

Summary of WQS Regulatory Revisions Final Rule

EPA finalized updates to the federal water quality standards (WQS) regulation at 40 CFR Part 131 that interprets part of the Clean Water Act (CWA). The updates result in a better-defined pathway for states, territories, and authorized tribes to improve water quality and protect high quality waters through enhancements in the regulation's effectiveness, WQS transparency, and opportunities for meaningful public engagement at the state, territorial, tribal and local levels.

EPA initially proposed revisions to the WQS regulation on September 4, 2013.

Designated Uses

Final Revision: Amends §131.10(g) to provide that where a state/tribe removes or revises a use specified in CWA section 101(a)(2) or a subcategory of such a use that is not attainable, the highest attainable use (HAU) shall be adopted in its place.

HAU is defined as “the modified aquatic life, wildlife, or recreation use that is both closest to the uses specified in section 101(a)(2) of the Act and attainable, based on the evaluation of the factor(s) in §131.10(g) that preclude(s) attainment of the use and any other information or analyses that were used to evaluate attainability. There is no required highest attainable use where the State demonstrates the relevant use specified in section 101(a)(2) of the Act and sub-categories of such a use are not attainable.”

The final rule also amends §131.10(g), §131.10(j), and §131.10(k) to clarify when a use attainability analysis (UAA) is and is not needed. The final rule defines the term “non-101(a)(2) use” and amends §131.10(a) to clarify that for such uses while a UAA is not required, the state/tribe must submit documentation justifying how its consideration of the use and value of water for those uses listed in §131.10(a) appropriately supports the state/tribal action.

Goal: Provide clear requirements and ensures appropriate WQS are in place to help restore and maintain robust aquatic ecosystems and promote resilience to emerging water quality stressors.

Triennial Reviews

Final Revision: Amends §131.20(a) to clarify the “applicable water quality standards” that must be reviewed triennially. The final rule also requires that if a state or tribe chooses not to adopt new or revised criteria for any parameters for which EPA has published new or updated criteria recommendations under CWA section 304(a), they must explain their decision when reporting the results of their triennial review to EPA under CWA section 303(c)(1) and 40 CFR 131.20(c).

Goal: Ensure public transparency and clarify existing requirements, so that states and tribes update WQS when necessary and consider the latest science as reflected in the CWA section 304(a) criteria recommendations.

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.

The requirements have provided a strong foundation for water quality-based controls, including water quality assessments, impaired waters lists and total maximum daily loads, under CWA section 303(d), as well as for water quality-based effluent limits in discharge permits under CWA section 402.

Administrator’s Determination

Final Revision: Amends §131.22(b) to add a requirement that an Administrator’s Determination must be signed by the Administrator (or duly authorized delegate) and include a statement that the document is an Administrator’s determination for purposes of section 303(c)(4)(B) of the Act.

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.

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Antidegradation

Final Revision: Amends provisions of §131.12 to specify that states/tribes:

- (1) may identify high quality waters on either a parameter-by-parameter approach, or on a waterbody-by-waterbody approach that does not exclude water bodies from Tier 2 protection solely because water quality does not exceed levels necessary to support all of the CWA section 101(a)(2) uses. When using the water body approach, states/tribes must involve the public in any decisions pertaining to when to provide Tier 2 protection, and the factors considered in such decisions.
- (2) must evaluate a range of practicable alternatives that would prevent or lessen the degradation associated with the proposed activity. When the analysis of alternatives identifies one or more practicable alternatives, the state/tribe must only find that the lowering is necessary if one of those alternatives is selected for implementation.
- (3) must provide an opportunity for public involvement during the development and any subsequent revisions of antidegradation implementation methods (whether or not those methods are adopted into rule), and to make the methods available to the public.

Goal: Promote public transparency and enhance antidegradation implementation through clearer requirements and expectations.

WQS Variances

Final Revision: Adds §131.14 to provide a comprehensive regulatory structure for and explicitly authorize the use of WQS variances. The final rule clarifies:

- (1) that a WQS variance is a water quality standard subject to EPA review and approval or disapproval.
- (2) how WQS variances relate to other CWA programs and specifies the information that the state/tribe must adopt in any WQS variance, and/or the water body or waterbody segments to which the WQS variance applies, and a quantifiable expression of the highest attainable condition.
- (3) that states/tribes must submit to EPA supporting documentation that demonstrates why the WQS variance is needed and justifies the term and interim requirements.
- (4) that states/tribes must reevaluate WQS variances longer than five years on an established schedule with public involvement.

Goal: Promote the appropriate use of WQS variances when applicable WQS are not attainable in the near-term but may be attainable in the future, and provide regulatory certainty to states, tribes, the regulated community, stakeholders, and the public in making progress toward attaining designated uses and criteria that protect such uses.

Provisions Authorizing the Use of Permit-Based Compliance Schedules

Final Revision: Adds §131.15 to clarify that a permitting authority may only issue compliance schedules for water quality-based effluent limitations in National Pollutant Discharge Elimination System permits if the state or tribe has authorized the use of such compliance schedules in their WQS or implementing regulations. The final rule requires that such authorizing provisions must be approved by EPA as WQS under CWA section 303(c).

Goal: Clearly articulate in regulation what must be done for states and tribes to be able to utilize permit compliance schedules, consistent with the CWA and the EPA Administrator's decision in *In the Matter of Star-Kist Caribe, Inc.*, and ensure public transparency on state/tribal decisions to allow permit compliance schedules.

The final rule also includes other changes to correct mistakes and inconsistencies in Part 131.

For more information and to access supplemental documents and the docket for this rulemaking, see EPA's WQS website at: http://water.epa.gov/lawsregs/lawsguidance/wqs_index.cfm.