

Proposed Water Quality Standards Regulatory Clarifications

Summary

The EPA has proposed changes to the federal water quality standards (WQS) regulation at 40 CFR Part 131 that interprets part of the Clean Water Act. The changes would improve the regulation’s effectiveness in restoring and maintaining the chemical, physical, and biological integrity of the nation’s waters. The proposed rule addresses the following key WQS program areas: (1) the EPA Administrator’s determinations that new or revised water quality standards are necessary, (2) designated uses for water bodies, (3) triennial reviews of state and tribal WQS, (4) antidegradation provisions to protect water quality, (5) variances to WQS, and (6) compliance schedule authorizing provisions.

Background

Water quality standards are the foundation of the water quality-based pollution control program mandated by the Clean Water Act and serve a dual purpose. First, water quality standards define the goals for a water body by designating its uses, setting criteria to protect those uses, and establishing antidegradation policies to protect water bodies from pollutants. Second, water quality standards serve as the basis for water quality-based limits in National Pollutant Discharge Elimination System permits, as the measure to assess and list impaired waters, and as the target in a Total Maximum Daily Load.

Fundamentally, the Federal WQS regulations: 1) defines when and how designated uses may be revised; 2) requires criteria to protect those uses and be based on sound science; 3) requires EPA and states to prevent the degradation of water quality, except under certain circumstances; 4) requires states/tribes to review their water quality standards at least every three years and engage the public in any revisions to water quality standards; and 5) specifies roles of states, tribes, and EPA and provides administrative procedures for EPA’s review.

The core of the current regulation was established in 1983; since then, a number of issues have been raised by stakeholders or identified by the EPA in the implementation process that will benefit from clarification and greater specificity. The proposed rule will lead to improved water quality standard development, implementation and compliance as well as improving the ability of water systems to adapt and respond to the impacts of climate change.

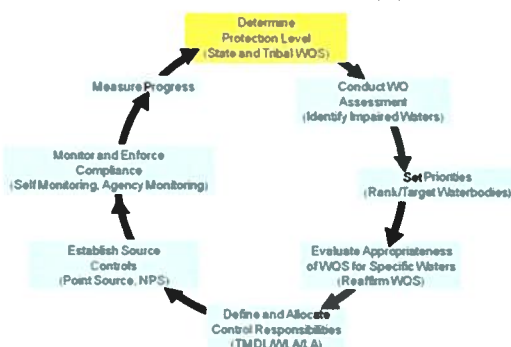
About This Rulemaking

Key Policy Issues Addressed in Proposed Rule

The EPA’s proposed national rule would provide clarification and greater specificity by:

- 1) establishing a more transparent process for the Administrator to announce a determination that new or revised WQS are necessary under section 303(c)(4)(B) of the Act;
- 2) ensuring states and tribes are striving to meet the highest attainable water quality goals even where Clean Water Act goals are unattainable;
- 3) ensuring states and tribes consider updating their WQS to reflect the EPA’s latest criteria recommendations;

Water Quality Based Approach



- 4) enhancing state and tribal implementation of antidegradation policies and helping better maintain and protect high quality waters;
- 5) providing regulatory flexibility and boundaries to allow states and tribes to achieve water quality improvements before resorting to a use change; and
- 6) clarifying that, in order to issue compliance schedules, states and tribes must first authorize compliance schedules in their WQS regulations.

Affected Entities and Estimated Economic Costs of Proposed Rulemaking

State and tribal governments responsible for administering or overseeing water quality programs may be directly affected by this rulemaking. As a result of this proposal, states and authorized tribes may need to consider and implement new provisions, or revise existing provisions, in their WQS.

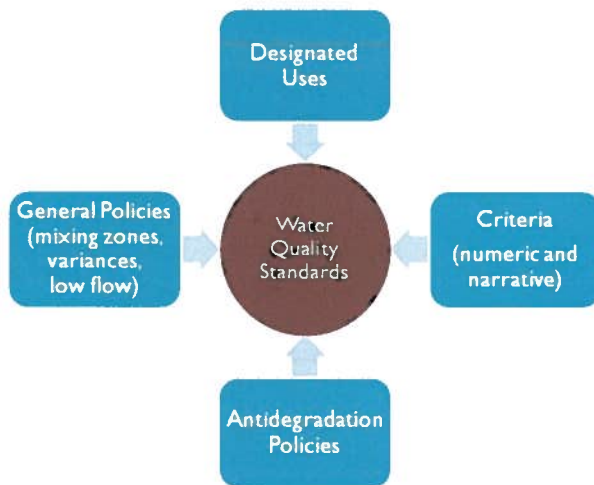
Entities such as industrial dischargers or publicly owned treatment works that discharge pollutants to waters of the United States may be indirectly affected by this rulemaking because WQS may be used in determining permit limits under the National Pollutant Discharge Elimination System or in implementing other Clean Water Act regulatory programs.

Total annual costs of this proposed rulemaking to states and tribes are estimated to be between \$4.8 million - \$7.4 million/year, which is well below the EPA's \$100 million threshold for regulatory significance. Annual burden to states and tribes resulting from this proposed rulemaking is estimated to be between 101,930 - 152,115 hours/year.

Benefits of the proposed rulemaking include improved clarification for states and tribes, other stakeholders, and the public in key areas that will allow them to better understand and make proper use of available CWA tools and flexibilities, while maintaining open and transparent public participation. Clear regulatory requirements and improved implementation has the potential to reduce burden and costs associated with unnecessary

litigation and inefficient use of administrative resources.

Other potential benefits include cost savings associated with reduced water quality restoration activities, increased public health, increased property values, protection of drinking and agricultural water supplies, reduced costs of reservoir dredging, and enhancement of the economic benefits of tourism and recreation.



Public Outreach Efforts

The EPA will accept public comments on the proposed rule for 90 days upon publication in the Federal Register [Docket identification No. EPA-HQ-OW-2010-0606].

The EPA plans to host two webinars and one public meeting during the 90-day public comment period. The sessions will provide a review of EPA's current regulation, a summary of the clarifications contained in the EPA proposed rule, and will allow time for questions from the public. Logistical information for each of the outreach efforts will be posted on EPA's website when they become available.

For More Information

Contact Janita Aguirre at (202) 566-1860 or WQSRegulatoryClarifications@epa.gov, or visit http://water.epa.gov/lawsregs/lawsguidance/wqs_index.cfm.