection request.¹³ This average burden estimate for project proponents for submission of information is unchanged from the existing collection. A commenter from the public comment period said that the hourly burden of four hours is a low estimate due to the open-endedness of the proposed request for certification provisions. The commenter added that it is also not a reasonable assumption for the hourly burden to be the same as the 2020 Rule. EPA disagrees with both of the commenter’s points. First, the Agency disagrees that the request for certification provision is open-ended. The final rule identifies minimum contents for all requests for certification. Additionally, the final rule provides important limiting principles for additional contents in a request for certification, such as emphasizing that additional contents must be water quality-related and identified prior to when the request for certification is made. Second, the Agency maintains that the same average hourly burden as under the 2020 Rule is reasonable, because it is an average estimate and the final rule includes similar levels of requirements as the 2020 Rule (e.g., pre-filing meeting requests, minimum contents of requests for certification) with some added flexibility. Additionally, the minimum contents in a request for certification should

¹³ Section A.1.9.1, EPA ICR No. 0229.23.

be readily available and already developed as part of the license or permit application process. Furthermore, not all requests for certification will involve the same associated burden. The requests for certification for small projects can be prepared by the project proponent with relatively little associated burden. The requests for certification for larger, more complex projects may require significantly more associated burden to prepare.

The average marginal estimated burden associated with certification requests for project proponents ranges from 228,000 to 388,000 hours per year, with a midpoint of 308,000 hours per year.

Table 6: Total Estimated Annual Hour Burden for Project Proponents

Low Estimate	Midpoint	High Estimate
228,000	308,000	388,000

The regulations include no specific recordkeeping requirements for project proponents.

(ii) Burden for Tribal Applications for TAS

To estimate the burden for Tribal applications for TAS, the CWA section 401 program relies on data from a related ICR, Revised Interpretation of Clean Water Act 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 401 by itself 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 401. Therefore, EPA estimates that two Tribes every year will apply to administer section 401 certification, for a total of six Tribes over the next three years. EPA also assumes that additional Tribes will be interested in participating in the section 401(a)(2) process. The Agency estimates that four Tribes every year will apply for TAS for section 401(a)(2), for a total of 12 Tribes over the next three years.

Based estimates from previous related ICRs, EPA estimates that Tribes would expend 161 staff hours and \$4,392 on contractor costs to develop applications for section 401, and Tribes would expend 113 staff hours and \$3,074 on contractor costs to develop applications for section 401(a)(2).¹⁴ The estimated burden for section 401 applications for TAS is: (2 applications) * (161 hours) = **322 hours**. The estimated burden for section 401(a)(2) applications for TAS is: (4 applications) * (113 hours) = **452 hours**.

14 The Water Quality Standards 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 CWA section 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 CWA section 401 Program, EPA estimates that Tribes will expend 10% of the staff hours and contractor costs of the Water Quality Standards Program on Tribal applications. EPA also assumes that Tribes would expend less on applications for section 401(a)(2), and the Agency estimates that Tribes would expend 7% of the staff hours and contractor costs of that the Water Quality Standards Program estimated.

6(b) Estimating Respondent Costs

(i) Estimating Labor Costs

(1) Certifying Authorities

EPA estimates that \$33.11 (starting point of a GS-11 “Rest of U.S.” locality¹⁵) is an appropriate average hourly wage for a certifying authority employee.¹⁶ Adding a 1.6 overhead factor¹⁷ results in an estimated hourly wage for a certifying authority employee of \$53. EPA multiplied the hourly wage of \$53 by the annual estimated hourly burden range presented in Table 4 to arrive at an estimated annual dollar burden range of \$12 million to \$53 million per year, with a midpoint of approximately \$29 million per year.

Table 7: Estimated Certifying Authority Annual Cost Burden (Millions)

Low Estimate	Midpoint	High Estimate
\$12	\$29	\$53

(2) Project Proponents

Request for certification documents are likely prepared by a team of employees with a range of skills. For the purposes of this burden estimate, EPA reviewed the Bureau of Labor Statistics website for wage information related to engineering services.¹⁸ The median hourly wage for all occupations under engineering services for May 2021, the most recent available, is \$38. Adding a 1.6 overhead factor results in a median hourly wage of \$61. EPA multiplied this hourly wage by the hourly burden for project proponents in Table 6 to arrive at the estimated cost burden. The average estimated total cost burden associated with certification requests for project proponents ranges from \$14 million to \$24 million per year, with a midpoint of approximately \$19 million per year.

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

Low Estimate	Midpoint	High Estimate
\$14	\$19	\$24

Not all requests for certification involve the same associated burden. The requests for certification for small projects can be prepared by the project proponent with relatively little associated burden. The requests for certification for larger, more complex projects may require significantly more associated burden to prepare.

In some cases, project proponents may pay fees for requests for certification. The prior

¹⁵ https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/23Tables/html/RUS_h.aspx, accessed March 2023.

¹⁶ Use of GS-11 as a proxy for state and local level wage information is consistent with existing EPA ICR supporting statements.

¹⁷ An overhead factor is used to estimate total compensation (wages and employment benefits).

¹⁸ https://www.bls.gov/oes/current/naics5_541330.htm, accessed March 2023.

notice included an estimate of the CWA section 401 fees that project proponents pay to certifying authorities when submitting requests for certification. Upon further consideration, the Agency determined that CWA section 401 fees represent a transfer from project proponents to certifying authorities and do not need to be included in the burden estimate for this ICR. EPA acknowledges that fees for requests for certification are burden costs for project proponents. In a previous collection, EPA estimated that fees paid by project proponents for certification requests range from \$0 to \$16.0 million, with a midpoint of \$8.0 million. However, these costs transfer to certifying authorities, who in turn use the fees to process the requests for certification. The \$8 million estimate for certification fees represents a burden faced by project proponents, but these fees are a transfer from a benefit-cost analysis standpoint.

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

(ii) Tribal Costs for Applications for TAS

To estimate the costs for Tribal applications for TAS, the CWA section 401 program again looked to the previous related ICR, Revised Interpretation of Clean Water Act Tribal Provisions (ICR number 2515.02). The estimated annual costs for section 401 applications for TAS is: (161 hours/application) * (\$53/hour) + (\$4,392 contractor cost) = **\$12,925**. The estimated annual costs for section 401(a)(2) applications for TAS is: (113 hours/application) * (\$53/hour) + (\$3,074 contractor cost) = **\$9,063**. Assuming that two Tribes apply for section 401 TAS and four Tribes apply for TAS for section 401(a)(2) each year, the total annual Tribal costs for TAS applications is: (\$12,925 * 2) + (\$9,063 * 4) = **\$62,102**.

6(c) Estimating Agency Burden and Cost

(i) Agency Burden and Costs for Certification Requests

EPA estimates that \$47.20 (starting point of a GS-13 "Rest of U.S." locality¹⁹) is an average hourly Federal government employee wage for an EPA regional employee tasked with acting on certification requests on behalf of Tribes. Adding a 1.6 overhead factor results in an estimated average hourly employee wage of \$76.

In the supporting statement from the existing collection, EPA estimated an average hourly burden per certification request of three hours, based on information provided by EPA employees. For this notice, EPA contacted regional offices to update the annual number of certification requests reviewed by EPA and the hourly burden per certification request. Responses from the regional offices suggest that some regional offices spend more than the estimated three hours per request used in the existing collection, and a range for the per-request burden would be more appropriate. EPA has estimated a low of three hours, a midpoint of eight hours, and a high estimate of 16 hours for regional offices to review certification requests.

Multiplying the 117 estimated decisions per year by the estimated hourly burden per request results in a total annual burden for certification request review by the Federal

¹⁹ https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/23Tables/html/RUS_h.aspx, accessed March 2023.

government ranging from 351 hours to 1,872 hours, with a midpoint of 936 hours. Multiplying the total annual burden for certification request review by an estimated hourly wage of \$76 provides an estimated annual cost burden ranging from approximately \$27,000 to \$142,000, with a midpoint of \$71,000.

Table 9: Estimated Federal Government Annual Hour and Cost Burden

Estimate Category	Hourly Burden Per Certification	Total Estimated Annual Hour Burden	Total Estimated Annual Dollar Burden
Low	3	351	\$26,676
Midpoint	8	936	\$71,136
High	16	1,872	\$142,272

(ii) Agency Burden and Costs for Tribal Applications

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. The annual Agency burden for reviewing section 401 applications for TAS is therefore: (2 applications/year) * (205 hours) = **410 hours**. The annual Agency burden for reviewing section 401(a)(2) applications for TAS is: (4 applications/year) * (205 hours) = **820 hours**.

The estimated annual Agency costs for reviewing section 401 applications for TAS is: (410 hours) * (\$76/hour) = **\$31,160**. The estimated annual Agency costs for reviewing section 401(a)(2) applications for TAS is: (820 hours) * (\$76/hour) = **\$62,320**.

6(d) Estimating the Respondent Universe

Participants in the information collection activities for section 401 water quality certification described by this ICR are generally project proponents or certifying authorities. EPA estimates that there is one project proponent per Federal license or permit submission that has the potential to discharge into “waters of the United States” that serves as a respondent for this information collection. EPA estimates that the 140 certifying authorities²⁰ serve as respondents for this information collection. Participants in the information collection activities for applying for section 401 TAS include 18 additional Tribal respondents over the three-year duration of the ICR (based on two additional Tribal respondents estimated to apply per year for TAS to administer section 401 and four additional Tribal respondents estimated to apply per year for TAS to administer section 401(a)(2)).

6(e) Bottom Line Burden Hours and Costs

The detailed bottom line burden hours and cost calculations for the respondents and EPA are shown above in the tables above and summarized below.

²⁰ The 50 states, Washington, DC, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and 83 Tribes with treatment as a state for CWA section 401.

(i) Respondent Tally

This ICR estimates 154,006²¹ annual responses from 77,146²² respondents, a decrease from the estimated 194,000 annual responses and 97,119 respondents presented in the existing collection. Using the midpoint estimates, the total annual burden for respondents (project proponents, certifying authorities, and Tribes applying for TAS) is anticipated to be 861,274 hours²³, with the associated annual labor costs being approximately \$48 million²⁴.

(ii) The Agency Tally

The total annual burden for EPA is anticipated to be 2,166 hours. Activities related to maintaining this collection are expected to cost EPA approximately \$164,616 each year.

6(f) Reasons for Change in Burden

There are changes in this collection due to the final rule. First, the non-labor costs for project proponents decreased because of the removal of certification fees from the burden estimate. EPA removed consideration of CWA section 401 fees since they represent a transfer from project proponents to certifying authorities. As previously discussed above, EPA had included an \$8 million (mid-point) estimate for fees paid by project proponents for certification requests in the previous collection request. However, the \$8 million estimate for certification fees represents a burden faced by project proponents, but these fees are a transfer from a benefit-cost analysis standpoint. Second, the overall annual hourly burden and annual burden costs increased from the existing collection due to the adoption of regulations for Tribes to seeking authorization for CWA section 401 TAS.

6(g) Burden Statement

The annual public reporting and recordkeeping burden for this collection of information is estimated to average 11 hours per request for certification (seven hours for certifying authorities and four hours for project proponents), 161 hours per Tribal application for authority to administer section 401, and 113 hours per Tribal application for authority to administer section 401(a)(2). “Burden” means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information either to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the

21 77,000 estimated annual responses for project proponents from Table 5 (midpoint) + 77,000 estimated annual responses for certifying authorities from Table 2 (midpoint) + 2 TAS applications for section 401 annually + 4 TAS applications for section 401(a)(2) annually.

22 77,000 estimated annual project proponent respondents + 140 certifying authorities + 2 TAS applications for section 401 annually + 4 TAS applications for section 401(a)(2) annually.

23 552,500 hours for certifying authorities + 308,000 hours for project proponents + 322 hours for Tribes applying for TAS for section 401 + 452 hours for Tribes applying for TAS for section 401(a)(2).

24 \$29 million for certifying authorities + \$19 million for project proponents + \$25,850 for Tribes applying for TAS for section 401 + \$62,102 for Tribes applying for TAS for section 401(a)(2).

existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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

To comment on EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OW-2022-0128. An electronic version of the public docket is available at <http://www.regulations.gov/>, which may be used to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and access those documents in the public docket that are available electronically. When in the system, select "search," then key in the docket ID number identified in this document. The documents are also available for public viewing at the Enforcement and Compliance Docket and Information Center in EPA Docket Center (EPA/DC), WJC West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the docket center is (202) 566-1752. Also, you can send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention: Desk Officer for EPA. Please include EPA Docket ID Number EPA-HQ-OW-2022-0128 and OMB Control Number 2040-0295 in correspondence.

Part B of the Supporting Statement

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