

**Response to Comments:
Information Collection 0710-0024
18 March 2024**

I. General Comments

- A. This ICR and corresponding information collection instruments should be aligned with the narrow parameters that drive the legal test under *Sackett* for determining “waters of the U.S.”**

The Associations request that any information collection forms relating to jurisdictional determinations be refined to reflect the principles of *Sackett* for the pre-2015 regulatory regime, as well as the 2023 rules (as applicable) for the 2023 regulatory regime. The Associations also ask that the USACE look for ways to significantly simplify as well as clarify the process for identifying and delineating jurisdictional waters overall. The Associations commented that any forms pertaining to delineation of jurisdictional waters should be carefully reviewed, revised, and modified to adhere to *Sackett* in order to avoid any unintended expansions of jurisdictional waters especially concerning flow. The Associations note that any such efforts relating to jurisdictional waters should be made through a notice and comment rulemaking.

USACE Response:

This renewal package for information collection package 0710-0024 includes two jurisdictional determination (JD) forms (ENG 6247 and ENG 6249) and 11 aquatic resources delineation data sheets (ENG 6116, 0-9 and ENG 6250). In addition to the 13 forms and data sheets that are being renewed, we have chosen to retain four “historical” approved jurisdictional determination (AJD) basis forms (ENG 6245, ENG 6246, ENG 6248, and ENG 6281) in the renewal package for historical purposes. The renewal package also includes discussion of two AJD Memorandum for Record (MFR) templates, which are template framework documents that USACE districts are using internally to document the basis of AJDs completed under the 2023 Conforming Rule and the pre-2015 regulatory regime consistent with *Sackett*.

With respect to the two JD forms in the renewal package (ENG 6247 and ENG 6249), those two forms are used to facilitate aspects of USACE’s JD processes that are unaffected by changes in the definition of “waters of the United States” (WOTUS) and as such neither of those two forms was affected by *Sackett*. The ENG 6247 is used by members of the public to request a USACE JD. The ENG 6249 is an internal form used by USACE district staff to document Preliminary Jurisdictional Determinations (PJDs). PJDs are “*written indications that there may be waters of the United States on a parcel or indications of the approximate location(s) of waters of the United States on a parcel. Preliminary JDs are advisory in nature and may not be appealed. Preliminary JDs include compliance orders that have an implicit JD, but no approved JD.*” (33 CFR 331.2). Preliminary JDs do not determine whether the aquatic resources identified on the site do or do not meet the definition of WOTUS. Because neither the ENG 6247 nor the ENG 6249 is affected by changes in the definition of WOTUS and neither was affected by *Sackett*, neither of the two active JD forms requires any revision to reflect the principles of *Sackett*.

With respect to the 11 aquatic resources delineation data sheets in the renewal package (ENG 6116, 0-9 and ENG 6250), these data sheets are for purposes of aquatic resources delineation and are not used for assessing USACE jurisdiction. Determining the location and extent of an aquatic resource (a.k.a., “aquatic resources delineation” is a separate inquiry from determining whether an aquatic resource is or is not jurisdictional under one or more of USACE’s regulatory authorities. None of the aquatic resource delineation data sheets (ENG 6116, 0-9 or ENG 6250) address USACE jurisdiction or are affected by the *Sackett* decision. Therefore, none of the delineation data sheets needs to be refined to reflect the principles of *Sackett*.

The four historical AJD basis forms that have been retained in the renewal package for historical purposes were used to implement WOTUS under various rules/regulatory regimes as they existed prior to the Supreme Court’s 25 May 2023 decision in the case of *Sackett v. EPA*. USACE is not seeking renewal of any of the four historical AJD basis forms, but we have chosen to retain them in the collection materials for historical purposes. Because the historical AJD basis forms are not being renewed as part of the information collection package and will not be used going forward, they do not need to be refined to reflect the principles of *Sackett*.

The two MFR AJD basis templates are USACE documentation tools that are used internally to promote efficiency and consistency in USACE’s documentation. The MFR templates are discussed in the renewal package for collection 0710-0024 to provide context and transparency but they are not part of this information collection. The MFR templates are not used to collect information from members of the public and are not information collection instruments and as such do not require burden estimates.

USACE continues to develop streamlining and efficiency tools to simplify and clarify the processes for identifying and delineating aquatic resources. USACE also continues to develop streamlining and efficiency tools to simplify and clarify the processes for determining whether aquatic resources are or are not jurisdictional under USACE authorities.

None of the active forms/data sheets in this collection are used to document the basis of AJDs or to identify the jurisdictional status of aquatic resources and as such this collection is not affected by the *Sackett* decision or the subsequent rulemaking to conform the definition of WOTUS to *Sackett*. None of the forms/data sheets in this collection would be used to determine the relative permanence or flow regime of aquatic resources. USACE defers to the U.S. Environmental Protection Agency (EPA) and the U.S. Department of the Army (together, “the agencies”) with respect to the development of regulations to define the types of aquatic resources which are or are not subject to regulation under the Clean Water Act (CWA).

- B. Based on our careful review of the Draft OHWM Manual, we do not agree with the assertions in the preamble to the information collections request that the manual and the associated OHWM Data Sheet will help improve consistency in the**

identification and delineation of the OHWM; and primarily we believe that RGL 05-05 should remaining the presiding OHWM guidance with any final OHWM Data Sheet to be made available for use on case-by-case optional basis.

The Associations note that detailed comments were previously provided in response to the *Notice of Availability of the Interim Draft of the National Ordinary High Water Mark Field Delineation Manual for Rivers and Streams*.

USACE Response:

Use of the National OHWM Manual and/or the ENG 6250 is optional and is not required in any situation. OHWM identification and delineation will continue to be completed on a case-by-case basis in accordance with the definitions in the Code of Federal Regulations (CFR) and applying the guidance provided in Regulatory Guidance Letter (RGL) 05-05.

USACE recognizes that most OHWM delineations are straightforward, and should not require in-depth analyses to apply the definition in the CFR and the guidance in RGL 05-05. Therefore, we do not anticipate that there will be utility in applying the National OHWM Manual for routine OHWM determinations, which constitute the vast majority of OHWM determinations.

The National OHWM Manual will serve as a resource that can be applied and cited where useful to inform OHWM determinations. In cases where the OHWM delineation may be more complex or challenging, the National OHWM Manual can serve as a tool to inform how the definition in the CFR is applied in a variety of contexts and to help with application of the guidance provided in RGL 05-05. Practitioners can cite to the OHWM Manual just as they would cite to other literature or information used to support their determinations. The OHWM Manual is not a definitive reference that is conclusive on the matters addressed, but rather provides a scientific basis for methods of identifying the OHWM in a variety of contexts.

We anticipate that many practitioners will choose to use the ENG 6250 as an efficiency tool as the ENG 6250 allows USACE and other practitioners to collect relevant OHWM information rapidly and in a standardized format. We expect that the vast majority of respondents who choose to make use of the ENG 6250 will do so without needing to specifically refer to or reference the recommendations in the OHWM Manual to complete most routine OHWM determinations. For determinations where respondents elect to apply the OHWM Manual as a technical resource, the ENG 6250 will allow them to document application of the concepts from the OHWM manual in an efficient and consistent manner using the same standardized format that can also be applied to routine determinations that are made based on the definitions in the CFR and on RGL 05-05 alone.

We expect that many professional practitioners will benefit from an understanding of the OHWM Manual and the ability to consult and apply the methods contained in OHWM Manual when beneficial. Practitioners are encouraged to read and understand the National OHWM Manual to reinforce the regulatory definition, to provide additional

scientific context to the concepts it identifies and defines, to better understand how to make observations of physical indicators and other characteristics of the OHWM, and to evaluate them using a weight of evidence approach, where beneficial, to arrive at accurate delineations in a transparent and consistent manner nationwide.

C. As a practical and administrative matter, we encourage the Agencies to improve transparency in this process by making all the forms subject to the ICR available in one place for public comments for review online.

The Associations note that the forms under this 60-day information collection notice and OMB Control No. 0710-0024 are not readily available in one location to facilitate review. The Associations request improving transparency and facilitating easier public access to available documents by including the collection instruments into the existing regulations.gov website for this docket number.

USACE Response:

All of the forms/data sheets in this information collection (0710-0024) are available in one location on the OMB webpage at: <https://omb.report/omb/0710-0024> . USACE is continuing to update the design of the forms and data sheets in this collection based on feedback from practitioners and from OMB as we complete the renewal process. We note that of the 13 forms/data sheets in this collection, most remain unchanged from the versions that have been in use for many years and that are posted on the OMB webpage. The only forms/data sheets in this collection that are expected have changes in content relative to the currently approved forms/data sheets are the ENG 6247 (Request for Corps Jurisdictional Determination) and the ENG 6250 (OHWM Field Identification Data Sheet).

The ENG 6247 is substantively the same as the example JD Request document provided in Appendix 1 of Regulatory Guidance Letter (RGL) 16-01. With respect to the content changes to the ENG 6247, the only notable aspect that is being modified relative to the previous version is that we have added a new check box to Section 6 to provide respondents with the option to request verification of an aquatic resources delineation. This additional check box was added at the request of USACE districts who had expressed concern that respondents could be confused by the lack of an option for USACE to verify an aquatic resources delineation, which is a common request from members of the regulated public. Providing respondents with additional options for addressing geographic jurisdiction does not impose additional burdens and instead provides the regulated public with additional options to ensure that USACE districts can best meet the needs of the regulated public.

With respect to question 5 on the ENG 6247, the questions are intended to facilitate the intent of RGL 16-01 to ensure that options for addressing geographic jurisdiction may be discussed with the requestor.

With respect to the content changes to the ENG 6250, USACE is updating the OHWM data sheet as needed to address comments and feedback received during the one year

testing period for the Interim Draft of the National OHRM Manual. USACE will continue to consider any feedback received from the public and practitioners to further improve the OHRM data sheet as part of the renewal process for this collection, if necessary.

- D. The Associations expressed concerns that the burdens to respondents are unclear and potentially incorrectly estimate burdens, especially given that the listed forms are not required each time a new regulated activity is planned. In addition, the estimates do not account for the time and funds expended in mobilizing experts for the collection of data that would be provided on the forms. In addition, the burden numbers inaccurately include estimates from forms that are not currently in use. The Associations also commented that additional supporting technical information that is customarily required by staff as part of jurisdictional determinations should be considered as part of the information collection.**

USACE Response:

The respondent burden associated with completing the forms and data sheets in this collection was estimated using data from USACE's internal regulatory database (ORM2) in consideration of the nature and extent of information that would be entered on each form/data sheet. The ORM2 data used to estimate the number of annual respondents were from 2019 to avoid any temporary changes to USACE workload that may have occurred due to changes in applicable regulations that occurred during 2020, 2021, 2022, and 2023.

For the ENG 6247 (Request for USACE JD), ORM2 was queried to determine the numbers of JD requests received by USACE in an average year. We estimated the total time required by respondents to complete each ENG 6247 as approximately ten minutes, based on the fact that the information collected on the ENG 6247 is minimal and includes only basic information such as property location/map, reason for request, and type of JD requested.

For the ENG 6249 (PJD Form), ORM2 was queried to determine the number of PJDs issued by USACE during an average year. It should be noted that the PJD forms are intended to be completed by USACE and are not intended to be completed by members of the public. However, USACE is aware that, in the past, some (approximately 15% of) PJD requestors would submit draft PJD forms that they had completed to USACE districts along with their PJD request, presumably because these entities believed that providing draft PJD forms to USACE would speed the PJD review process. Because some members of the public were using the PJD form to provide information to USACE, USACE requested approval of the PJD form as an OMB approved collection instrument to be included in this collection. To account for the fact that approximately 15% of PJD requestors had been completing the ENG 6249, the total number of PJDs per year was multiplied by 0.15 to estimate the number of respondents who were making use of the PJD Form. It should be noted that USACE has since directed our districts to not accept completed draft PJD forms from members of the public under any circumstances and therefore the estimate that 15% of JD requestors would complete the PJD form on

behalf of USACE is a conservative overestimate. For the ENG 6249 we estimated that average response time would be approximately 25 minutes per response for respondents with average proficiency with completing the JD forms. The information collected on the ENG 6249 is minimal and includes only basic information such as property location information and the name, size, and authority under which each aquatic resource “may be” subject in the review area.

The aquatic resource delineation data sheets (ENG 6116, 0-9 and ENG 6250) can be used to provide technical information regarding the presence, absence, and spatial extent of aquatic resources. The data sheets in the ENG 6116 series can be used to efficiently and consistently record observations that are made during the delineation of wetlands in accordance with the USACE’s 1987 Wetland Delineation Manual (1987 Manual) and the applicable regional supplement to the 1987 Manual. The ENG 6250 data sheet can be used to efficiently and consistently record observations made during identification of the OHWM. The ENG 6250 can be used to characterize the OHWM based on the definition in the CFR and can also be used to apply the guidance in RGL 05-05 in appropriate situations. The ENG 6250 can also be used in cases where practitioners choose to apply technical information and methods provided in the National OHWM Manual.

Use of the ENG 6116 wetland data sheets and/or the ENG 6250 OHWM data sheet to collect and organize aquatic resources delineation data is optional. However, the ENG 6116 and ENG 6250 are efficiency tools that can be used to facilitate collection of this information more efficiently and in a consistent format. Use of the aquatic resources delineation data sheets reduces the time it takes to provide aquatic resources information to USACE. While not required by regulation, the use of the ENG 6116 to document the presence or absence of wetlands and use of the ENG 6250 to document the presence/absence and/or location of the OHWM can greatly enhance the efficiency of collecting field data on aquatic resources and can greatly enhance the consistency in how the results of field surveys are presented.

It should be noted that even if ENG 6116 and ENG 6250 are not used, the same technical information is typically needed for aquatic resources delineations. This type of information is normally collected for many other customary and usual business practices and purposes such as project planning, project design, engineering, use for applications to obtain state and local authorizations, and use for compliance with other federal laws. While there are efficiencies and benefits to using the aquatic resources delineation data sheets, a requestor can submit the required information in other formats as well.

When calculating the burden to respondents, USACE considered the fact that the aquatic resources delineation data that is entered on the data sheets would be collected regardless of the availability of the data sheets in this collection. The time to complete each aquatic resource delineation data sheet is estimated as the time required for a respondent to enter the data on the data sheet. The estimated time to complete data entry on the data sheet assumes that the information needed to identify and delineate the aquatic resources has already been generated (i.e., the time needed to enter the information on the data sheet does not include all costs associated with completing an

aquatic resources delineation). Costs for completing an aquatic resources delineation such as travel to the site, field equipment, time spent in the field traversing the site, identifying vegetation, describing soil characteristics, and identifying hydrology indicators would normally be incurred regardless of the availability of the aquatic resource delineation data sheets.

Without the information contained in the ENG 6116 wetland data sheets, project proponents and USACE field staff would not be able to efficiently and consistently document whether investigated areas do or do not meet the definition of wetlands in accordance with the procedures in the USACE's 1987 Wetland Delineation Manual and the applicable regional supplement. If the ENG 6116 data sheets were not available, project proponents would need to provide the information needed to demonstrate that they had followed the 1987 Manual and the applicable regional supplement via some other means, which could result in deficiencies and inconsistencies and potentially delay the regulatory review process. Without the information contained in the ENG 6250 OHWM data sheet, project proponents and USACE field staff would not be able to efficiently and consistently document the presence, absence, or location of OHWM (as the term is defined in 33 CFR 328 and in 33 CFR 329 and as described in RGL 05-05).

For the ENG 6116, 0-9 (Wetland Data Sheets), ORM2 was queried to determine the number of wetlands that were documented in USACE regulatory actions during 2019, and the total was doubled to reflect the fact that wetland data points are often "paired" with a corresponding upland data point when a wetland delineation is completed. We estimated the total time required by respondents to complete each ENG 6116 as approximately 30 minutes for respondents with average proficiency with wetland delineation and with completing data sheets. In practice, the time to enter data would be expected to be lower for respondents with higher levels of expertise at delineating wetlands and completing wetland data sheets. The time to complete the data sheet is estimated as the time to record the data obtained from field observations. A 30 minute estimate is reasonable to complete the transcription process.

For the ENG 6250 (OHWM Data Sheet), ORM2 was queried to determine the number of riverine waterbodies (e.g., rivers and streams) that were documented in USACE regulatory actions during 2019. USACE does not anticipate that an ENG 6250 will be completed for each and every stream or river that is included in a regulatory action. However, we used the total number of rivers and streams that were documented in 2019 to ensure that our estimate captured the total number of potential respondents. We estimated the total time required by respondents to complete each ENG 6250 as approximately 30 minutes for respondents with average proficiency with OHWM identification and with completing an OHWM data sheet. The time to complete the data sheet is estimated as the time to record the data obtained from field observations. A 30 minute estimate is reasonable to complete the transcription process.

With respect to the burden estimate's inclusion of the four historical AJD basis forms that are no longer in use (ENG 6245, ENG 6246, ENG 6248, and ENG 6281), the burden estimate has been retained in the overall burden estimate for this collection as a placeholder as USACE continues to evaluate options for the development of new AJD

basis form(s) that could be used to facilitate implementation of the 2023 Rule (as amended) and the pre-2015 regulatory regime consistent with *Sackett*. To be clear, USACE is not pursuing the approval of any new AJD basis form(s) as part of this renewal. However, USACE may pursue the development of new AJD basis forms in the future and in such case USACE will adhere to and comply with all PRA requirements prior to use of any such forms. We believe that retention of the estimated burden associated with the completion of AJD basis forms provides a more complete estimate of this collection as it has existed over the longer-term and will help to inform subsequent renewals in the event that new AJD basis forms are incorporated into the collection.

Because of multiple recent changes to the regulatory definition of WOTUS, all recent historical AJD basis forms (NWPR, Rapanos, and 2023 Rule) were included in the renewal package. The burden estimates for completing each version of the historical AJD basis form are the same. For example, the NWPR AJD basis form and the 2023 Rule AJD basis form had less sections than the Rapanos AJD basis form, but more detailed information was required to be entered in each section. Based on experience completing the AJD basis forms, we estimate the time to complete each version of the AJD basis form would be approximately the same. The number of AJDs completed in an average year remains the same regardless of regulation (Rapanos, NWPR, or 2023 Rule), therefore these estimates reflect the use of any version of the AJD basis form. It should be noted that, due to changes resulting from the Supreme Court's decision in the case of *Sackett*, USACE is not currently using any AJD basis form and is instead completing its documentation for the basis of AJDs using MFR template documents. Therefore, there is no current burden to the public for completing AJD basis forms. Even though this information collections renewal does not include any active AJD basis form, USACE has chosen to retain the four historical AJD basis forms that were previously in use for historical purposes.

To estimate the response burden for the historical AJD basis forms, ORM2 was queried to determine the numbers of AJDs issued during an average year. It should be noted that the AJD forms are internal USACE documentation tools and are not intended to be used by members of the public. However, USACE is aware that, in the past, some (approximately 15% of) AJD requestors would submit draft AJD forms to USACE districts along with their AJD request, presumably because these entities believed that providing draft AJD forms to USACE would speed the AJD review process. Because some members of the public were using the AJD forms to provide information to USACE, USACE requested approval of the AJD forms as OMB approved collection instruments to be included in this collection. To account for the fact that approximately 15% of AJD requestors had been completing the AJD forms, the total number of AJDs per year was multiplied by 0.15 to estimate the number of respondents who were making use of the AJD forms. It should be noted that USACE has directed our districts to not accept draft AJD basis documents from members of the public under any circumstances and therefore the estimate that 15% of JD requestors would complete the AJD form on behalf of USACE is a conservative overestimate. We estimated the total time required by respondents to complete each AJD basis form as approximately 2.5 hours for respondents with average proficiency with completing the AJD basis forms. In practice,

this estimate may be lower for respondents with higher levels of expertise at completing AJD basis forms.

These estimates assume that any aquatic resources delineation work and mapping has been completed and that the USACE district has completed any analysis necessary to document the jurisdictional status of the aquatic resources that are being assessed in the jurisdictional determination. The only information a party requesting a jurisdictional determination needs to provide to the USACE district is a description of the review area. The USACE district will accept additional pre-existing information from a requestor when it is available. Accepting the pre-existing information does not affect the USACE district's responsibility for assessing each aquatic resource to determine the resource's jurisdictional status, including any site research on aspects such as water flows and connectivity. In addition, USACE does not require an aquatic resources delineation or information regarding the flow regime or connectivity of the aquatic resources as mandatory for completing a JD.

In the small percentage of cases in which the requestor supplies this pre-existing information on an AJD basis form, their work would consist only of transcribing that pre-existing information onto the form. Entering the small amount of information needed on the AJD basis form would rarely be expected to take more than 15 minutes for each aquatic resource. Because our JDs cover variable amounts of aquatic resources (it could be just one aquatic resource, or it could be a hundred or more) we need to estimate some number of aquatic resources per basis form. In our experience, the average AJD usually includes about 10 aquatic resources, give or take a few. Many AJDs have no aquatic resources at all, and some (in rare cases) have a hundred or more aquatic resources. Assuming 8-10 aquatic resources per AJD is a conservative overall estimate, and based on that number (10 aquatic resources, on average), 2.5 hours/basis form is a reasonable approximation of time to fill out the basis form by the average user. For the ENG 6246 (Rapanos Dry Land AJD basis form) we estimated that average response time would be approximately 15 minutes per response, based on the fact that the information collected on the ENG 6246 is minimal and includes only basic information such as property location information and verification that no aquatic resources of any kind exist in the AJD review area.

The two MFR AJD basis templates are USACE documentation tools that are used internally to promote efficiency and consistency in USACE's documentation. The MFR templates are discussed in the renewal package for collection 0710-0024 to provide context and transparency but they are not part of this information collection. The MFR templates are not used to collect information from members of the public and are not information collection instruments and as such do not require burden estimates.

II. Specific Comments

- E. Further clarification and corrections are needed to reflect and itemize burdens associated with the following: JD Request Forms, PJD Forms, four AJD Forms that are not in current use, and the Memoranda for Record ("MFR"). The burden association with the completion of the MFR should be assessed and reflected in the estimated data.**

The Associations request clarification on the inclusion of burden data for the four AJD Forms that are not currently in use in the 60-day information collection notice. Specifically, the Associations note that it would be helpful for the USACE to define the term “burden” and explain the types of burdens that are included in the notice. The Associations indicate that if the four AJD Forms are no longer in use, that data should be removed from the total burden numbers. The Associations note that no information collection request is made specific to the MFR even though information will be collected from respondents to document the USACE’s basis for jurisdictional determinations under the two prevailing regimes. The Associations recommend that separate quantified data and burden estimates be provided for information that is collected from respondents to form the basis for the USACE’s issuance of the MFR, and that the estimates should clearly reflect all the analysis and information collection required of respondents in preparation and completion of a MFR. The Associations note that it is unclear how the USACE calculated the different response burden estimates and indicate that the estimate does not take into account the level of complexity required for documenting JD determinations.

USACE Response:

USACE’s burden estimates for this collection are described in the Supporting Statement for the collection. The term “burden” means time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency, including the resources expended for reviewing instructions; acquiring, installing, and utilizing technology and systems; adjusting the existing ways to comply with any previously applicable instructions and requirements; searching data sources; completing and reviewing the collection of information; and transmitting, or otherwise disclosing the information. Generally, burden estimates should not include burden hours for customary and usual business practices.

With respect to the burden estimate’s inclusion of the four historical AJD basis forms that are no longer in use (ENG 6245, ENG 6246, ENG 6248, and ENG 6281), the burden estimate has been retained in the overall burden estimate for this collection as a placeholder as USACE continues to evaluate options for the development of new AJD basis form(s) that could be used to facilitate implementation of the 2023 Rule (as amended) and the pre-2015 regulatory regime consistent with *Sackett*. To be clear, USACE is not pursuing the approval of any new AJD basis form(s) as part of this renewal. However, USACE may pursue the development of new AJD basis forms in the future and in such case USACE will adhere to and comply with all PRA requirements prior to use of any such forms. We believe that retention of the estimated burden associated with the completion of AJD basis forms provides a more complete estimate of this collection as it has existed over the longer-term and will help to inform subsequent renewals in the event that new AJD basis forms are incorporated into the collection.

The two MFR AJD basis templates are USACE documentation tools that are used internally to promote efficiency and consistency in USACE’s documentation. The MFR templates are discussed in the renewal package for collection 0710-0024 to provide context and transparency but they are not part of this information collection. The MFR

templates are not used to collect information from members of the public and are not information collection instruments and as such do not require burden estimates.

F. Only relevant information that is pertinent under the USACE's statutory and regulatory authority should be required and information outside the scope should be removed.

The Associations note that their review of the forms under the information collection request indicates that certain information is not necessary, has no practical utility, and adds to the reporting burden for the respondents. The Associations request a review of all the forms and indicate that all optional information not subject to specific regulatory requirements should be excluded. The Associations give the example that the JD Request form includes nine reasons for making the request (question 5) and asks the respondent to check as many of the potential outcomes as may be applicable. The Associations indicate that this requirement for the respondent to attest to their intentions is overly obtrusive, difficult to assess at the beginning of the process, and entirely irrelevant to the final determination of jurisdiction. The Associations request that question 5 in the JD Request Form be removed and similar reviews be performed on all the forms.

USACE Response:

All of the forms/data sheets in this information collection (0710-0024) are available in one location on the OMB webpage at: <https://omb.report/omb/0710-0024> . USACE is continuing to update the design of the forms and data sheets in this collection based on feedback from practitioners and from OMB as we complete the renewal process. We note that of the 13 forms/data sheets in this collection, most remain unchanged from the versions that have been in use for many years and that are posted on the OMB webpage. The only forms/data sheets in this collection that are expected have changes in content relative to the currently approved forms/data sheets are the ENG 6247 (Request for Corps Jurisdictional Determination) and the ENG 6250 (OHWM Field Identification Data Sheet).

The ENG 6247 is substantively the same as the example JD Request document provided in Appendix 1 of Regulatory Guidance Letter (RGL) 16-01. With respect to the content changes to the ENG 6247, the only notable aspect that is being modified relative to the previous version is that we have added a new check box to Section 6 to provide respondents with the option to request verification of an aquatic resources delineation. This additional check box was added at the request of USACE districts who had expressed concern that respondents could be confused by the lack of an option for USACE to verify an aquatic resources delineation, which is a common request from members of the regulated public. Providing respondents with additional options for addressing geographic jurisdiction does not impose additional burdens and instead provides the regulated public with additional options to ensure that USACE districts can best meet the needs of the regulated public.

With respect to question 5 on the ENG 6247, the questions are intended to facilitate the intent of RGL 16-01 to ensure that options for addressing geographic jurisdiction may be discussed with the requestor.

With respect to the content changes to the ENG 6250, USACE is updating the OHWM data sheet as needed to address comments and feedback received during the one year testing period for the Interim Draft of the National OHWM Manual. USACE will continue to consider any feedback received from the public and practitioners to further improve the OHWM data sheet as part of the renewal process for this collection, if necessary.

In addition to the previously submitted comments, the Associations provide the following specific comments on the OHWM Data Sheet.

G. OHWM Data Sheet is burdensome, unnecessary, and should only be used on an optional case-by-case basis.

1. The 30-minutes average burden per response is underestimated and is not an accurate reflection based on our understanding of the requirements.

The Associations note that in their review of the OHWM Data Sheet, the amount of effort to 1) assess a site; 2) fill out the OHWM Data Sheet per the detailed instructions; and 3) use the Draft OHWM Manual for guidance, would substantially exceed the 30 minutes time per response estimated by the USACE. The Associations indicate that producing a photo log, conducting an internal assessment of the site, and using additional resources as indicated on the OHWM Data Sheet would likely be at a minimum, closer to double the estimated average time per OHWM Data Sheet for simpler sites and significantly more for complex sites. The Associations note their concern that implementing new processes across the field offices as well as increased numbers of completed OHWM Data Sheets for review will likely increase the USACE's workload as well and potentially impact overall permitting processes. The Associations indicate they understand that the OHWM Data Sheets may be useful to USACE staff in completing their review as well as for respondents in certain cases and as such, should be made available for use upon specific requests but not as a mandatory requirement for every OHWM assessment.

USACE Response:

Use of the National OHWM Manual and/or the ENG 6250 is optional and is not required in any situation. OHWM identification and delineation will continue to be completed on a case-by-case basis in accordance with the definitions in the Code of Federal Regulations (CFR) and applying the guidance provided in Regulatory Guidance Letter (RGL) 05-05.

USACE recognizes that most OHWM delineations are straightforward, and should not require in-depth analyses to apply the definition in the CFR and the guidance in RGL 05-05. Therefore, we do not anticipate that the National OHWM Manual will need to be

comprehensively applied for routine OHWM determinations, which constitute the vast majority of OHWM determinations.

The National OHWM Manual will serve as a resource that can be applied and cited where useful to inform OHWM determinations. In cases where the OHWM delineation may be more complex or challenging, the National OHWM Manual can serve as a tool to inform how the definition in the CFR is applied in a variety of contexts and to help with application of the guidance provided in RGL 05-05. Practitioners can cite to the OHWM Manual just as they would cite to other literature or information used to support their determinations. The OHWM Manual is not a definitive reference that is conclusive on the matters addressed, but rather provides a scientific basis for methods of identifying the OHWM in a variety of contexts.

We anticipate that many practitioners will choose to use the ENG 6250 as an efficiency tool as the ENG 6250 allows USACE and other practitioners to collect relevant OHWM information rapidly and in a standardized format. We expect that the vast majority of respondents who choose to make use of the ENG 6250 will do so without needing to specifically refer to or reference the recommendations in the OHWM Manual to complete most routine OHWM determinations. For determinations where respondents elect to apply the OHWM Manual as a technical resource, the ENG 6250 will allow them to document application of the concepts from the OHWM manual in an efficient and consistent manner using the same standardized format that can also be applied to routine determinations that are made based on the definitions in the CFR and on RGL 05-05 alone.

We expect that many professional practitioners will benefit from an understanding of the OHWM Manual and the ability to consult and apply the methods contained in OHWM Manual when beneficial. Practitioners are encouraged to read and understand the National OHWM Manual to reinforce the regulatory definition, to provide additional scientific context to the concepts it identifies and defines, to better understand how to make observations of physical indicators and other characteristics of the OHWM, and to evaluate them using a weight of evidence approach, where beneficial, to arrive at accurate delineations in a transparent and consistent manner nationwide.

The identification and delineation of aquatic resources, such as rivers and streams, is essential to determine whether an area may be regulated by USACE. Use of the ENG 6250 OHWM data sheet is optional. However, use of the ENG 6250 to document the presence, absence, and location of any OHWM can greatly enhance the efficiency of collecting field data on aquatic resources and can greatly enhance the consistency in how the results of field surveys are presented. Without the information contained in the ENG 6250 OHWM data sheet, project proponents and USACE field staff would not be able to efficiently and consistently document the presence, absence, or location of OHWM (as the term is defined in 33 CFR 328 and in 33 CFR 329 and as described in RGL 05-05) efficiently and consistently. Use of the aquatic resources delineation data sheets reduces the time it takes to provide needed information to USACE.

We believe that 30 minutes or less for a practitioner with proficiency in completing OHWM determinations to complete the OHWM 6250 is reasonable for most sites. With respect to USACE workload, we anticipate that the availability of an optional standardized data sheet to allow practitioners to rapidly and consistently document OHWM will not result in any increase to USACE workload.

2. The qualitative weight of evidence approach to assemble, evaluate, and integrate different lines of evidence is a new requirement that will add increased burdens on information collection.

The Associations indicate that the weight of evidence (WoE) approach (the process of weighing the relevance, strength, and reliability of each line of evidence and then combining weights to support a final delineation) outlined by the Draft OHWM Manual is complex and subject to the whims of the evaluator, and the USACE's goal to have consistent and objective determinations that are repeatable may be difficult to attain as the WoE approach would vary by experience and regional expertise. The Associations state that the WoE methodology moves away from the RGL 05-05 baseline standard for indicators to be "reasonably reliable" and gives "strength," "relevance" and "reliability" equal consideration (citing OHWM Field Identification Data Sheet Instructions and Field Procedures, Step 3b). The Associations indicate that specifying each indicator to be weighed by each of the three standards adds further complexity leaving more room for inconsistent and inefficient OHWM practices. The Associations state that the RGL 05-05 process provides accountability and consistency to the regulatory process and should remain in place.

USACE Response:

The weight-of-evidence approach has historically been used in the agencies' decision-making process, including the determination of jurisdiction for aquatic resources, by evaluating the strength, reliability, and relevance of lines of evidence. While RGL 05-05 did not explicitly require the use of the weight of evidence approach, it did incorporate the same concepts by encouraging practitioners to consider the strength and reliability of evidence, either physical evidence or other characteristics of the surrounding area, to identify the OHWM.

Use of the National OHWM Manual and/or the ENG 6250 is optional and is not required in any situation. OHWM identification and delineation will continue to be completed on a case-by-case basis in accordance with the definitions in the Code of Federal Regulations (CFR) and applying the guidance provided in Regulatory Guidance Letter (RGL) 05-05.

USACE recognizes that most OHWM delineations are straightforward, and should not require in-depth analyses to apply the definition in the CFR and the guidance in RGL 05-05. Therefore, we do not anticipate that the National OHWM Manual will need to be comprehensively applied for routine OHWM determinations, which constitute the vast majority of OHWM determinations.

The National OHWM Manual will serve as a resource that can be applied and cited where useful to inform OHWM determinations. In cases where the OHWM delineation may be more complex or challenging, the National OHWM Manual can serve as a tool to inform how the definition in the CFR is applied in a variety of contexts and to help with application of the guidance provided in RGL 05-05. Practitioners can cite to the OHWM Manual just as they would cite to other literature or information used to support their determinations. The OHWM Manual is not a definitive reference that is conclusive on the matters addressed, but rather provides a scientific basis for methods of identifying the OHWM in a variety of contexts.

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3. The expanded list of physical indicators for delineating OHWM is problematic, introduces increased complexities and variabilities into the process, and is a material change in the USACE's practice under RGL 05-05.

The Associations indicate that RGL 05-05 should be the governing national guidance on OHWM identification and physical indicators should be considered to the extent they are deemed "reasonably reliable" when making an OHWM determination. The Associations indicate that the OHWM Data Sheet would remove the longstanding case-by-case flexible approach to site assessment and add the use of additional highly sophisticated resources and technologies such as LIDAR, GIS mapping, etc., which not everyone has access to. The Associations state that this introduces added time and burdens on the regulated community as well as on the agency staff that are not considered fully. The Associations state that OHWM should be tied to the

longstanding physical indicators such as the presence and characteristics of a reliable OHWM with a channel defined by a bed and bank, and the current OHWM Data Sheet should be revised and simplified. The Associations also state that the OHWM Manual specifies four new categories of physical indicators as well as additional listed regional and landscape considerations.

USACE Response:

Use of the National OHWM Manual and/or the ENG 6250 is optional and is not required in any situation. OHWM identification and delineation will continue to be completed on a case-by-case basis in accordance with the definitions in the Code of Federal Regulations (CFR) and applying the guidance provided in Regulatory Guidance Letter (RGL) 05-05.

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evaluate them using a weight of evidence approach, where beneficial, to arrive at accurate delineations in a transparent and consistent manner nationwide.

With respect to the Associations' concern stating that four new categories of physical indicators as well as additional listed regional and landscape considerations are being added to the OHWM delineation process, we note that the geomorphic, vegetation, sedimentary, and ancillary indicators are not new categories of indicators. The OHWM data sheet uses these sub-categories to organize and group the longstanding indicators that are described in the definitions of OHWM in the CFR and in RGL 05-05, such that OHWM determinations can be documented efficiently and in a logical and consistent format which employs efficiencies such as check boxes and drop-down menus.

With respect to the Associations' concern stating that the OHWM Data Sheet would remove the longstanding case-by-case flexible approach to site assessment and add the use of additional highly sophisticated resources and technologies such as LIDAR, GIS mapping, etc., which not everyone has access to, we again note that OHWM identification and delineation should continue on a case-by-case basis in accordance with the definitions in the CFR and the guidance provided in RGL 05-05. The recognition that additional data sources, such as LiDAR, GIS mapping, etc., can be accepted does not preclude the use of more traditional data sources nor does it create a requirement that the additional data sources be used. However, we do anticipate that use of remote sensing and GIS data could provide efficiencies to the OHWM documentation process in many cases.

4. There is a lack of tiered OHWM assessment with the OHWM Data Sheet which appears to be required for all projects ranging from simple to complex and this unnecessary burden can be reasonably minimized by making the data sheet optional and/or adding a tiered approach per RGL 05-05.

The Associations indicate that the lack of a tiered OHWM assessment means that any response will require consideration of all these variables and weighing the evidence in every scenario. The Associations state that applying the complex WoE methodology in simple cases seems to be an entirely unnecessary and inefficient step. The Associations note that a large percentage of OHWM assessments can be processed quickly and efficiently and should not require consideration of all the complex elements under the OHWM Data Sheet. The Associations recommend that only in certain special circumstances, the OHWM Data Sheet may be appropriate and could be utilized on a case-by-case basis. The Associations suggest that the OHWM Data Sheet could include a Tier 1 box for simple cases that have reliable physical indicators listed in the definitions and then only applying more advanced tier steps where "other appropriate means" are needed "[w]here the physical characteristics are inconclusive, misleading, unreliable, or otherwise not evident." The Associations request the USACE to consider further refining this OHWM Data Sheet and making it easier to use while keeping in mind the concepts laid out in RGL 05-05. If an OHWM Data Sheet is mandated for all projects, the Associations

request clarification of what would be considered an accurate and complete OHWM Data Sheet that is sufficient to meet the USACE's requirements.

USACE Response:

With respect to the Associations' request that the OHWM datasheet include an option for a tiered OHWM assessment, we note that use of the National OHWM Manual and/or the ENG 6250 is optional and is not required in any situation. OHWM identification and delineation will continue to be completed on a case-by-case basis in accordance with the definitions in the Code of Federal Regulations (CFR) and applying the guidance provided in Regulatory Guidance Letter (RGL) 05-05.

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H. Estimated burdens are underestimated for the Automated Wetland Sheets.

The Associations indicate that the 30-minute average burden per response severely disregards all the steps and resources that are needed to be activated to fill out the form accurately, which may include mobilizing a team, hiring consultants, desk review using a variety of tools, accompanying team and consultants to sites which can sometimes include a day or two of travel time depending on the location, assessing the site which can vary depending on complexity of elements, delineating the boundary of jurisdictional features, assessing site for factors such as hydrology, soil and vegetation, and compiling the report per the requirements of the form. The Associations request the USACE reconsider its assessment of average burdens on the respondents for filling out the ADS.

USACE Response:

USACE's burden estimates for this collection are described in the Supporting Statement for the collection. The term "burden" means time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency, including the resources expended for reviewing instructions; acquiring, installing, and utilizing technology and systems; adjusting the existing ways to comply with any previously applicable instructions and requirements; searching data sources; completing and reviewing the collection of information; and transmitting, or otherwise disclosing the information. Generally, burden estimates should not include burden hours for customary and usual business practices.

The structure and content of the wetland delineation data sheets has remained unchanged during the 10+ years since the release of the regional supplements to USACE's 1987 Wetland Delineation Manual and USACE is not proposing to make any changes to the data sheets at this time. The identification and delineation of aquatic resources, such as wetlands, is essential to determine whether an area may be regulated by USACE. Use of the ENG 6116 wetland data sheets is optional. However, use of the ENG 6116 to document the presence or absence of wetlands can greatly enhance the efficiency of collecting field data on aquatic resources and can greatly enhance the consistency in how the results of field surveys are presented.

Without the information contained in the ENG 6116 wetland data sheets, project proponents and USACE field staff would not be able to efficiently and consistently document whether investigated areas do or do not meet the definition of wetlands in accordance with the procedures in the USACE's 1987 Wetland Delineation Manual and the applicable regional supplement. If the ENG 6116 data sheets were not available, it is unlikely that project proponents would provide all of the information needed to demonstrate that they had followed the 1987 Manual and the applicable regional supplement, which could delay the regulatory review process. Use of the aquatic resources delineation data sheets reduces the time it takes to provide needed information to USACE.