

Summary of Water Quality Standards Regulatory Clarifications Proposed Rule

The EPA has proposed targeted changes to the WQS regulation that aim to improve the regulation's effectiveness in restoring and maintaining the chemical, physical and biological integrity of the Nation's waters, and to clarify and simplify regulatory requirements.

Designated Uses

Proposed Revision: Amends §131.10(g) to provide that where a use specified in section 101(a)(2) of the Act or a subcategory of such a use is not attainable, the highest attainable use (HAU) and criteria to protect that use shall be adopted in its place. It also amends §131.10(g), (j) and (k) to be clear when a UAA is and is not needed.

HAU will be defined as "the aquatic life, wildlife, and/or recreation use that is found to be both closest to the uses specified in section 101(a)(2) of the Act and feasible to attain, as determined using best available data and information through a UAA defined in §131.3(g)."

Issue: WQS regulation allows states and tribes to remove unattainable uses, but does not clearly specify that attainable uses must be retained.

Goal: Ensure that states/tribes continue striving to meet the national goal of the CWA, even where it is determined to be unattainable at a particular time.

Preamble and rule also identifies: Examples of how a state may choose to articulate the HAU.

- (1) Use a sufficiently refined designated use structure that is already adopted into state regulation.
- (2) Revise the current designated use structure to include more refined uses and/or sub-categories of uses.
- (3) Designate a location-specific use and the criteria that protect such a use.

Requirements of Triennial Reviews

Proposed Revision: Amends §131.20(a) to clarify that where the EPA has published new or updated section 304(a) criteria recommendations, states/tribes shall re-examine their criteria to determine if any criteria should be revised to assure protection of designated uses.

Issue: States/tribes may retain criteria in their WQS that do not reflect updated science or fully protect designated uses, without considering the availability of new or updated section 304(a) recommendations. The current regulations are not clear about this expectation.

Goal: Ensure states and tribes update WQS when necessary by adding an explicit expectation for states/tribes to review both criteria and designated uses.

Administrator's Determination

Proposed Revision: Amends §131.22(b) to add a requirement that an Administrator's Determination must be signed by the Administrator and state it is a determination.

Issue: Public and stakeholder misinterpretation that Agency memoranda or documents that articulate areas where states' and tribes' WQS may need improvements are official CWA section 303(c)(4)(B) Administrator Determinations that obligate EPA to propose and promulgate federal WQS.

Goal: Allow EPA and states/tribes to communicate directly and specifically on areas where WQS improvements should be considered and establish a more transparent process for the Administrator to announce determinations made under section 303(c)(4)(B) of the Act.

The basic structure of the water quality standards regulation (40 CFR part 131) was last revised in November 1983. EPA added tribal provisions in 1991, "Alaska rule" provisions in 2000, and BEACH Act rule provisions in 2004.

At the 15-year point (July 1998), EPA issued a comprehensive advance notice of proposed rulemaking (ANPRM) and conducted an extensive dialogue with states and the public on over 130 discrete issues. The ANPRM led to some program redirections, but EPA did not revise the regulation itself at that time.

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Antidegradation Implementation

Proposed Revision: Amends several provisions of §131.12 to specify that state/tribal methods must ensure:

- (1) high quality waters are identified on a parameter-by-parameter approach or on a waterbody-by-waterbody approach that does not exclude any waterbody from Tier 2 protection solely because not all of the uses specified in CWA section 101(a)(2) are attained; and
- (2) decisions are made after conducting an alternatives analysis to identify the practicable alternative that either prevents or minimizes degradation and implementing one of those alternatives.

EPA also requests comment on whether the EPA should require the adoption of statewide antidegradation implementation methods as WQS.

Issue: High quality waters are not being adequately maintained and protected.

Goal: Enhance state and tribal implementation of antidegradation by strengthening the transparency and clarity of EPA's expectations and the states'/tribes' intentions.

Preamble also identifies: A list of minimum elements to be included in an implementation method in order for those methods to be consistent with EPA's regulations.

WQS Variances

Proposed Revision: Adds §131.14 to establish regulatory guidelines for WQS variances and WQS variance renewals, including that a WQS variance submission must specify:

- (1) the pollutant(s), the permittee(s), and/or the waterbody or water by segments to which the WQS variance applies;
- (2) numeric interim requirements that apply during the WQS variance for CWA section 402 NPDES permitting and section 401 certification;
- (3) an expiration date not to exceed 10 years; and
- (4) a §131.10(g) factor to justify why and for how long a WQS variance is necessary.

A WQS variance will be defined as "a time-limited use and criterion for a specified pollutant(s), permittee(s), and/or waterbody or waterbody segment(s) that reflect the highest attainable condition during the specified time period."

Issue: Current regulation does not provide guidelines or boundaries on WQS variances; thus, WQS variances are not always used effectively to drive water quality progress.

Goal: Provide regulatory guidelines to encourage appropriate use of WQS variances and to allow states to achieve water quality improvements before resorting to a use change.

Provisions Authorizing the Use of Permit-Based Compliance Schedules

Proposed Revision: Adds §131.15 to clarify that a permitting authority may only issue compliance schedules for WQBELs in NPDES permits if the state/tribe has authorized use of such compliance schedules in their WQS or implementing regulations. It also specifies that such provisions must be approved as WQS under section 303(c) of the Act.

Issue: Despite the EPA Administrator's decision in *In the Matter of Star-Kist Caribe, Inc (1990)* (that compliance schedules may only be issued if the state/tribe has authorized them in their WQS or implementing regulations), compliance schedules are often included in permits without being authorized.

Goal: Clearly articulate in regulation what must be done for states/tribes to be able to utilize permit compliance schedules, consistent with the EPA Administrator's decision in *In the Matter of Star-Kist Caribe, Inc.*

The proposed rule was published in the Federal Register on 09/04/2013. The EPA will receive public comments on the proposed rule for 90 days, until 12/3/2013. During the 90-day public comment period, the EPA plans to hold 2 webinars and one public meeting.