

U.S. Environmental Protection Agency

Information Collection Request

Title: Clean Water Act Section 404 State-Assumed Programs

OMB Control Number: 2040-0168

EPA ICR Number: 0220.18

Abstract:

This information collection request describes the burden (hours) and labor cost (dollars) associated with 40 CFR 233, the regulations that implement Clean Water Act Section 404(g). The Clean Water Act authorizes states [tribes] to assume the section 404 permit program for discharges of dredged or fill material into certain waters of the U.S. Implementing regulations establish specific information that must be submitted to EPA when a state/tribe requests program assumption and while administering the program. There are three types of information collected for different needs. The three parts are: 1) Information needed for EPA to review and approve state or tribal requests to assume the program; 2) information needed from permit applicants for reviewing and processing the permit application; and 3) information the state or tribe must submit to EPA in their annual report summarizing program administration.

The new baseline total annual burden and labor costs incurred by Tribes, states and permittees is 130,600 hours and \$6,576,054. In comparison to the previous collection (EPA ICR No. 0220.14), this new baseline annual burden and labor costs is an overall decrease of 88,281 hours and \$2,507,627. Primary factors contributing to this overall decrease in burden and labor costs are related to the reduction of assumed Section 404 programs and corrections made to underlying calculations.

On August 14, 2023, the EPA proposed a new rule to revise the implementing regulations for Clean Water Act Section 404(g). 88 FR 55276 (August 14, 2023). The EPA submitted a revised ICR, EPA ICR Number 0220.16, which received conditional approval from OMB. The EPA anticipates it will finalize its rulemaking in 2024. Accordingly, EPA is providing this renewal to ensure no lapse in coverage while the new rule is finalized.

The Terms of Clearance issued with the previous ICR (EPA ICR No. 0220.16) requested the program more clearly identify PRA burden related to Permit Application and Enforcement and Compliance Information. The revised program renewal supporting statement more clearly articulates the burden associated with permit application and compliance information (e.g., program reporting). In alignment with PRA regulation 5 CFR 1320.4(a)(1), the burden associated with Criminal Enforcement does not need to be addressed in the supporting statement.

Supporting Statement A

1. NEED AND AUTHORITY FOR THE COLLECTION

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

Section 404 of the CWA requires a permit for discharges of dredged and fill material into “waters of the United States” unless the discharge is associated with an activity exempt from permitting requirements under CWA Section 404(f). 33 U.S.C. 1344. The U.S. Army Corps of Engineers generally administers the day-to-day CWA Section 404 permitting program on behalf of the Secretary of the Army. *See id.* at 1344(a). Section 404(g) of the CWA provides Tribes and states the option of assuming, or taking over, administration of the Section 404 program for certain waters of the United States. *Id.* at 1344(g). The implementing regulations at 40 CFR 233 require that Tribes and states must provide to the EPA specific information to assume and administer the Section 404 program. The information provided must be sufficient so that the EPA can assure the Tribe or state has the authority and resources to administer a program that is consistent with and no less stringent than the requirements of the CWA and implementing regulations, including issuing permits that comply with the CWA Section 404(b)(1) Guidelines. *Id.* at 1344(g)-(k). The regulations also require that the regulated community (henceforth “permittees”) provide specific information as part of their permit request. The information a Tribe, state and permittee provides to the approved Tribe or state program and the EPA represents a collection of information. This information is necessary for the EPA to fulfill its obligation to ensure that approved programs operate consistently with the CWA and the implementing regulations.

Section 518 of the CWA authorizes the EPA to treat eligible federally recognized Tribes in a similar manner as a state (TAS) for purposes of implementing and managing various environmental functions under the statute. 33 U.S.C. 1377(e). The requirements for TAS are established in CWA Section 518 and are reflected in EPA regulations for various CWA provisions. The CWA does not require Tribes to administer regulatory programs. However, Tribes seeking to assume administration of Section 404 must apply for and obtain TAS. The information a Tribe submits to the EPA represents a collection of information. This information is necessary for the EPA to fulfill the agency’s responsibilities under CWA Section 518(e) in a reasonable and timely manner.

2. PRACTICAL UTILITY/USERS OF THE DATA

Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The information collected under Section 404(g) by the EPA is used to determine whether a Tribal or state Section 404 program meets relevant statutory and regulatory requirements, and after approval, to oversee the program. The information collected for purposes of TAS is used by the agency to determine whether an applicant Tribe is eligible for TAS to administer the Section 404 program. The information collected under Section 404(g) by Tribes and states from permittees is used to review proposed projects that require a permit to discharge dredged and fill material into waters of the United States. A Tribe or state could not issue a permit without such information. The agency could not approve a program or determine whether it remains in compliance with the statute and regulations without the collected information.

3. USE OF TECHNOLOGY

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

There are no automatic data collections, forms, etc. associated with assuming and administering the Section 404 program. The regulations provide the minimum requirements for Section 404 permit applications and notice (see Subpart D of 40 CFR 233), but the agency does not define the collection method. Under 40 CFR 233.39, reporting by electronic means is available to Tribes and states that choose to receive electronic documents that satisfy the requirements of 40 CFR part 3.

4. EFFORTS TO IDENTIFY DUPLICATION

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

The information collected under 40 CFR part 233 may not be systematically collected or made available elsewhere, nor is it currently available elsewhere. Once a Tribe or state Section 404 permitting program is approved by the EPA, the Corps stops accepting and reviewing Section 404 permit applications as well as issuing Section 404 permit associated with the Tribe's or state's assumed waters. The Corps continues to oversee permitting in a subset of retained waters and may coordinate with the Tribe or state where a project may span a Corps-retained and a Tribe- or state-assumed water or adjacent wetland.

TAS is a prerequisite for Tribes seeking to assume the Section 404 program. To avoid requiring Tribes to submit duplicate information, the EPA's regulations specify that a Tribe need only provide the required information that has not been submitted in a previous application. See 40 CFR 233.61(f).

5. MINIMIZING BURDEN ON SMALL BUSINESSES AND SMALL ENTITIES

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

Tribal and state governments are not considered small governments under the *Regulatory Flexibility Act*. Information collected under CWA Section 404(g) could be furnished by permittees that include small entities. However, the collected information is required of any entity or person who proposes to discharge dredged and fill material into a water of the United States unless the discharge is associated with an activity exempt from permitting requirements under CWA Section 404(f). 33 U.S.C. 1344. The information required from permittees applying for a permit in an assumed program is generally the same information that would have been required by the Corps if the Tribe or state had not assumed the program. See *id.* at 1344(h), (j). As such, the collection's impact on small entities is expected to be minimal or nonexistent.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION

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

Frequency of information collected from Tribes, states, and permittees depends on the associated activity. These collection frequencies vary from regular to irregular or rare.

Frequent and Regular Collections. Since each permit application addresses a distinct discharge activity, a permit application must be submitted and processed for each project, unless authorized by a general permit. The information is needed to evaluate the impacts of the specific project in the particular location in which it is sited. A permittee cannot move forward before submitting a permit application and receiving a permit from the Tribal or state permitting authority.

Frequent Annual Collections. The regulations require the Tribe or state with an approved Section 404 permitting program to submit a program report annually. The annual report is meant to provide a robust overview of the Tribe's or state's Section 404 program. The details provided in the annual report allows EPA to ensure the program remains consistent with CWA and the implementing regulations.

Irregular and Infrequent Collections. The information needed to request Section 404 program assumption is submitted only once to the EPA at the time of the formal request to assume the Federal permit program. Tribes and states requesting Section 404 program assumption cannot move forward, and the EPA may not proceed with approving assumption, without the information required by statute and in the regulations. See 33 U.S.C. 1344(g). Tribes may seek TAS to administer the CWA Section 404 program pursuant to EPA regulations. A TAS request is a one-time event, and the EPA has no control over the frequency of this collection.

Rare Collections. Program revisions should be made in the case of changes to the program. If an applicable federal statute or regulation has been changed, the Tribe or state must make corresponding changes within one year of the statutory or regulatory revisions or two years if the state must amend or enact statute to make the required revisions. 40 CFR 233.16. Withdrawal events are one-time events and have not been invoked to date.

7. GENERAL GUIDELINES

Explain any special circumstances that require the collection to be conducted in a manner inconsistent with PRA Guidelines at 5 CFR 1320.5(d)(2).

The proposed collection does not create special circumstances requiring justification under 5 CFR 1320.5.

8. PUBLIC COMMENT AND CONSULTATIONS

8a. Public Comment

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

In compliance with the Paperwork Reduction Act of 1995, public notice for this information collection request was published in the *Federal Register* notice of proposed rulemaking, *Clean Water Act Section 404 Tribal and State Program Regulation*. See 88 FR 55276 (August 14, 2023). The first notice requested comments on the burden and labor cost estimates associated with both the renewal of the existing collection and the activities associated with the proposed rulemaking. . The agency did not receive any comments (Docket Number: EPA-HQ-OW-2020-0276).

8b. Consultations

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure or reporting format (if any), and on the data elements to be recorded, disclosed or reported. Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

In 2017 and 2020, the EPA requested information from Michigan's and New Jersey's Section 404 program state representatives. The purpose of this request was to gather information about the level of effort (i.e., burden) associated with completing a program submission package and reviewing Section 404 permit applications. Burden estimates provided by state representatives were averaged and used to inform the previous ICR collection (EPA ICR No. 0220.14) and this supporting statement (EPA ICR No. 0220.18). The agency recognizes these data represent state efforts only.

The EPA also received input from various sources that have been useful in helping the agency refine its understanding of the previous collection (EPA ICR No. 0220.14). Those sources include state feasibility studies, stakeholder meetings and written input received on the proposed rule (Docket ID No. EPA-HQ-OW-2020-0276).

9. PAYMENTS OR GIFTS TO RESPONDENTS

Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

The Agency does not intend to provide payments or gifts to respondents as part of this collection.

10. ASSURANCE OF CONFIDENTIALITY

Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation or agency policy. If the collection requires a systems of records notice (SORN) or privacy impact assessment (PIA), those should be cited and described here.

See 40 CFR 233.3 (Confidentiality of Information).

(a) Any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter at the time of submittal and a final determination as to that claim will be made in accordance with the procedures of [40 CFR part 2](#) and [paragraph \(c\)](#) of this section.

(b) Any information submitted to the Director may be claimed as confidential in accordance with State law, subject to [paragraphs \(a\)](#) and [\(c\)](#) of this section.

(c) Claims of confidentiality for the following information will be denied:

- (1) The name and address of any permit applicant or permittee,
- (2) Effluent data,
- (3) Permit application, and
- (4) Issued permit.

11. JUSTIFICATION FOR SENSITIVE QUESTIONS

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

This collection does not include sensitive questions.

12. RESPONDENT BURDEN HOURS & LABOR COSTS

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

- Indicate the number of respondents, frequency of response, annual hour burden and an explanation of how the burden was estimated. Generally, estimates should not include burden hours for customary and usual business practices.*
 - If this request for approval covers more than one form, provide separate hour burden estimates for each form and the aggregate the hour burdens.*
 - Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included as O&M costs under non-labor costs covered under question 13.*
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12a. Respondents/NAICS Codes

Respondents associated with this collection fall into one of three categories: (1) Tribes, (2) states and (3) regulated community (i.e., "permittees"). The associated North American Industry Classification System (NAICS) codes are listed below.

Most state and Tribal authorities will fall into the following NAICS codes.

- 921110 Executive Offices
- 921190 Other General Government Support

A federally recognized Tribe with a reservation may be approved for TAS if they meet certain eligibility criteria. The EPA estimates that over the next three years zero (0) Tribes will apply for Section 404 TAS to assume the Section 404 program.

Following Tribal or state assumption, any person from the regulated community who proposes a project which involves the discharge of dredged and fill material into waters of the United States within the jurisdiction of a Tribal or state assumed program must submit a Section 404 permit application to either the Tribe or state unless authorized by a general permit. Given the broad range of potential entities nationwide, the EPA is unable to comprehensively catalog their 6-digit NAICS codes. However, the following general sectors would be expected to be highly represented among this group of respondents.

- 21 Mining
- 22 Utilities
- 23 Construction

- 31-33 Manufacturing

12b. Information Requested

The type of information requested varies by respondent group and activity. For this information collection, the EPA classified respondents into one of three categories: (1) Tribes or states seeking Section 404 program assumption; (2) Tribes or states administering an approved Section 404 program; and (3) permittees. The information collected by respondent group and the existing data sources for this information are described below in **Table 1**.

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12c. Respondent Activities

Respondent activities and the associated information sources are described below in **Table 1**.

Table 1. Description of program activities by respondent group and associated data sources used to inform this supporting statement.

Respondent Group/ Program Activity	Description of Program Activity	Data Source(s)
State(s) or Tribe(s) Pursuing Section 404 Program Assumption		
Pre-submission Activities	Activities necessary for the Tribe or state to achieve regulatory compliance with the requirements described in 40 CFR 233.	State Feasibility Studies (Alaska, Arizona, Minnesota, Montana, Nebraska, Virginia, Wisconsin) Summarized in Table A-1.
TAS for Section 404 Program Assumption	Activities necessary to complete a TAS application to assume the Section 404 program.	Water Quality Standards ICR (OMB Control Number 2040-0049)
Section 404 Program Assumption	Development of the program submission package, request to the EPA, responding to EPA request for more information/clarity of program submission package.	40 CFR 233.10 and is as follows in Appendix 1
State(s) or Tribe(s) Administering an Approved Section 404 Program		
Program Revisions ¹	Procedures to complete a general, non-substantial and substantial revisions to approved programs.	Agency best estimates.
Permit Application: Review	Review of permit application includes an initial assessment of the application for completeness, public notice of the permit application, coordination with affected states and federal agencies (as appropriate), responding to and addressing comments on a proposed permit, and making a determination on a permit application.	Two data sources: (1) Burden (hours) to review a single permit application. ² (2) Annual number of permits issued from an approved program. See Table A-3 for calculations.
Program Annual Reports	Approved program must collect, summarize, analyze and produce a report of program activities annually.	40 CFR 233.52 and as follows in Appendix 2

¹ Previous supporting statements (EPA ICR No. 0220.14 and 0220.16) used different approaches to describe program revisions. This renewal combines the two types of program revisions and presents it as one category.

² This supporting statement relies on the reported average burden estimates appearing on page 20 of EPA ICR No. 0220.14.

Withdrawal Procedures	Approved program must demonstrate compliance with CWA and regulatory requirements and as requested, carry out remedial actions specified by the Administrator.	Agency best estimate.
Regulated Community (i.e., Permittees)		
Permit Application: Completion	Activities associated with permittees completing a permit application.	Two data sources: (1) Burden (hours) to complete a single permit application. ³ (2) Annual number of permits issued from an approved program. See Table A-3 for calculations.

12d. Respondent Burden Hours and Labor Costs

Estimating and Extrapolating Burden from Single Data Point to Program Scale. The data sources for estimating burden are described in **Table 1** above, and the associated burden estimates and scaling factors are summarized in **Table 2**. The agency believes one (1) state and zero (0) Tribes will request assumption of the Section 404 program during this collection period.⁴ Therefore, the burden associated with Section 404 program assumption activities (i.e., pre-submission activities, obtaining TAS for assumption and requesting assumption of a Section 404 program) were scaled up based on the number of states (n = 1) or Tribes (n = 0) expected to request assumption of the program.

Currently, two (2) states have approval to administer the Section 404 programs. The agency assumes one (1) additional state will request and be approved to administer the Section 404 program during this collection period. As a result, a factor of three (3) was used to scale up most activities associated with program operation and maintenance (i.e., completing and reviewing a Section 404 permit application and program annual reports). There are some exceptions. First, a scaling factor of two (2) was used for program revisions. Previous supporting statements assumed prior approved programs would not need to make any type of revisions to their approved programs. While revisions of the two existing state

³ Refer to page 21 of EPA ICR No. 0220.14. The original data point was sourced from the Corps ICR (ICR No 202202-0710-002; OMB Control No 0710-0003) at <http://m.omb.report/icr/202202-0710-002>.

⁴ On May 25, 2023, the Supreme Court issued a decision in *Sackett v. Environmental Protection Agency*, holding that the CWA term “waters of the United States” encompasses only those relatively permanent, standing or continuously flowing bodies of water forming geographical features that are described in ordinary parlance as streams, oceans, rivers and lakes. The Court also held that adjacent wetlands are waters of the United States only when the wetlands have a continuous surface connection to bodies that are waters of the United States in their own right, so that there is no clear demarcation between such waters and wetlands. Following the *Sackett* decision, the EPA and the Department of the Army amended the regulatory definition of “waters of the United States” to conform to the Supreme Court’s interpretation. *Revised Definition of “Waters of the United States”*; *Conforming*, 88 Fed. Reg. 61,964 (Sept. 8, 2023). The Court’s decision, as reflected in the Conforming Rule, has reduced the overall scope of jurisdictional waters of the United States. As related to the CWA Section 404(g) rule, Tribes and states also now have fewer waters of the United States available to be assumed under the Section 404(g) dredged and fill program. Consequently, Tribes and states that have assumed the Section 404 program may have fewer Section 404 permits to process than previously. It is unclear whether the reduction in Section 404 permits would lead to a reduction in staff needs as Tribes and states may still issue permits for these discharges under Tribal or state law. The EPA also anticipates that fewer states and Tribes will assume the dredged and fill program under CWA Section 404(g) given the narrower scope of “waters of the United States.” EPA projects that only one state may assume the dredged and fill program over the next three years.

programs are unlikely, the agency recognizes it cannot control if and when revisions are needed and the extent of those revisions. See 40 CFR 233.16. For this reason, the agency is revising their assumption and incorporating the burden associated with program revisions in the overall calculations. A factor of two (2) was used to calculate total program modification burden because the agency believes it is unlikely for a state Section 404 program approved during this collection to make revisions during the same collection period. Second, a scaling factor of zero (0) was used for withdrawal because the agency does not expect to withdraw an existing approved state Section 404 program during this collection period.⁵ Furthermore, the agency does not anticipate that a state with an approved Section 404 program will voluntarily initiate the withdrawal process. Finally, the average annual number of permit applications per program (5,075) was used in combination with the total number of approved programs (3) to estimate total burden associated with completing and reviewing a permit application; additional information about these data sources and calculation can be found in **Table A-3**.

Table 2: Assigned burden estimates and scaling factors for related Section 404(g) program activities. The burden estimates described here are for single events only. The scaling factor represents the number of Tribes or states expected to request assumption the Section 404 program, or the number of Tribes or states approved to administer the Section 404 program.

Respondent Group / Program Activity	Burden (Hours)	Program Scaling Factor	Total Annual Activities (Across Collection)
State(s) or Tribe(s) Pursuing Section 404 Program Assumption			
Pre-submission Activities	27,912	1	.3333
TAS for Section 404 Program Assumption	161	0	0
Section 404 Program Assumption	1,012	1	.3333
State(s) or Tribe(s) Administering an Approved Section 404 Program			
Program Revisions	385 ⁶	2	.6667
Permit Application: Review	12.7	3	5,079
Program Annual Reports	110	3	3
Withdrawal Procedures	632 ⁷	0	0
Regulated Community (i.e., Permittees)			

⁵ This expectation is based on EPA's observations of the current status of existing state programs. It does not curtail EPA's discretion to institute withdrawal proceedings should EPA determine that such action is necessary.

⁶ The previous ICR (ICR EPA No. 0220.14) did not describe the burden associated with this activity, and the burden estimates published in the proposal supporting statement (ICR EPA No. 0220.16) were associated with the proposed changes to the existing regulations. This renewal publishes the agency's best estimate of the burden associated with the existing implementing regulations.

⁷ See footnote 8.

Permit Application: Completion	11	3	5,079
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Calculating Labor Costs for Program Activities. Labor costs for Tribe and state respondent categories were calculated using the hourly wage for a GS-11 Step 1 salary (\$34.76).⁸ To estimate labor costs for permittees, the agency relied on the hourly wage of \$27.07.⁹ Total burden for an assigned activity was multiplied by the appropriate scaling factor (see **Table 2**), the appropriate hourly wage (i.e., \$34.76 or \$27.07) and an overhead factor of 1.6.¹⁰

Results. Total burden and labor costs for each program activity and respondent group are described in **Table 3**.

Table 3. Total burden (hours) and associated labor costs (2024 dollars) assigned to each program activity and respondent group. Totals presented here represent the burden (hours) and costs (2024 dollars) incurred over the entire three-year collection period and account for the appropriate program scaling factor.

Respondent Group/ Program Activity	Burden (Hours)	Labor Costs (Dollars, 2024)
State(s) or Tribe(s) Pursuing Section 404 Program Assumption		
Pre-submission Activities	27,912	\$1,555,354
TAS for Section 404 Program Assumption	0	\$0
Section 404 Program Assumption	1,012	\$56,283
<i>Respondent Group 1 Total</i>	<i>28,924</i>	<i>\$1,608,637</i>
State(s) or Tribe(s) Administering an Approved Section 404 Program		
Program Revisions	770	\$42,824
Permit Application: Review	193,510	\$10,762,247
Program Annual Reports	990	\$55,060
Withdrawal Procedures	0	\$0
<i>Respondent Group 2 Total</i>	<i>195,270</i>	<i>\$10,860,131</i>
Regulated Community (i.e., Permittees)		
Permit Application: Completion	167,607	\$7,259,394
<i>Respondent Group 3 Total</i>	<i>167,607</i>	<i>\$7,259,394</i>
<i>Respondent Grand Total</i>	<i>391,801</i>	<i>\$19,728,162</i>

13. RESPONDENT CAPITAL AND O&M COSTS

Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).

The cost estimate should be split into two components: (a) a total capital and start-up cost

⁸ 2024 hourly wage for a GS-11 Step 1 was accessed at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/24Tables/html/RUS_h.aspx. The agency relied on federal salary wages to extrapolate labor costs for TAS-related activities because we do not have comparable information for Tribal staff.

⁹ See page 21 of EPA ICR 0220.14 or access the original Corps ICR (No: 202202-0710-002, OMB Control No: 0710-0003) at <http://m.omb.report/icr/202202-0710-002>.

¹⁰ The 1.6 overhead factor represents compensation and wages.

component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should consider costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling, and testing equipment; and record storage facilities. If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate.

Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government or (4) as part of customary and usual business or private practices.

This collection does not create non-labor costs for respondents that would not already be covered as part of customary and usual business practices.

14. AGENCY COSTS

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

14a. Agency Activities

Request for program assumption

There is a 120-day statutory review period that shall commence on the date of receipt of a complete state or tribal submission. The Regional Administrator shall approve or disapprove the program based on whether the state or tribe fulfills the requirements outlined in the regulation.

EPA activities associated with the review of a state or tribal assumption request are specified in the regulation at 40 CFR 233.15 and include the following actions:

- 1) determine if the assumption submission is complete and notify the state or tribe within 30 days of EPA's determination;
- 2) within 10 days, send copy of assumption request to the appropriate Corps District, USFWS and NMFS;
- 3) provide a public comment period of no less than 45 days;
- 4) publish public notice on receipt of assumption request
- 5) provide a public hearing to be held not less than 30 days after notice is published in the Federal Register;
- 6) review public comments received and preparation of a responsiveness summary of significant comments received;
- 7) make decision to approve or deny assumption request;
- 8) notify other federal agencies about the decision;

- 9) notify the state or tribe about the decision; and,
- 10) publish notice of decision in the Federal Register.

As part of any necessary consultation under ESA Section 7, EPA will:

- 1) send a letter initiating consultation to USFWS and/or NMFS;
- 2) prepare any necessary documentation to facilitate consultation in compliance with ESA Section 7 and its implementing regulations (e.g., a Biological Evaluation); and,
- 3) review any relevant documentation provided in the state or tribe's assumption submission package.

As part of any necessary consultation under NHPA Section 106, EPA will:

- 1) send a letter to initiate consultation with the ACHP and the state or tribal historical preservation office, as well as invite consultation from tribes that may have an interest in the state or tribe's assumption process,
- 2) provide for public notice and comment on EPA's Section 106 consultation and consider all comments received, and
- 3) review any relevant materials from the state or tribe's assumption submission package, such as an OA or other state-level agreement on historic preservation.

EPA activities associated with review of a state or tribal revision are specified in the regulation at 40 CFR 233.16 and may include the following actions:

- 1) evaluate modified program descriptions or other documents submitted by the state or tribe to determine if the program complies with the CWA;
- 2) publish and circulate notice to interested parties, provide opportunity for public hearing and consult with the relevant federal agencies;
- 3) request a supplemental Attorney General's statement, program description, or other documents or information necessary to evaluate the program's compliance with the CWA; and,
- 4) any necessary consultations.

Program approval under federal regulation requires submission to the Regional Administrator of at least three copies of the required elements of a program submission (40 CFR 233.10). The use of electronic forms of collection techniques are not appropriate for the submission of an application under current regulations.

Permit application information

EPA activities associated with review of a state or tribal permit application are specified at 40 CFR 233.50 and include the following:

- 1) a state or tribe will promptly transmit to EPA a copy of the public notice for any permit application subject to federal review, except for those for which review has been waived that under 40 CFR 233.51;
- 2) a copy of a draft general permit whenever a state (or tribe) intends to issue a general permit;

- 3) EPA will provide a copy of the public notice to the appropriate Corps, USFWS, and NMFS offices for review and comment;
- 4) if EPA intends to comment on the permit application, EPA will notify the state or tribe of its intent within 30 days;
- 5) if the state or tribe has been notified, the permit shall not be issued until after receipt of the comments, or 90 days from EPA's receipt of the public notice; and,
- 6) if the state or tribe receives comments from EPA, either objecting to the permit or requesting permit modification, the permit shall not be issued until such objections or request for modification are resolved.

Consistent with the policy position to consult if program approval may affect threatened or endangered species or critical fish habitat or historic properties, EPA will:

- 1) forward permits to USFWS and/or NMFS as required to fulfill any obligations resulting from any ESA consultations and
- 2) forward permits to ACHP as required to fulfill obligations resulting from any NHPA consultations.

Annual reports and program information

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

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

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

Under CFR 233.51, Waiver of review, the MOA with the Regional Administrator shall specify the categories of discharges for which EPA will waive review. Pursuant to this Section, only a portion of permits issued by states or tribes that have assumed a program are reviewed by EPA. As estimate of the permits that EPA reviews ranges from one to two percent per year.

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

Annual reports and program information

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

14b. Agency Labor Cost

Request for program assumption

Each state or tribal request to assume the program must be reviewed by the federal government. EPA is the agency responsible for approval or denial of an assumption request; the Corps, USFWS, NMFS, and under NHPA Section 106, the ACHP, review and provide comments to EPA on the adequacy of the state or tribal program. Existing burden to federal agencies is estimated a:

- (1) 400 hours to review and provide comments to EPA on the adequacy of the submission application.
- (2) 34 hours for an agreement generated by EPA and other signatories to fulfill requirements under the NHPA,
- (3) 4 hours for EPA to initiate ESA Section 7 consultation with USFWS and NMFS,
- (4) 4 hours to initiate consultation under NHPA Section 106, and 200 hours for EPA, USFWS and NMFS to generate and review consultation documentation related to ESA Section 7 consultation (e.g., one option being a Biological Evaluation). While this burden is expected to vary widely depending on the state and in some cases consultation obligations may not be triggered, these estimates are based on ESA Section 7 consultation on Florida's recent assumption package.

The 2024 loaded (x 1.6 for benefits) hourly rate of a GS-13, Step 5 for the “rest of U.S.” is \$89.86. At 442 hours per assumption request this results in a federal labor cost of \$39,716 per assumption request. This ICR assumes there will be one state assumption request in the 3 years covered by this ICR. As a result, the average annual federal labor costs for program assumption requests of \$13,239.

Permit application information

EPA estimates that federal review will be conducted on only a subset of state permit applications, approximately 25 permits annually per state program. The permits subject to federal review tend to be the larger projects with more potential for adverse environmental impacts. Federal review is coordinated by EPA and includes the Corps, USFWS, NMFS and ACHP as appropriate. Because of this, EPA estimates that federal review will average 80 hours per

permit application. This results in an annual burden of 2,000 burden hours per assumed program. At the 2024 loaded wage rate of a GS-12, Step 5 for the “rest of U.S.” (\$75.52), the federal labor cost is \$151,104 per program. As a result, the average annual federal labor costs for permit applications for 3 state programs is \$151,104.

Annual reports and program information

EPA estimates that its review of the 3 state annual report expected in this ICR will take approximately 40 hours each. At the GS-12 loaded wage rates described above, this translates into a federal labor cost of approximately \$3,021 per annual report and average annual federal labor rates of \$9,062 overall.

Total Average Annual Labor for the Agency: \$173,405.

14c. Agency Non-Labor Costs

There are no anticipated non-labor costs for the Agency.

15) REASONS FOR CHANGE IN BURDEN

Explain the reasons for any program changes or adjustments reported in the burden or capital/O&M cost estimates.

The new baseline total annual burden and labor costs incurred by Tribes, states and permittees is 130,600 hours and \$6,576,054. In comparison to the previous collection (EPA ICR No. 0220.14), this new baseline annual burden and labor costs is an overall decrease of 88,281 hours and \$2,507,627.

The primary factor contributing to the overall decrease in burden and labor costs between this renewal and the previous ICR (EPA ICR No. 0220.14) was the reduction in the number of Tribes and states seeking assumption and administering a Section 404 program. Other factors that influenced the overall burden and costs estimates included revising scaling factors for individual activities (e.g., completing and reviewing permit applications, and program modification) and updating labor costs to 2024 hourly wages. Additionally, the agency recognized the seven state feasibility studies provided useful information to inform burden and costs associated with Section 404 program assumption. For this reason, this collection request incorporates data from those studies and presents a summary of that information in a new “pre-submission activities” category. A detailed description of each revision is summarized in **Table A-4**.

16) PUBLICATION OF DATA

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

All data associated with this collection are publicly available. For example, a Tribe or state is required to make Section 404 permit applications and annual reports publicly available. The agency posts Tribe or state Section 404 program submission packages to the *Federal Register*. Tribe or state responses to questionnaires about efforts to complete certain program activities are published in the ICR supporting statements.

17) DISPLAY OF EXPIRATION DATE

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

The Agency plans to display the expiration date for OMB approval of the information collection on all instruments.

18) CERTIFICATION STATEMENT

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

This information collection complies with all provisions of the Certification for Paperwork Reduction Act Submissions.

Appendix

Table A-1. Estimated costs and time to prepare for assumption of the Section 404 program.

State	Publication Year	Estimated Assumption Costs	Years to Prepare for Assumption
Alaska	2023	\$4.8-5 million	Est. 2 years
Arizona	2018	\$2.1 million	NA
Minnesota	2017	\$150,000	Est 2 years
Montana	2021	NA	NA
Nebraska	2021	2.6 million	4.5 years
Virginia	2012	\$3.4-4.0 million	NA
Wisconsin	2022	\$1.0-1.4 million	NA
Average*	NA	\$2,716,667	2.8
Annual Costs		\$970,238	--
Annual Burden (Hours)		--	27,912

*All possible values used to calculate average (n=9). For example, the low and high estimates presented in Alaska's report were used to calculate the average assumption costs.

NA = Not available.

Table A-2. Section 404 permits issued by the U.S. Army Corps of Engineers in years 2013-2018, by state.

State	2013	2014	2015	2016	2017	2018	Annual Average (by State)
AK	638	473	483	488	603	430	519
AL	743	504	485	446	558	593	555
AR	1,370	911	1,147	1,068	609	555	943
AZ	278	506	177	362	220	337	313
CA	2,091	1,989	1,666	2,663	2,294	2,238	2,157
CO	883	1,393	773	892	1,759	936	1,106
CT	257	250	241	325	440	284	300
DE	92	154	83	97	78	95	100
FL	1,644	1,649	1,759	1,826	2,149	2,238	1,878
GA	872	746	709	1,550	943	932	959
HI	31	25	21	49	28	57	35
IA	1,099	1,091	809	851	845	726	904
ID	604	608	519	516	643	743	606
IL	1,863	1,486	1,026	1,479	1,219	1,151	1,371
IN	1,020	841	1,033	1,101	1,172	1,227	1,066
KS	1,964	597	672	613	838	616	883
KY	613	550	452	874	557	445	582
LA	2,662	3,903	2,617	1,945	1,638	1,598	2,394
MA	289	300	435	460	521	435	407
MD	1,563	1,271	1,035	540	1,056	1,182	1,108
ME	425	421	429	451	565	653	491
MN	1,224	1,059	1,064	1,062	1,004	1,377	1,132
MO	1,972	1,390	1,920	3,057	1,862	1,569	1,962
MS	736	620	476	776	827	730	694
MT	585	539	425	527	536	376	498
NC	1,524	1,647	1,524	1,758	1,640	2,124	1,703
ND	683	710	668	623	375	470	588
NE	633	593	477	633	672	658	611
NH	454	363	343	486	350	482	413
NM	208	378	411	260	207	205	278
NV	126	73	85	46	65	56	75
NY	1,956	2,130	1,954	2,241	2,161	1,738	2,030
OH	1,487	1,850	1,859	1,496	2,703	1,550	1,824
OK	469	517	493	393	635	556	511
OR	883	608	562	694	778	552	680
PA	7,651	6,326	5,863	5,967	4,890	2,407	5,517
RI	80	47	36	50	52	44	52
SC	572	436	438	749	832	802	638
SD	332	312	268	371	371	405	343
TN	1,245	1,210	1,124	1,518	1,003	1,184	1,214

TX	3,684	3,344	5,105	3,052	2,078	4,035	3,550
UT	449	360	308	342	397	313	362
VA	1,515	1,370	1,378	1,563	1,502	1,524	1,475
VT	491	398	273	242	261	293	326
WA	1,605	856	858	718	1,803	1,418	1,210
WI	1,752	1,857	2,124	2,036	1,992	2,349	2,018
WV	2,781	2,409	1,837	1,720	2,897	3,624	2,545
WY	235	189	178	237	293	232	227
Annual & Grand Average	1174	1068	1013	1067	1061	1011	1,066

Source: U.S. Army Corps of Engineers

Table A-3. Calculations for scaling the burden for completing and reviewing a single Section 404 permit application to the program level.

Step 1: Calculating average number of permits			
State	Annual No. of Section 404 Permits Issued	Reference	
Michigan	3,792	EPA ICR No. 0220.14; State's 2020 Annual Report	
New Jersey	220	EPA ICR No. 0220.14; State's 2020 Annual Report	
One (1) New Program	1,066	Annual average of permits issued by the Corps (see Table A-2)	
No. of Permits per Program			
<i>Annual average</i>	1,693	<i>Calculated</i>	
<i>Estimate for Collection Period (3 years)</i>	5,079	<i>Calculated</i>	
Step 2: Estimating Burden for Approved Tribal or State Section 404 Programs			
Burden Estimates	Single Permit (A)	Single Program (B)	Total for All Approved Section 404 Programs (C)
	--	(A x 5,079 permits)	(C = B x 3 programs)
Completing a permit application	11.0 hours ^a	55,869	167,607
Reviewing a permit application	12.7 hours ^b	64,503	193,510

a. Refer to page 21 of EPA ICR No. 0220.14. The original data point was sourced from the Corps ICR (ICR No 202202-0710-002; OMB Control No 0710-0003) at <http://m.omb.report/icr/202202-0710-002>.

b. Refer to page 20 of EPA ICR No. 0220.14

Table A-4. Updates and revisions made to burden and labor costs estimates.

Action Summary	Description
Reduced the number of existing approved state Section 404 programs.	The EPA's approval of Florida's Section 404 program was vacated in February 2024. As a result, the agency removed Florida's data from all "approved" or "existing" state calculations and reduced the total burden and labor costs scaling factor for "approved" or "existing" Section 404 programs from 3 to 2. Note that Florida's permit numbers from 2013-2018 were used to calculate the overall permit average (see Table A-2 and Table A-3 for more on this calculation).
Revised the number of expected new Section 404 program assumption requests from states and incorporated TAS requests.	The number of states expected to submit a program submission package and be approved to administer the Section 404 program was reduced from 2 to 1. ¹¹ No Tribes have assumed or are expected to assume the program.
Revised Estimates related to Federal Burden.	Federal labor rates were updated to reflect 2024 dollars.
Incorporated data from the seven state feasibility studies.	This renewal was revised to incorporate the costs discussed in the seven feasibility studies. While the feasibility studies were referenced in the previous collection (EPA ICR No. 0220.14), these data were not incorporated into the analysis. The agency has elected to incorporate these estimates into this renewal because the associated activities and resulting burden and costs incurred by Tribes or states are a result of meeting regulatory requirements to assume the Section 404 program.
Updated and corrected hourly wages.	Labor rates were updated to reflect 2024 dollars.
Updated Program Revisions.	Previous supporting statements handled program revisions differently. For this renewal, the agency combined the two types of program revisions (i.e., non-substantial/general and substantial) into one category (i.e., program revisions) and updated and incorporated burden estimates under existing implementing regulations into the overall burden totals.
Updated scaling factors to extrapolate permit calculations.	For this renewal, a scaling factor for completing and reviewing a permit application was set to 3. The previous collection (EPA ICR 0220.14) relied on different scaling factors to estimate the total burden and associated labor costs. For example, estimates for preparing a Section 404 permit application were scaled on the number of approved state programs (n = 3), whereas the total burden and costs to review a Section 404 permit application considered both the number of approved state programs at the time (3) and two new Section 404 program approval (2; overall total = 5). The agency determined it was unnecessary to use different scaling factors here because once a program is approved, all permit responsibilities are transferred from the Corps to the state by the agreed upon effective date. For this renewal,

¹¹ See footnote 6 for additional information.

	the agency scaled for three approved state Section 404 programs. This number captures the two approved state Section 404 programs (Michigan and New Jersey) and accounts for one new state Section 404 program request and approval. No Tribes are expected to assume the 404-program during this collection period.
Corrected the number of Section 404 permits and scaling factors.	Previous supporting statements incorrectly incorporated annual and multi-year Section 404 permit data into two permit-related calculations (i.e., completing and reviewing a permit application). Here, we corrected New Jersey's underlying data point from multi-year to annual data to ensure consistency with Michigan's annual permit data. We averaged the annual data from the two state programs along with an estimate for one newly approved Tribe or state Section 404 program (based on Corps numbers) to calculate an annual average. This annual average was then multiplied by three (3) to correctly estimate the number of Section 404 permits expected to be issued during this collection period (i.e., total for collection period = annual permit data × 3 years).
Reorganized the presentation of results to align with the supporting statement outline.	Previous supporting statements summarized and presented information by program activity (e.g., Section 404 program assumption, reviewing a Section 404 permit application, etc.). For this renewal, program activity descriptions, summaries and results were organized into three respondent groups. This reorganization follows the supporting statement outline, which makes it easier for the reader to follow.

Appendix 1

The information needed for a complete assumption package is listed at 40 CFR 233.10 and is as follows:

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

In addition, potential consultations associated with historic preservation and endangered species statutes and regulations may require additional information and documents at the time of submission of an application to facilitate evaluation by EPA and potentially on program revisions; this documentation may include the following:

- 1) information associated with consultation under Section 106 of the NHPA and
- 2) information associated with consultation under Section 7 of ESA.

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

- 1) a supplemental Attorney General's statement and

2) program description, or other documents or information necessary to evaluate the program.

The statute and the regulations do not include specific record keeping requirements, and none are required by EPA.

Appendix 2

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

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