

**SUPPORTING STATEMENT FOR
INFORMATION COLLECTION REQUEST FOR
CLEAN AIR ACT TRIBAL AUTHORITY**

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I. INTRODUCTION

A. PURPOSE

This Information Collection Request (ICR) seeks authorization for Tribes to demonstrate their eligibility to be treated in the same manner as states under the Clean Air Act (CAA) and to submit applications to implement a CAA program. This ICR extends the collection period of information for determining eligibility, which expires October 31, 2004. The ICR also is revising the estimates of burden costs for Tribes in completing an CAA application.

The program regulation provides for Indian Tribes, if they so choose, to assume responsibility for the development and implementation of CAA programs. The regulation, Indian Tribes: Air Quality Planning and Management (Tribal Authority Rule [TAR] 40 CFR parts 9, 35,49, 50 and 81), sets forth how Tribes may seek authority to implement their own air quality planning and management programs. The rule establishes: 1) which CAA provisions Indian Tribes may seek authority to implement, 2) what requirements the Tribes must meet when seeking such authorization, and 3) what Federal financial assistance may be available to help Tribes establish and manage their air quality programs. The TAR provides Tribes the authority to administer air quality programs over all air resources, including non-Indian owned fee lands, within the exterior boundaries of a reservation and other areas over which the tribe can demonstrate jurisdiction. An Indian Tribe that takes responsibility for a CAA program would essentially be treated in the same way as a State would be treated for that program.

The TAR adopts EPA's "streamlined" eligibility review and approval process for Tribes to implement CAA programs. The ICR was prepared according to the guidance contained in the Office of Information Collection (OIC) December 1996 ICR Handbook. This handbook is the Agency's most current guidance document for preparing an ICR and follows the provisions of the Paperwork Reduction Act (4 U.S.C. section 1320) and the Office of Management and Budget (OMB) guidelines.

B. SUMMARY OF INFORMATION REQUEST

Section 301(d) of the Clean Air Act (CAA) directs the Administrator of the Environmental Protection Agency (EPA) to promulgate regulations specifying those provisions of the Act which are appropriate for treating Tribes in the same manner as states. The regulations, which were approved in 1998, give Tribes the opportunity, if they choose, to carry out virtually all Clean Air Act (CAA) programs. The rule authorizes eligible Tribes to implement CAA programs over all air resources within the exterior boundaries of their reservations, including non-Indian owned fee lands, or other areas within the Tribes' jurisdiction. This ICR requests clearance for Tribes to apply for authority to administer CAA programs.

C. SUMMARY OF BURDEN AND COST

This rule incorporates the Agency's streamlined process for treating Tribes in manner similar to the States. Since Tribes are not required to participate in this program, the number of applications will vary depending upon air quality conditions, presence of major sources of air pollution on reservations, and the Tribes' interest in and capacity to carry out CAA programs. For the purposes of estimating the total burden associated with the regulation, EPA has derived the following estimates:

- The estimated number of respondent Tribes applying for CAA programs over the next three years is 27. The annual average is 9 (27 respondents divided by 3 years).
- EPA estimates 40 hours per respondent for an annual burden of 360 hours.
- The average respondent labor cost is \$73.4 per hour for Professional/Technical. A factor of 110% was added to each labor cost category per Office of Management and Budget policy.
- The annual per respondent cost is \$2937.60. The annual total cost is estimated to be \$26,438.40 per year for a total of \$79,315.20 over the three year collection period.

II. JUSTIFICATION

1.0 IDENTIFICATION OF THE INFORMATION COLLECTION

1.1 Title and Number of Information Collection

Clean Air Act Tribal Authority (40 CFR part 35, subpart B; parts 9, 49, 50 and 81) (Renewal)

This ICR (OMB Control Number 2060-0306) is for implementing Section 301(d) of the Clean Air Act.

1.2 Short Characterization

The purpose of this ICR is to estimate the burden associated with the regulation governing the treatment of Indian Tribes in the same manner as States as authorized in Section 301 (d) of the Clean Air Act. The reporting burden is a one-time application for authorization to adopt Clean Air Act programs through regional program offices.

2.0 NEED FOR AND USE OF THE COLLECTION

2.1 Need and Authority for the Collection

Implementation of regulations includes a collection of information by EPA from Indian Tribes for purposes of determining if a Tribe is qualified for delegation of the CAA Program. Section 114 of the CAA is the authority for the collection of information.

2.2 Use and Users of the Data

EPA uses the submitted information to determine if the Tribe meets the statutory criteria under CAA Section 301 (d) and is qualified for program delegation.

3.0 NON-DUPLICATION, CONSULTATIONS, AND OTHER COLLECTION CRITERIA

3.1 Non-duplication

To avoid requiring submission of duplicate information, EPA will accept information previously submitted by an Indian Tribe (i.e., information included in an application for treatment in the same manner as a State under another Act).

3.2 Public Notice Required Prior to ICR Submission to OMB

In compliance with the Paperwork Reduction Act, EPA solicited comments for a 60-day period prior to submission of the ICR to OMB. Comments were requested by September 13, 2004 via a Federal Register announcement (69 FR 42052). No comments were received.

3.3 Consultations

An EPA workgroup drafted the proposed regulation following consultation with various

tribal representatives and extensive internal review. In developing this regulation EPA consulted with tribal representatives at the National Tribal Conference on Environmental Management in Cherokee, N.C. in May 1992 and at three “outreach meetings” in Chicago, Denver and San Francisco in November 1992. A final set of outreach meetings was held with tribal representatives and with members of the State and Territorial Air Pollution Administrators and the Association of Local Air Pollution control Official (STAPPA/ALAPCO) in September 1993. Suggestions and comments articulated during these exchanges, most supporting the delegation of the CAA authority to Tribes, were incorporated as appropriate into the proposed rule. The proposed rule was published on August 25, 1994 and solicited additional comments from the general public. These comments were addressed in the final rule promulgated in early 1998.

Prior to this renewal, each Regional EPA Office was contacted and asked to provide estimates to support the action. Tribes are believed to be comfortable with the process as it is being conducted and have a good understanding of the requirements. The Regional Offices confirmed the estimated average burden of nine actions per year for each of the next three years.

3.4 Effects of Less Frequent Collection

Applications by Indian Tribes for eligibility in air quality programs are a one-time collection of information per respondent.

3.5 General Guidelines

No paperwork reduction guidelines contained in 5 CFR 1320.5 are exceeded by this information collection.

3.6 Confidentiality and Sensitive Questions

Any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, part 2, subpart B - Confidentiality of Business Information (see 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 40000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 17674, March 23, 1979).

There is no sensitive information required.

4.0 THE RESPONDENTS AND THE INFORMATION REQUESTED

4.1 Respondents Identification Codes

Indian Tribes would be the sole respondents to this ICR. EPA estimates that 27 of the 570 Tribes -- over the three year clearance period -- will apply for eligibility for CAA programs. Based on a survey of regional offices and basic knowledge of Tribes, EPA assumes that 10 Tribes will submit applications in Year 1, 8 in Year 2, and 9 in year 3. The assumption is based on projections provided by each Regional Office. The TAR was promulgated in 1998, and Tribes are just now building air quality programs. Therefore, EPA expects the number of applications to remain relatively constant in the out years as additional tribes build capacity. However, since Tribes have the option of applying for CAA programs, and it is ultimately up to the EPA to implement the Act where there is a gap, more or less Tribes may be interested in seeking eligibility. If more Tribes express an interest during the public comment period, EPA will revise this ICR and the estimated burden accordingly.

4.2 Information Requested

To be eligible for delegation of CAA programs, an Indian Tribe must submit documentation showing they meet the following criteria: 1) be recognized by the Federal government (CAA section 302(r); 2) have an existing governing body which carries out governmental duties (such as tax and police functions); 3) show that the management and protection of air resources applies within the exterior boundaries of the reservation or other areas within the Tribe's jurisdiction, and 4) be reasonably expected to be capable of implementing all applicable regulations. Meeting the definition of "Federally recognized Tribe" (Section 302(r)) can be achieved in two ways: 1) approval by the Secretary of Interior (or in the process of doing so) as documented in the Federal Register notices periodically published by the Secretary; or 2) previous EPA approval for implementation of another program under another environmental statute. Previous eligibility determination under another EPA program (such as the CWA, SDWA, or other CAA program) satisfies the governing body requirement as well. If an initial declaration has not yet been approved, this can be shown by demonstrating that the tribe is performing governmental functions to promote the public health, safety and welfare of the population, including such things as levying taxes, acquiring land by exercising the power of eminent domain, and police powers.

As for the third criterion, demonstration of appropriate jurisdiction, identifying tribal jurisdictions clearly and with precision, can be done with the use of maps and a legal description

of the area; if the tribe is asserting jurisdiction over off-reservation lands, it must demonstrate the legal and factual basis for its jurisdiction consistent with applicable principles of Indian law.

In evaluating a Tribe's demonstration of program implementation capability, EPA considers their management and technical skills by reviewing the following factors: 1) tribe's previous management experience, 2) existing environmental or public health programs administered, 3) mechanism(s) in place for carrying out the executive, legislative and judicial functions of the Tribal government, 4) the relationship between regulated entities and regulating administrative agency, and 5) the technical and administrative capabilities of the staff. Tribes with limited management and technical skills can also submit a plan detailing steps for acquiring those skills.

5.0 THE INFORMATION COLLECTED -- AGENCY ACTIVITIES, COLLECTION METHODOLOGY, AND INFORMATION MANAGEMENT

5.1 Agency Activities

EPA will review the applications to determine if they meet the eligibility criteria.

5.2 Collection Methodology and Information Management

The collection methodology for this ICR maintains that a tribal application for implementation of a CAA program is a one-time submission that does not lend itself to electronic formatting. For example, tribal boundary information would be difficult to translate electronically. These applications will be reviewed and retained by the regional program offices.

5.3 Small Entity Flexibility

Information collection requirements covered in this ICR will not affect small businesses. All respondents are Indian Tribes.

5.4 Collection Schedule

Tribes can apply on a voluntary basis for eligibility under the CAA Tribal Authority Rule. Therefore, a collection schedule is not applicable.

6.0 ESTIMATING THE BURDEN AND COSTS OF THE COLLECTION

6.1 Estimating Respondent Burden

The annual burden to the respondent Indian Tribes is a function of the requirements of the

eligibility application and average time required for Tribes to complete each information item. The average burden per respondent varies, depending on whether the Tribe has received approval under another environmental program, i.e., Clean Water Act, Safe Drinking Water Act. The annual burden per Tribe is estimated at 40 hours at a cost of \$2937.60. The estimated annual burden is 360 hours at a cost of \$26,438.40. See Exhibit I.

Exhibit 1

Annual Respondent Burden and Costs

Activity	(A)Tech hrs. (\$73.44 hr.)	(B)Burden hrs.	(C)Collection Cost	(D)* Annual collection	Annual Burden (hrs) (B)*(D)	Total Annual Cost (C)*(D)
Collecting	13	13	\$954.72	N/A	N/A	
Compiling	11	11	\$807.84	N/A	N/A	
Reporting	16	16	\$1175.04	N/A	N/A	
Total	40	40	\$2937.60	9*	360	\$26,438.40

* Annual collection is the average number of collections per year. For the three year period, EPA expects a total of 27 respondents. $27 \text{ respondents} / 3 \text{ years} = 9 \text{ collections annually}$.

The annualized responses per year over the three year period: $27/3=9$.

The annualized burden hours over the three year period: $1,080/3=360$

6.2 Estimating Respondent Cost

The cost imposed on the Tribes as respondents includes the burden placed on collecting, compiling, and reporting the information and the wages of the typical Tribal worker performing these activities. The cost is associated with salaries and overhead for Tribal employees will probably vary significantly. The average respondent per hour labor cost is \$73.44 ($\$23.69 * 110\%$) for Professional/Technical. The rates include a factor of 110%, added to each labor rate per Office of Management and Budget (OMB) policy. The labor rates are based on hourly wages for the appropriate grade civilian employees as determined by using the Bureau of Labor and Statistics

(BLS) employment cost trends tables for civilian workers, March 2004. A 110% factor was added to the original rates per OMB policy. The cost per respondent is estimated to be \$2,937.60, the total annual respondent cost is \$26,438.40. The total cost for the three year collection period is \$79,315.20.

6.3 Capital Costs, and Operations and Maintenance Costs

There are no capital and operations and maintenance costs since the information collection only requires an application for eligibility to be filed so as to participate in a program. No capital investments are required to develop the application and no operations and maintenance costs are encountered.

6.4 Estimating the Agency Burden

The burden and cost imposed on the Federal government is a function of 1) the average number of responses to each information collection and reporting requirements, for this EPA expects 9; and 2) the time required for the Federal government to review and process that information, and EPA estimates it will take an average of 35 hours per respondent.

EPA expects to review, on an annual basis, 9 responses at 35 hours per response for an annual burden of 315 hours. EPA's review of the 27 Tribal applications -- over the three year clearance period -- is 945 hours. The review time will be considerably less if the Indian Tribe has already established eligibility with another EPA program, but it also may be higher. Each individual respondent has separate and unique circumstances that affect the amount of time required of the EPA to process an application. Therefore, additional time may be required, but the EPA estimates that it takes on average, 35 hours per respondent to review, publish, consult, and finalize a single request.

Annual Burden: 9 responses *35 hrs./response=315 hrs.

Total Burden: 27 responses * 35 hrs./response = 945 hrs.

6.5 Estimating Agency Cost

The cost imposed on the Federal government for review of the information requirements is the burden of reviewing information (described above) and the wages of the typical Federal worker performing these activities. The cost associated with salaries and overhead for Federal

employees will probably vary significantly. As preciously mentioned, it is difficult to predict the number of hours EPA will spend on any given respondent. On average it will take 35 hours.

This ICR uses estimates from the hourly rate for federal workers as per the Office of Personnel Management’s rate for General Service (GS) federal employees, January, 2004. The average rate for a GS-10, \$22.76, plus a factor of 160% to include employee benefits as per OMB policy, amounts to \$59.18 per hour labor cost. The annual Agency cost is \$18,641.70. The total Agency cost over the three year collection period is estimated to be \$55,925.10. See Exhibit 2.

Exhibit 2

Annual Agency Burden and Costs

Activity	(A)GS-10 hrs. (\$59.18 hr.)	(B)Burden hrs.	(C)Collectio n Cost	(D)* Annual Collection	Annual Burden (hrs) (B)*(D)	Annual Cost (C)*(D)
Collecting	9	9	\$532.62	N/A		
Compiling	9	9	\$532.62	N/A		
Comments	17	17	\$1006.06	N/A		
Total	35	35	\$2,071.30	9*	315	\$18,641.70

* Annual collection is the average number of collections per year. For the three year period, EPA expects a total of 27 respondents. 27 respondents / 3 years =9 collections annually.

The annualized responses per year over the three year period:27/3=9.

The annualized burden hours over the three year period is 945/3=315.

6.6 Total Burden and Cost

The annual burden for the respondents is 315 hours.

The annual costs for the respondents is \$26,438.40.

The total burden and cost for the respondents is, 1080 hours at a cost of \$79,315.20 for the three year collection period.

The annual burden for the Agency is 315 hours.

The annual costs for the Agency is \$18,641.70.

The total burden and cost for the Agency is 945 hours at a cost of \$55,925.10 for the three year

collection period.

6.7 Reasons for Change in Burden

The 293 Burden Hours approved by OMB for the active ICR (Total Hours Requested), used the first year of the ICR's three year period, since it reflected the highest estimated number of responses. For this ICR, an annualized average of the ICR's three year periods were used $(420+300+360)/3=360$ hours. The total burden hours have been updated to reflect new estimates that are based on the number of applications the EPA received under the previous ICR and what EPA estimates it will receive in the upcoming years. The difference between the active ICR and this ICR is 67 fewer hours based on our estimates of fewer responses.

The estimates were revised in part because the respondents that have already received eligibility will not apply again in this period. However, they may apply for additional programs and in this case EPA believes it will take less time to process. EPA estimates that it takes a respondent an average of 40 hours to process a single request. Additionally, several respondents that were expected to request eligibility have and therefore the numbers were reduced slightly.

Tribes are not required to seek this eligibility and therefore it is possible that the actual number of respondents will differ from the estimates. These numbers represent EPA estimates based on discussion with regional offices and expectations of the capacity of tribes to actively seek eligibility.

6.8 Burden Statement

The public reporting burden for collecting information is estimated to average 40 hours per response. This estimate includes the time required to review instructions, search for existing data sources, gather and maintain all necessary data, and complete and review the information collection. The respondents are 27 Indian Tribes that are expected to apply for and receive delegation under Section 301 (d) of the Clean Air Act Amendments.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to

respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed at 40 CFR Part 9 and 48 CFR chapter 15.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this ICR under Docket ID Number OAR-2004-0093, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566-1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at <http://www.epa.gov/edocket>. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the Docket ID Number identified above. Also, you can send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention: Desk Officer for EPA. Please include the EPA Docket ID Number OAR-2004-0093 and OMB Control Number 2060-0306 in any correspondence.

Part B of the Supporting Statement

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