



## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2005-0023; FRL-9961-97-OW]

### **Proposed Information Collection Request; Comment Request; Clean Water Act Section 404 State-Assumed Programs; EPA ICR No. 0220.13, OMB Control No. 2040-0168**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), “Clean Water Act Section 404 State-Assumed Programs” (EPA ICR No. 0220.13, OMB Control No. 2040-0168) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR No. 0220.12, which is currently approved through November 30, 2017. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Comments must be submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA-HQ-OW-2005-0023, online using [www.regulations.gov](http://www.regulations.gov) (our preferred method), by email to [ow-docket@epa.gov](mailto:ow-docket@epa.gov), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave., NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** Kathy Hurld, Wetlands Division, Office of Wetlands, Oceans, and Watersheds, (4502T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC, 20460; telephone: 202-566-1269; fax number: 202-566-1349; email address: [hurld.kathy@epa.gov](mailto:hurld.kathy@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at [www.regulations.gov](http://www.regulations.gov) or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another Federal Register notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

*Abstract:* Section 404(g) of the Clean Water Act authorizes states [and tribes] to assume the section 404 permit program for discharges of dredged or fill material into certain Waters of the U.S. This ICR covers the collection of information EPA needs to perform its program approval and oversight responsibilities and the state/tribe needs to implement its program.

Request to assume CWA section 404 permit program. States/tribes must demonstrate that they meet the statutory and regulatory requirements (40 CFR 233) for an approvable program. Specified information and documents must be submitted by the state/tribe to EPA to request assumption and must be sufficient to enable EPA to undertake a thorough analysis of the state/tribal program. The information contained in the assumption request submission is provided to the other involved federal agencies (U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and National Marine Fisheries Service) and to the general public for review and comment.

States/tribes with assumed programs must be able to issue permits that assure compliance with all applicable statutory and regulatory requirements, including the 404(b)(1) Guidelines. Sufficient information must be provided in the application so that states/tribes, and federal agencies reviewing the permit are able to evaluate, avoid, minimize and compensate for any anticipated impacts resulting from the proposed project. EPA's assumption regulations establish required and recommended elements that should be included in the state/tribe's permit application, so that sufficient information is available to make a thorough analysis of anticipated impacts. (40 CFR 233.30). These minimum information requirements generally reflect the information that must be submitted when applying for a section 404 permit from the U.S. Army Corps of Engineers. (CWA section 404(h); CWA section 404(j); 40 CFR 230.10, 233.20, 233.21, 233.34, and 233.50; 33 CFR 325)).

EPA has an oversight role for assumed 404 permitting programs to ensure that state/tribal programs are in compliance with applicable requirements and that state/tribal permit decisions adequately consider, avoid, minimize and compensate for anticipated impacts. States/tribes must evaluate their programs annually and submit the results in a report to EPA. EPA's assumption regulations establish minimum requirements for the annual report (40 CFR 233.52).

The information included in the state/tribe's assumption request and the information included in a permit application is made available for public review and comment. The information included in the annual report to EPA is made available to the public. EPA does not make any assurances of confidentiality for this information.

*Form Numbers:* None.

*Respondents/affected entities:* Entities potentially affected by this action are those states/tribes requesting assumption of the Clean Water Act section 404 permit program; states/tribes with approved assumed programs; and permit applicants in states/tribes with assumed programs.

*Respondent's obligation to respond:* Required to obtain or retain a benefit (40 CFR 233).

*Estimated number of respondents:* 2 states/tribes to request program assumption; 11,900 permit applicants (2,975 applications per state); and 4 states/tribes which have assumed the program (the two current programs and potentially two who may be approved under this ICR) which will submit an annual report.

*Frequency of response:* States/tribes will respond one time to request assumption and once the program is approved they will respond annually for the annual report; permit applicants will respond one time when requesting a permit.

*Total estimated burden:* The public reporting and recordkeeping burden for this collection of information is estimated to be 120,400 hours per year (520 hours to request program assumption times two states/tribes (1,040 hours); 11,900 permit applicants times 10 hours per application

(119,000 hours); and 90 hours to prepare an annual report times 4 state/tribal assumed programs (360 hours)). The burden to EPA for related activities is 8,560 hours per year (200 hours to review assumption requests times two states/tribes (400 hours); 100 permit applications times 80 hours per application review (8,000 hours); and 40 hours to review an annual report times 4 state/tribal assumed programs (160 hours)). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* Costs to states/tribes for assumed section 404 permit programs will vary widely by state/tribe and permit, however there are \$0 capital or operation & maintenance costs. The cost to EPA for related activities is \$420,513.28 in labor costs (per year), includes \$0 annualized capital or operation & maintenance costs.

*Changes in Estimates:* There is an increase of 29,440 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is an adjustment reflecting an increase in hours spent reviewing each permit. Michigan doubled its estimate of the number of hours spent reviewing each permit application, based upon the increase in number of applicants requesting a review of permit and mitigation options. New Jersey's estimate remained the same at 10 hours per permit application.

Dated: April 21, 2017.

John Goodin, Acting Director,

Office of Wetlands, Oceans, and Watersheds.

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