

**Information Collection Request
for
Treatment of Indian Tribes in a Similar Manner as States for Purposes of
Section 303(d) of the Clean Water Act
(Proposed Rule)**

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1. IDENTIFICATION OF THE INFORMATION COLLECTION

1.1 TITLE OF THE INFORMATION COLLECTION

The title of this Information Collection Request (ICR) is *Treatment of Indian Tribes in a Similar Manner as States for Purposes of Section 303(d) of the Clean Water Act (Proposed Rule)*.

1.2 SHORT CHARACTERIZATION/ABSTRACT

The U.S. Environmental Protection Agency (EPA) developed this ICR to evaluate how the proposed rule, *Treatment of Indian Tribes in a Similar Manner as States for Purposes of Section 303(d) of the Clean Water Act*, would affect the paperwork burden on tribal applicants.

In section 518 of the Clean Water Act (CWA), Congress authorized EPA to treat eligible federally recognized Indian tribes in a manner similar as states for purposes of administering section 303 and certain other provisions of the CWA, and directed the agency to promulgate regulations effectuating this authorization. EPA has issued regulations establishing a process for federally recognized tribes to obtain treatment in a similar manner as states (TAS) for several provisions of the CWA; 50 tribes, for example, have obtained TAS authority to issue water quality standards under CWA section 303(c). EPA, however, has not yet promulgated regulations expressly establishing a process for such tribes to obtain TAS authority to administer the water quality restoration provisions of CWA section 303(d), including issuing lists of impaired waters and developing total maximum daily loads (TMDLs) under CWA section 303(d), as states routinely do. EPA is now proposing to remedy this gap. By establishing regulatory procedures for eligible tribes to obtain TAS for the CWA Section 303(d) Impaired Water Listing and TMDL Program (or “303(d) Program”), the proposed rule would enable eligible tribes to obtain authority to identify impaired waters on their reservations and to establish TMDLs, which serve as plans for attaining and maintaining applicable water quality standards (WQS). The proposal is comparable to similar regulations that EPA issued in the 1990s for the CWA Section 303(c) WQS and CWA Section 402 and 404 Permitting Programs, and includes features designed to minimize paperwork and unnecessary reviews.

Section 303(d) of the CWA requires states, territories, and authorized tribes to identify and rank waters that do not meet EPA-approved/EPA promulgated WQS (referred to as “applicable WQS” from here forward in this document) following the implementation of technology-based controls. Under section 303(d), states, territories, and authorized tribes are also required to establish TMDLs for listed waters not meeting standards as a result of pollutant discharges. A TMDL is the calculation and allocation to point and nonpoint sources of the maximum amount of a pollutant that a water body can receive and still meet applicable WQS, with a margin of safety.

EPA reviews and approve or disapproves state and territory section 303(d) lists and TMDLs from 56 respondents (the 50 states, the District of Columbia, and the five territories). Section 303(d) specifically requires states to develop lists and TMDLs “from time to time,” and EPA to review and approve or disapprove the lists and TMDLs.

State and territory respondent burden for implementing the 303(d) Program is covered under ICR 1560.10 (OMB Control Number 2040-0071), National Water Quality Inventory Reports (Renewal).¹ This ICR, “*Treatment of Indian Tribes in a Similar Manner as States for Purposes of Section 303(d) of the Clean Water Act (Proposed Rule)*,” provides estimates of burden and costs to Indian tribes (1) to apply for TAS for purposes of the CWA Section 303(d) Impaired Water Listing and TMDL Program and (2) to implement the 303(d) Program. This ICR also includes corresponding EPA burden and cost estimates for reviewing the tribal applications, section 303(d) lists, and TMDLs.

The total estimated burden could overstate actual burden because (a) EPA used a liberal estimate of the number of tribal applications to ensure that the ICR does not underestimate tribal burden and (b) EPA used estimates based upon state and territory burden to implement the 303(d) Program, and a reservation’s area may be considerably smaller (with fewer river miles and lake acres) than a state’s or territory’s area for implementing the 303(d) Program.

Because EPA has assumed that all administrative costs and burden associated with the rule are information collection burden, EPA has not conducted a separate Economic Analysis.

In an upcoming renewal cycle, this ICR may be merged with ICR 1560.10, National Water Quality Inventory Reports (Renewal).² ICR 1560.10 addresses state and territory identification, ranking, and reporting of waters that do not meet applicable WQS and establishment of TMDLs.

2. NEED FOR AND USE OF THE COLLECTION

2.1 NEED AND AUTHORITY FOR THE COLLECTION

In 1987, through the Water Quality Act (P. L. 100-4), Congress made substantial additions to the CWA. The Water Quality Act added section 518(e), which requires EPA to promulgate regulations specifying how Indian tribes would qualify to administer certain specified CWA programs. EPA published such regulations for CWA regulatory programs from 1991 through 1994 in 40 CFR sections 131.4(c), 131.8, 123.31-34, 223.60-62, and related sections. This proposed rule, *Treatment of Indian Tribes in a Similar Manner as States for Purposes of Section 303(d) of the Clean Water Act*, once finalized, would satisfy the requirement set forth in CWA section 518(e) to promulgate regulations specifying how Indian tribes would qualify to administer the 303(d) Program.

The CWA does not require tribes to administer regulatory programs. However, tribes seeking to be authorized must apply for and be found eligible for TAS through the procedures described in the regulations. The information a tribe submits represents a collection of

¹ EPA ICR No. 1560.10 is located at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201112-2040-007. A draft renewal ICR number 1560.11 is available at <http://www.gpo.gov/fdsys/pkg/FR-2015-07-07/pdf/2015-16638.pdf>.

² EPA ICR No. 1560.10 is located at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201112-2040-007.

information that is necessary for EPA to fulfill the Agency's responsibilities under CWA section 518(e) in a reasonable and timely manner.

The statute and existing regulations specify four criteria for an Indian tribe to qualify to administer a CWA regulatory program: (a) the tribe must be federally recognized, (b) the tribe must have a governing body carrying out substantial governmental duties and powers, (c) the program must pertain to water resources within the borders of an Indian reservation and (d) the tribe must be reasonably expected to be capable of carrying out the functions to be exercised consistent with the terms and purposes of the CWA and all applicable regulations. Further information is summarized in section 4.2.

As described in ICR 1560.10, National Water Quality Inventory Reports (Renewal),³ section 303(d) of the CWA establishes the TMDL process to address waters where required controls are inadequate to achieve applicable WQS. States, territories, and authorized tribes must identify waters that do not or are not expected to meet applicable WQS solely through the implementation of technology based controls. These waters are referred to as water-quality limited or impaired waters.

- “(d)(1)(A) Each State shall identify those waters within its boundaries for which the effluent limitations required by section 301(b)(1)(A) and section 301(b)(1)(B) are not stringent enough to implement any water quality standard applicable to such waters. The State shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.
- (B) Each State shall identify those waters or parts thereof within its boundaries for which controls on thermal discharges under section 301 are not stringent enough to assure protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife.
- (C) Each State shall establish for the waters identified in paragraph (1)(A) of this subsection, and in accordance with the priority ranking, the total maximum daily load, for those pollutants which the Administrator identifies under section 304(a)(2) as suitable for calculation. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.
- (D) Each State shall estimate for the waters identified in paragraph (1)(B) of this subsection the total maximum daily thermal load required to assure protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife...”

Section 303(d)(2) requires states, territories, and authorized tribes to submit the lists of water-quality limited waters and associated TMDLs to the EPA “from time to time.”

³ EPA ICR No. 1560.10 is located at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201112-2040-007.

“(2) Each State shall submit to the Administrator, from time to time, with the first submission not later than one hundred and eighty days after the date of publication of the first identification of pollutants under section 304(a)(2)(D), for his approval the waters identified and the loads established under paragraphs (1)(A), (1)(B), (1)(C), and (1)(D) of this subsection...”

For purposes of listing impaired waters under section 303(d), EPA’s Water Quality Planning and Management regulation (40 CFR 130) defines “from time to time” as a biennial reporting requirement for submitting prioritized lists of water-quality limited waters still requiring TMDLs (note that the regulatory provision pertains exclusively to 303(d) lists of waters requiring TMDLs and does not require biennial submittal of TMDLs).

Like states, authorized tribes would be required to submit their "303(d) lists" to EPA for approval every two years on April 1st. As indicated in section 130.16(c)(3) of the proposed rule, a tribe gaining TAS status would be provided at least 24 months to submit its first impaired waters list to EPA. The 24-months would begin to run on (1) the date the tribe’s TAS application for 303(d) is approved or (2) the date applicable WQS for the tribe’s waters are effective, whichever comes later.

EPA encourages tribes, when submitting their section 303(d) lists, to also submit their section 106 assessment reports, as appropriate. If a tribe’s CWA section 106 grant work plan includes ambient water quality monitoring activities, the tribe is also required to develop an assessment report pursuant to the CWA section 106 grant reporting requirements.⁴ EPA encourages tribes that obtain TAS for the 303(d) Program and that also develop CWA section 106 assessment reports to combine their CWA section 303(d) impaired waters list with their CWA section 106 assessment report, and submit the combined report electronically through the Assessment TMDL Tracking and Implementation System (ATTAINS).⁵ In this way such tribes could create a combined CWA 303(d)/106 report that is similar to a state’s CWA 303(d)/305(b)⁶ “Integrated Report.”⁷

Under the CWA, each state and authorized tribe must, from time to time, develop TMDLs for pollutants causing impairments in all the waters on its 303(d) list.⁸ States and authorized tribes set priorities for developing TMDLs for their impaired and listed waters.

TMDLs must be established “at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any

⁴ See *Final Guidance on Awards of Grants to Indian Tribes under Section 106 of the Clean Water Act* (http://water.epa.gov/grants_funding/cwsrf/upload/2006_10_20_cwfinance_final-tribal-guidance.pdf) at page 8-1.

⁵ See “Water Quality Assessment and Total Maximum Daily Loads Information,” available at <http://www.epa.gov/waters/ir/>.

⁶ CWA section 305(b) requires states to provide every two years an assessment of the quality of all their waters. EPA explicitly exempted tribes from the section 305(b) reporting requirement. See 40 CFR 130.4(a); 54 FR 14354, 14357 (April 11, 1989).

⁷ See *Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act*, July 29, 2005, (available at <http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/upload/2006irg-report.pdf>) for more information on the Integrated Report.

⁸ CWA sections 303(d)(1)(C) and 303(d)(2).

lack of knowledge concerning the relationship between effluent limitations and water quality.”⁹ Calculations to establish TMDLs must be subject to public review.¹⁰ Once established, the state or authorized tribe submits the TMDL to EPA for review.

2.2 PRACTICAL UTILITY/USERS OF THE DATA

EPA would use the information supplied in an application by a tribe interested in TAS for the CWA Section 303(d) Impaired Water Listing and TMDL Program to determine whether it qualifies to administer the 303(d) Program. EPA must assess the tribe’s information to determine whether the tribe meets the requirements specified in section 518(e) of the CWA and EPA’s implementing regulations described in section 2.1 above and under development with this proposed rule.

If these information collection activities were not carried out, interested and otherwise qualified tribes would be unable to administer the CWA Section 303(d) Impaired Water Listing and TMDL Program. This would not be consistent with the CWA or EPA and federal Indian policy.

The action is likely to increase the availability of information to indigenous populations as interested tribes obtain TAS for the CWA Section 303(d) Impaired Water Listing and TMDL Program and begin implementing the 303(d) Program. In short, tribes with TAS assume *the primary role* in deciding (1) what waters on their reservations are impaired and in need of restoration (and establish priority ranking for TMDL development for those waters) and (2) what the TMDLs and pollutant source allocations for those waters should look like.

The Assessment and Watershed Protection Divisions (AWPD), along with other divisions within EPA, would utilize the tribal data and information generated through implementation of the 303(d) Program (similar to entities described in ICR 1560.10, National Water Quality Inventory Reports (Renewal)).¹¹ EPA Regional permit enforcement branches have used the data to verify that state National Pollutant Discharge Elimination System permits address causes and sources of pollution in degraded waters. Others, such as the Great Lakes Task Force, can use the Assessment, TMDL Tracking and Implementation System (ATTAINS) database to summarize water pollution information by interstate and interregional hydrological units.¹² Other agencies, including the National Oceanic and Atmospheric Administration (NOAA) and the US Department of Agriculture, have used ATTAINS to summarize the extent of water quality problems in coastal water and the national extent of watershed impaired by agricultural nonpoint sources. Also, the respondents use ATTAINS and other assessment databases in their water quality management programs to identify problem areas, track progress in pollution control, and to set priorities.

AWPD would use the information submitted under CWA section 303(d) to track tribal

⁹ CWA 303(d)(1)(C).

¹⁰ 40 CFR 130.7(c)(1)(ii).

¹¹ EPA ICR No. 1560.10 is located at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201112-2040-007.

¹² See “Water Quality Assessment and Total Maximum Daily Loads Information,” available at <http://www.epa.gov/waters/ir/>.

progress in preparing TMDLs for impaired waters still requiring TMDLs. Consistent with the requirements of CWA section 303(d), EPA would review the section 303(d) lists submitted by the tribes to determine whether they comply with the requirements of the statute and EPA's regulations and reflect an accurate accounting of waters not meeting applicable WQS. Also as required by CWA section 303(d), EPA reviews TMDLs developed and submitted by the states to determine their technical sufficiency and whether they otherwise comply with CWA section 303(d) and EPA regulations.

3. NON-DUPLICATION, CONSULTATIONS, AND OTHER COLLECTION CRITERIA

3.1 NON-DUPLICATION

Under EPA's regulations, a tribe must address TAS application requirements for each program it wishes to administer. To avoid requiring tribes to submit duplicate information, EPA's regulations specify that a tribe need only provide the required information that has not been submitted in a previous application. For example, in evaluating whether a tribe qualifies to administer the CWA Section 303(d) Impaired Water Listing and TMDL Program, EPA does not require a tribe to resubmit information from a previously-approved TAS application for the CWA Section 303(c) Water Quality Standards Program.

The CWA Section 303(d) impaired water lists would be unique tribe-by-tribe accounting and ranking of waters not meeting applicable WQS. Under CWA section 303(d), states, territories, and authorized tribes submit lists to EPA for review and approval/disapproval. TMDLs are a unique and valuable tool that quantifies the maximum amount of a pollutant that a water body can absorb and still meet applicable WQS. They specify the amount that pollutant loadings need to be reduced for the water to attain such WQS and allocate pollutant load reductions among sources for a watershed. Section 303(d) would also require EPA to review and approve or disapprove tribally-submitted TMDLs.

3.2 PUBLIC NOTICE REQUIRED PRIOR TO ICR SUBMISSION TO OMB

In compliance with the 1995 Paperwork Reduction Act, EPA is soliciting comments on this draft ICR for a 30-day period concurrently with the comment period on the proposed rule, *Treatment of Indian Tribes in a Similar Manner as States for Purposes of Section 303(d) of the Clean Water Act*. Before finalizing the rule, EPA will submit the revised ICR to the Office of Management and Budget (OMB).

3.3 CONSULTATIONS

In developing the proposed rule, EPA made a substantial effort to involve key stakeholders. In multiple meetings, EPA consulted and coordinated with tribes, states, and organizations representing tribes and states.

To help develop the burden estimates for this ICR, EPA worked with relevant information gathered for a related draft ICR, *Revised Interpretation of Clean Water Act Tribal Provision (Proposed Rule)* (ICR number 2515.01) and information within ICR 1560.10, National Water Quality Inventory Reports (Renewal)).¹³ In preparing draft ICR number 2515.01, EPA consulted with eight tribes that have been approved for TAS to administer the Water Quality Standards Program.¹⁴ The information requested included the number of tribal staff hours spent on the application process, and the amount of tribal funds spent on contractor support for the process. The tribes provided resource information in interviews conducted by EPA staff members in the respective Regional offices.

EPA typically develops an integrated reporting memo to help states, territories, and authorized tribes prepare for biennial reporting to EPA on the conditions of waters within their boundaries.¹⁵ For each integrated reporting cycle, EPA generally distributes the draft integrated reporting guidance to all respondents for comment before issuing final guidance. EPA may solicit comment on the draft guidance from other federal agencies. EPA may reach out to states, territories, and authorized tribes occasionally to solicit their input on the effectiveness of the 303(d) Program in meeting the applicable WQS. This information would facilitate the evaluation of the 303(d) Program to identify gaps and potential efficiencies that can be gained.

3.4 EFFECTS OF LESS FREQUENT COLLECTION

Application by Indian tribes to obtain TAS to administer the CWA Section 303(d) Impaired Water Listing and TMDL Program is a one-time collection of information per respondent, initiated voluntarily by interested tribes.

The biennial frequency of the CWA section 303(d) list collection is mandated by 40 CFR 130.7(d)(1). Less frequent collection may result in a declining quality of state, territory, tribal, and EPA water quality analyses because they would be based on outdated information. Each state, territory, or authorized tribe must, from time to time, develop TMDLs for pollutants causing impairments in all waters on its 303(d) list; this “from time to time” frequency is mandated by the CWA.¹⁶

3.5 GENERAL GUIDELINES

EPA reviewed this draft ICR for compliance with OMB’s information collection guidelines in 5 CFR 1320.5(d)(2) and concluded it is in compliance.

¹³ EPA ICR No. 1560.10 is located at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201112-2040-007.

¹⁴ The tribes and the year in which their TAS approval occurred are: Hoopa Valley Tribe (CA) (1996), Hualapai Indian Tribe (AZ) (2004), Ute Mountain Ute (CO) (2005), Navajo Nation (AZ, NM, UT) (2006), North Cheyenne (MT) (2006), Lac du Flambeau Band of Chippewa (WI) (2008), Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation (WI) (2009), Blackfeet Tribe (MT) (2012).

¹⁵ See <http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/guidance.cfm>. For states and territories, the single document that integrates the reporting requirements of CWA sections 303(d), 305(b), and 314 is called the Integrated Report; hence, EPA’s memo is called integrated reporting (IR) guidance.

¹⁶ CWA sections 303(d)(1)(C) and 303(d)(2).

3.6 CONFIDENTIALITY AND SENSITIVE QUESTIONS

Tribal program applications under this ICR would contain no confidential or sensitive information; tribal respondents would be working entirely in a public forum.

4. THE RESPONDENTS AND THE INFORMATION REQUESTED

4.1 RESPONDENTS/NAICS CODES

The following describes the universe of potential respondents. The number of annual respondents is estimated in section 6.

Any federally recognized tribe with a reservation can apply to administer the CWA Section 303(d) Impaired Water Listing and TMDL Program. There are over 300 tribes with reservations.

The respondents affected by this collection activity are in NAICS code 92411 “Administration of Air and Water Resources and Solid Waste Management Programs.”

4.2 INFORMATION REQUESTED

This *Treatment of Indian Tribes in a Similar Manner as States for Purposes of Section 303(d) of the Clean Water Act* proposed rule to clarify the process for tribes to obtain TAS authority for the CWA Section 303(d) Impaired Water Listing and TMDL Program specifies the information a tribe must provide in its application to administer the CWA Section 303(d) Program. The application would include the following information, as described in 130.16 (a) & (b) of the proposed rule:

- (1) A statement that the tribe is recognized by the Secretary of the Interior.
- (2) A descriptive statement demonstrating that the tribal governing body is currently carrying out substantial governmental duties and powers over a defined area.
- (3) A descriptive statement of the tribe's authority to regulate water quality.
- (4) A narrative statement describing the capability of the Indian tribe to administer an effective CWA Section 303(d) Impaired Water Listing and TMDL Program.
- (5) Additional documentation required by the Regional Administrator that, in the judgment of the Regional Administrator, is necessary to support a tribal application.
- (6) Where the tribe has previously qualified for eligibility for TAS under another EPA-administered program, the tribe need only provide the required information that has not been submitted in a previous application.

Approvals for tribes to administer a CWA Section 303(d) Impaired Water Listing and TMDL Program would be valid unless rescinded. Therefore, EPA anticipates an interested tribe would typically need to apply only once for TAS for the 303(d) Program. Where a tribe has previously qualified for TAS under another program, the tribe need only provide the required information that has not been submitted in a previous application.

As described in section 2.1 of this ICR and in accordance with CWA section 303(d)(1), an authorized tribe would submit to EPA, for review and approval/disapproval, a list of waters not attaining applicable WQS. The statute requires authorized tribes to establish a priority ranking for these waters taking into account the severity of the pollution problems and the designated uses of each water. In conformance with the CWA, authorized tribes would apply individual approaches to assign priority to the order in which TMDLs will be established for each identified water.

In accordance with CWA section 303(d)(2), an authorized tribe would establish TMDLs for waters not meeting applicable WQS as a result of pollutant discharges. A TMDL is a written, quantitative assessment of water quality problems and contributing pollutant sources. It specifies the amount that pollutant loadings need to be reduced for the water to attain applicable WQS and allocates pollutant load reductions among sources in a watershed. CWA section 303(d) requires authorized tribes to submit TMDLs to EPA for review and approval/disapproval action. Occasionally EPA might also seek additional information from authorized tribes to evaluate how well the 303(d) Program is working.

4.3 RESPONDENT ACTIVITIES

Respondent activities relevant to applying for TAS for the CWA Section 303(d) Impaired Water Listing and TMDL Program include:

- Reading the statutory and regulatory requirements and EPA guidance, obtaining any necessary background understanding, obtaining clarifications from EPA.
- Assembling information required for the application, as necessary, including federal recognition documentation; descriptions of form and functions of tribal government; documentation of the tribe's authority to carry out functions; maps and legal description of the tribal reservation; identification of surface waters to be regulated; description of the tribe's previous management experience; descriptions of existing tribal environmental or public health programs; identification of tribal entities that exercise the tribe's executive, legislative, and judicial functions; and a description of the tribal agency that will assume responsibility for the program.
- Developing any of the above materials that do not already exist, or revising existing materials, as necessary, for inclusion in the application.
- Generating any needed data, including conducting water quality monitoring, and conducting scientific analyses of the data, to assist as necessary with the application.
- Analyzing the assembled information, and analyzing any issues identified by the tribe or EPA.

- Developing, as necessary, a statement by the tribal legal counsel discussing the legal basis for the tribe's assertion of authority.
- Developing, as necessary, a description of the technical and administrative capabilities of the staff to administer the program.
- Developing, if necessary, a plan that describes how the tribe will acquire needed expertise, and how the tribe will obtain the funds required to develop needed expertise.
- Assembling and writing the application and transmittal documents.
- Meeting with EPA as needed to discuss plans, progress and any issues in developing the application.
- Responding to comments from EPA or others.
- Transmitting the draft and final application to EPA.
- Establishing a permanent file of the TAS application that can be referenced when amending the application or applying for other EPA programs at a later date.

Respondent activities relevant to implementing the CWA Section 303(d) Impaired Water Listing and TMDL Program include:

- Reviewing the CWA, regulations and guidance for CWA section 303(d).
- Developing, reviewing, and updating 303(d) assessment methodology.
- Preparing the 303(d) list. Specific activities include identifying waters (including wetlands and coastal and marine waters), establishing priorities, and determining schedules and targets.
- Conducting public participation required for the 303(d) list. Specific activities include issuing public notice(s) and developing responses to public comments on the list, priorities, and schedules.
- Submitting the 303(d) list to EPA and responding to EPA comments.
- Occasionally assisting EPA with evaluating program management and its effectiveness in attaining applicable WQS.
- Conducting watershed characterization, compiling available information, creating database or electronic files, reviewing available information, and selecting the technical approach.
- Modeling and analyzing data. Selecting, setting up, and calibrating the final model.
- Conducting allocation analysis. Evaluating allocation scenarios and selecting final allocation.
- Developing TMDL document for public review. Preparing technical report documenting analysis and assumptions. Documenting the TMDL (i.e., waste load allocation (WLA), load allocation (LA), loading capacity, margin of safety, seasonality). Preparing administrative record.
- Conducting public outreach with public participation. Holding public meeting(s) and disseminating information prior to TMDL submittal.

- Tracking, planning, developing legal support, etc. Completing miscellaneous tasks needed to support TMDL development.

These activities are generally carried out by tribal staff members, with support in some instances from contractors and consultants hired by the tribe.

5. THE INFORMATION COLLECTED – AGENCY ACTIVITIES, COLLECTION METHODOLOGY, AND INFORMATION MANAGEMENT

5.1 AGENCY ACTIVITIES

After a tribe submits an application to administer the CWA Section 303(d) Impaired Water Listing and TMDL Program, EPA would review the application and use the submitted information to determine whether the tribe meets the criteria under CWA section 518(e) and EPA’s regulations to administer the 303(d) Program (proposed in the *Treatment of Indian Tribes in a Similar Manner as States for Purposes of Section 303(d) of the Clean Water Act (proposed rule)*). According to the proposed rule, EPA would also provide an appropriate opportunity for “appropriate governmental entities” (*i.e.*, states, tribes and other federal entities located contiguous to the reservation of the applicant tribe) to comment on the applicant tribe’s assertion of authority and, among other things, inform EPA of any special circumstances that they believe could affect a tribe’s ability to administer the 303(d) Program.

Once EPA receives a list or TMDL from an authorized tribe, it must either approve or disapprove that list or TMDL within thirty days.¹⁷ If EPA disapproves the list or TMDL, EPA must establish a replacement list or TMDL within thirty days of disapproval.¹⁸ Additional Agency activities include preparing 303(d) guidance and providing technical assistance to authorized tribes for 303(d) listing.

5.2 COLLECTION METHODOLOGY AND MANAGEMENT

An interested tribe submits its application in hardcopy and/or electronic form to the EPA Regional office. EPA has delegated to Regions the responsibility to review and approve tribal TAS eligibility; EPA headquarters would concur on the first application submitted to each Region. Regional office staff members work closely with the tribes in this process. EPA headquarters staff members provide support to the Regional offices in the reviews.

Authorized tribes would submit the CWA section 303(d) lists and priority rankings to the EPA Regions. The Regions would review the submissions and then issue a decision document approving or disapproving the tribal list. If EPA were to disapprove a tribal list, EPA would need to issue a public notice identifying the waters EPA is proposing to add to the tribal list. Tribes would need to submit each completed TMDL to the appropriate EPA Region for review and action. If EPA were to disapprove the tribal submission, EPA would establish the TMDL for the tribe.

¹⁷ CWA section 303(d)(2).

¹⁸ 40 CFR § 130.7(d)(2).

5.3 SMALL ENTITY FLEXIBILITY

The reporting requirements discussed in this ICR do not place a burden on any small entities.

5.4 COLLECTION SCHEDULE

There are no scheduling requirements for Indian tribes to apply for authorization to administer the CWA Section 303(d) Impaired Water Listing and TMDL Program; however, as described in section 3.4, the frequency of the CWA section 303(d) list collection is biennial. A tribe gaining TAS status would be provided at least 24 months to submit its first section 303(d) list to EPA. The tribe's first impaired waters list would be due to EPA the next listing cycle due date that is at least 24 months from the later of (1) the date the tribe's TAS for 303(d) application is approved or (2) the date applicable WQS for the tribe's waters are effective. Subsequent section 303(d) lists would be due April 1st of even-numbered years (*e.g.*, April 1, 2018, 2020, 2022). As described in section 3.4, each state, territory, or authorized tribe must, from time to time, develop TMDLs for pollutants causing impairments in all waters on its 303(d) list; this "from time to time" frequency is mandated by the CWA.¹⁹

6. ESTIMATING THE BURDEN AND COST OF THE COLLECTION

6.1 ESTIMATING RESPONDENT BURDEN

In order to develop the burden estimate in this section, EPA evaluated information for a related draft ICR, *Revised Interpretation of Clean Water Act Tribal Provisions (Proposed Rule)* (ICR number 2515.01). In preparing draft ICR 2515.01, EPA consulted with eight tribes that have been approved for TAS to administer the Water Quality Standards Program. The information requested included the number of tribal staff hours spent on the application process, and the amount of tribal funds spent on contractor support for the process. The eight tribes were contacted and interviewed through Regional EPA offices. EPA also worked with CWA Section 303(d) Program experts to estimate respondent burden information. EPA's methodology and results are described in the Appendix: Derivation of Burden Estimates.

EPA estimates that a typical tribe would expend 270 staff hours and \$11,000 on contractor costs to develop a section 303(d) TAS application. EPA staff estimate that there would be approximately 12 new tribal TAS applications for CWA regulatory programs per year. Thus, the burden comprises (12 tribes) * (270 hours/application) = 3,240 staff hours, and (12 tribes) * (\$11,000/application) = \$132,000 in contractor costs.

Note that this estimate of burden for 303(d) TAS application assumes that all TAS for 303(d) applications would be submitted by tribes already having TAS for the CWA Section 303(c) WQS Program; as such, the tribes would be able to rely on materials from previous

¹⁹ CWA sections 303(d)(1)(C) and 303(d)(2).

applications. The tribe would need to submit only material that had not been provided as part of the WQS TAS application process, thus alleviating the burden on the 303(d) application.

Based on estimates derived from ICR 1560.10, National Water Quality Inventory Reports (Renewal)²⁰, EPA estimates that an authorized tribe would expend 3,522 hours per respondent per year on 303(d) listing activities.²¹ EPA estimates that each respondent tribe would develop five TMDLs per year. This estimate is based upon average size (350 mi² land area) of an Indian reservation more closely resembling the average size (805 mi² land area) of a U.S. territory than the average size (4,826 mi² land area) of the five smallest states.²² EPA estimated that, on average, a U.S. territory has developed about five TMDLs per year over recent years.²³ Also, the State of Rhode Island, with a land area of about 1,034 mi² (roughly two to three times the land area of the average Indian reservation) developed an average of about ten TMDLs (twice the annual TMDL estimate per tribe) per year over recent years.

EPA estimates that a respondent tribe would expend (740 hours/TMDL) * (5 TMDLs) = 3,700 hours per year on TMDL development. The total annual burden for 303(d) Program implementation would be (3,522 hours + 3,700 hours =) 7,222 hours per respondent. Therefore, the total annual reporting burden for 12 authorized tribes with 303(d) responsibilities is estimated at (12 tribes) * (7,222 hours) = 86,664 hours.

Total respondent burden for application for TAS for 303(d) and implementation of the 303(d) Program for all respondents is estimated to be (3,240 hours + 86,664 hours =) 89,904 hours (see Table 1).

Note that the burden estimates within this section (6.1) are informed by the ICR 1560.10, and are based upon information available to EPA at this time. As the draft renewal 1560.11 states, “EPA is currently designing the Water Quality Framework, which is a new way of integrating EPA’s data and information systems to more effectively support reporting and tracking water quality protection and restoration actions. EPA expects that the reporting burden will decrease and will revise the ICR burden after the new information system is implemented

²⁰ EPA ICR No. 1560.10 is located at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201112-2040-007. A draft renewal ICR number 1560.11 is available at <http://www.gpo.gov/fdsys/pkg/FR-2015-07-07/pdf/2015-16638.pdf>. USEPA *The National Costs to Develop TMDLs (Draft Report)*, July 31, 2001, is also referenced within EPA ICR No. 1560.10, and available at <http://www.epa.gov/owow/tmdl/coststudy/costsupp1.pdf>.

²¹ The average annual burden for each respondent, under ICR 1560.10, for current 305(b) and 303(d) reporting is estimated to be 7,181 hours. The average annual burden for a respondent with 305(b) responsibility only is 3,659 hours. Thus, the burden for 303(d) listing only is estimated to be (7,181 hours - 3,659 hours =) 3,522 hours. EPA estimates 12 tribes would develop 60 TMDLs per year total.

²² Average size of an Indian reservation is estimated to be about (113,721.77 mi² /326 land areas=) 350 mi² based upon U.S. Census total land area of American Indian Reservations.

(http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_SF1_GCTPH1.US03&prodType=table) divided by the approximately 326 Indian land areas administered as federal Indian reservations (<http://www.bia.gov/FAQs/>). State and territory land area estimates were taken from U.S. Census data at <http://www.census.gov/compendia/statab/2012/tables/12s0358.pdf>.

²³ USEPA Assessment, TMDL Tracking and Implementation System, “Approved TMDLs by State,” available at http://iaspub.epa.gov/waters10/attains_nation_cy.control?p_report_type=T#content, August 7, 2015. The State of Rhode Island, with a land area of about 1,034 mi² (roughly two to three times the land area of the average Indian reservation) developed an average of about ten TMDLs per year over recent years.

for the 2018 reporting cycle.”²⁴ EPA expects to revise the ICR burden after the new information system is implemented for the 2018 reporting cycle. Also, these estimates assume an average of twelve tribes per year implementing the 303(d) Program; this scenario seems more likely to take place in the final year this ICR is in effect rather than the first year this ICR is in effect.²⁵ More data will be available to revise the ICR burden as EPA melds this ICR, *Treatment of Indian Tribes in a Similar Manner as States for Purposes of Section 303(d) of the Clean Water Act*, with the National Water Quality Inventory Reports ICR in a future renewal cycle.

6.2 ESTIMATING RESPONDENT COSTS

EPA estimated tribal employee costs using an average annual salary of \$61,950, with a mean hourly wage of \$ 28.41²⁶. Total benefits add 50% to the base wage rate on average, yielding a total hourly rate of \$42.62.²⁷

Cost per application = (270 hours/application) * (\$42.62/hour) + \$11,000 contractor costs = \$22,507. Total annual cost = (12 Tribes) * (\$22,507/application) = \$270,089 (see Table 1).

To estimate respondent costs for implementing the 303(d) Program, EPA referred to ICR 1560.10, National Water Quality Inventory Report and *The National Costs to Develop TMDLs (Draft Report)*²⁸ referenced therein (see Table 1).

Similar to section 6.1, burden cost estimates in section 6.2 are based upon information available to EPA at this time. More data will be available to revise the ICR burden as EPA melds this ICR, *Treatment of Indian Tribes in a Similar Manner as States for Purposes of Section 303(d) of the Clean Water Act*, with the National Water Quality Inventory Reports ICR in a future renewal cycle.²⁹

Table 1. Estimating Respondent Burden and Cost

Activity	Annual Average Burden Per Respondent	Annual Average Burden for All Respondents	Annual Average Cost Per Respondent	Annual Average Cost for All Respondents
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24 EPA ICR No. 1560.10 is located at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201112-2040-007. A draft renewal ICR number 1560.11 is available at <http://www.gpo.gov/fdsys/pkg/FR-2015-07-07/pdf/2015-16638.pdf>.

25 In the first and second year this ICR is in effect, implementation may be minimal as tribes are ramping up to apply for TAS and implement their CWA Section 303(d) Impaired Water Listing and TMDL Programs; thus, the estimate of an annual average of twelve tribes per year implementing the 303(d) Program is very conservative.

26 U.S. Bureau of Labor Statistics (BLS), “May 2014 National Industry-Specific Occupational Employment and Wage Estimates,” Local Government, excluding schools and hospitals, “Life, Physical & Social Science Sciences Occupations” occupation title and wage information is available at http://www.bls.gov/oes/current/naics4_999300.htm#19-0000.

27 BLS, “Table 3. State and local government, by major occupational and industry group” available at <http://www.bls.gov/news.release/ecec.t03.htm>.

28 *The National Costs to Develop TMDLs (Draft Report)*, July 31, 2001, is also referenced within EPA ICR No. 1560.10, and available at <http://www.epa.gov/owow/tmdl/coststudy/costsupp1.pdf>.

29 EPA ICR No. 1560.10 is located at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201112-2040-007. A draft renewal ICR number 1560.11 is available at <http://www.gpo.gov/fdsys/pkg/FR-2015-07-07/pdf/2015-16638.pdf>.

	(Hours)	(i.e., 12 Tribes) (Hours)		(i.e., 12 Tribes)
TAS for 303(d) Application Development	270	3,240	\$22,507	\$270,089
303(d) Listing	3,522	42,264	\$182,370 ³⁰	\$2,188,440
TMDL Development	3,700	44,400	\$143,895 ³¹	\$1,726,740
Total	7,492	86,664	\$348,772	\$4,185,269

6.3 ESTIMATING AGENCY BURDEN AND COST

Annual burden and costs to the federal government regarding TAS for CWA section 303(d) applications are estimated below. EPA employee costs were estimated assuming a GS-12 Step 1 federal employee earning \$60,877 per year. At 2,080 labor hours per year, the hourly rate is \$29.27. Overhead costs for federal employees are expected to be 60 percent, or \$17.56 per hour, yielding a total hourly rate of \$46.83.

EPA estimates that reviewing a typical application requires approximately 321 staff hours from Regional and headquarters offices. The Agency burden is estimated as (321 hours/application) * (\$46.83/hour) = \$15,032 per application reviewed. Thus the annual Agency burden is (12 tribes) * (321 hours/application) = 3,852 staff hours or (12 tribes) * (\$15,032/application) = \$180,389.

To estimate Agency burden and cost related to authorized tribes' implementation of the 303(d) Program, EPA referred to ICR 1560.10, National Water Quality Inventory Report.³² Note that these estimates are based upon information available to EPA at this time given the information within that ICR (see Table 1). As the draft renewal 1560.11 states, EPA is currently designing the Water Quality Framework, which is a new way of integrating EPA's data and information systems to more effectively support reporting and tracking water quality protection and restoration actions. EPA expects to revise the ICR burden after the new information system is implemented for the 2018 reporting cycle.³³

³⁰ The average annual cost to each respondent for current 305(b) and 303(d) reporting is estimated to be \$371,832. The average annual cost to a respondent with 305(b) responsibility only is \$189,462. Thus, the cost for 303(d) listing only is estimated to be (\$371,832-\$189,462) = \$182,370.

³¹ Level of effort is estimated to be 740 hours per TMDL and cost of \$28,779 per TMDL, representing mid-level efficiency and mid-range analysis, according to *The National Costs to Develop TMDLs (Draft Report)*, July 31, 2001, available at <http://www.epa.gov/owow/tmdl/coststudy/costsupp1.pdf>. Annual TMDL development cost per respondent tribe is estimated at (5 TMDLs) * (\$28,779 /TMDL) = \$143,895.

³² EPA ICR No. 1560.10 is located at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201112-2040-007. A draft renewal ICR number 1560.11 is available at <http://www.gpo.gov/fdsys/pkg/FR-2015-07-07/pdf/2015-16638.pdf>.

³³ Draft renewal ICR number 1560.11 is available at <http://www.gpo.gov/fdsys/pkg/FR-2015-07-07/pdf/2015-16638.pdf>.

The average annual Agency burden for 303(d) listing activities and reviewing TMDLs is estimated at (12 tribes) * (330.83 hours) = 3,970 hours at a cost of (12 tribes) * (\$18,285) = \$219,420.

Total annual Agency burden and cost for reviewing applications for TAS for CWA section 303(d), 303(d) listing activities, and reviewing TMDLs is estimated to be (3,852 hours + 3,970 hours=) 7,822 hours and (\$180,389 + \$219,420=) \$399,809.

Table 2. Estimating Agency Burden and Cost³⁴

303(d) Listing Activities	Annual Average Burden (Total for 59 Respondents) (Hours)	Annual Average Burden Per Respondent (Hours)	Annual Average Cost (at \$55.27 per hour)
Review annual electronic updates of tribe	800	13.56	\$749.42
Assist tribe with assessment database (ADB) indexing	3,328	56.41	\$3,117.60
Maintain national ADB database	1,040	17.63	\$974.25
Prepare 303(d) guidance	62	1.05	\$58.08
Provide technical assistance to tribes for 303(d)	236	4	\$221.08
Review draft 303(d) lists	236	4	\$221.08
Review final 303(d) lists and resolve disapprovals	500	8.47	\$468.39
Guidance on enhanced benefit cost analysis	2,117	35.88	\$1,983.16
Review TMDLs	11,200	189.83	\$10,491.93
Total Burden for Existing Program Activities	19,519	330.83	\$18,285.00

6.4 BURDEN STATEMENT

The annual public reporting and recordkeeping burden for this collection of information is estimated to average 270 hours plus \$11,000 in contract support per response for a typical applicant tribe.

³⁴ Excerpt and analysis from EPA ICR No. 1560.10, "National Water Quality Inventory Reports (Renewal)," pages 25-26, available at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201112-2040-007.

The annual burden for responsibilities related to implementation of the 303(d) Program is estimated to be 3,522 hours per respondent per year on 303(d) listing activities and about 3,700 hours per respondent per year on TMDL development (refer to section 6.1)³⁵ The total annual burden for 303(d) Program implementation would be (3,522 hours + 3,700 hours=) 7,222 hours per respondent.

Respondent reporting burden for a TAS for 303(d) application and implementation of the 303(d) Program per respondent is estimated to be (270 hours + 7,222 hours =) 7,492 hours.

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.

A federal 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. The OMB control numbers for EPA's regulations are listed in 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 No. EPA-HQ-OW-2014-0622, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), WJC West, Room 3334, 1301 Constitution Ave., 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 Water Docket is (202) 566-2426. An electronic version of the public docket is available online for viewing at <http://www.regulations.gov>. Use <http://www.regulations.gov> 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. Once 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 (EPA-HQ-OW-2014-0622) and OMB Control Number (2040-NEW) in any correspondence.

³⁵ For the purposes of this ICR, EPA assumes an authorized tribe would develop about five TMDLs per year.

Derivation of Burden Estimates

Methodology

In order to evaluate the burden under this proposed rule, EPA considered *Revised Interpretation of Clean Water Act Tribal Provision (Proposed Rule)* (draft ICR number 2515.01). Draft ICR number 2515.01 collected quantitative resource information from the eight tribes listed in section 3.3 that have experience in applying for TAS for the WQS Program. EPA 303(d) Program experts also estimated respondent burden of the staff hours and contractor funds the tribes would expend in preparing their TAS applications.

EPA also referred to ICR 1560.10, National Water Quality Inventory Report³⁶ for information related to EPA 303(d) listing activities and TMDL development burden evaluation. *The National Costs to Develop TMDLs (Draft Report)*³⁷ provided further information related to TMDL development burden.

Utility and Limitations

The estimates based on tribal input reflect the best available information, consistent with *Revised Interpretation of Clean Water Act Tribal Provision (Proposed Rule)* (draft ICR number 2515.01). EPA selected the tribes because of their knowledge of the TAS process and willingness to participate. The staff members interviewed were either direct participants or observers at the time the applications were developed. They were knowledgeable about how their tribes demonstrated inherent authority and were able to discern how the level of effort would have differed if such a demonstration had not been required.

The information obtained from the EPA 303(d) Program experts has certain limitations. First, some of the information could lack precision and accuracy because it depends largely on Regional estimates summarized with a national average. Second, this analysis estimates the number of TAS for 303(d) applications EPA would receive from tribes upon finalization of the rule as well as the burden involved to develop an application when no such application has yet been developed and submitted to EPA. EPA used a conservatively high estimate of the annual rate of tribal applications. This estimate was used to ensure that the ICR does not underestimate tribal burden, given that EPA used a simplifying steady-state assumption in estimating annualized tribal application costs. Third, this analysis estimates the number of TMDLs that tribes would submit to EPA upon finalization of the rule and tribal implementation of the CWA Section

³⁶ EPA ICR No. 1560.10 is located at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201112-2040-007. A draft renewal ICR number 1560.11 is available at <http://www.gpo.gov/fdsys/pkg/FR-2015-07-07/pdf/2015-16638.pdf>.

³⁷ *The National Costs to Develop TMDLs (Draft Report)*, July 31, 2001, is also referenced within EPA ICR No. 1560.10, and available at <http://www.epa.gov/owow/tmdl/coststudy/costsupp1.pdf>.

303(d) Impaired Water Listing and TMDL Program. These estimates are based upon territory TMDL development estimates, and the estimates of burden in this document will likely overstate the actual burden. Fourth, this analysis estimates the listing burden for tribes based upon state and territory listing burden estimates, and the estimates of burden may likely overstate the actual burden (the average land area of an Indian reservation more closely resembles the average size of a U.S. territory than the average size of the five smallest states, as described in section 6.1).

In summary, the estimates of burden in this document reflect uncertainty of the actual ICR burden by an unknown amount, but provide a reasonable estimate of the total administrative costs based upon published ICR documents and *The National Costs to Develop TMDLs (Draft Report)*³⁸.

Assumptions for estimates

This analysis assumes that all TAS for 303(d) applications would be submitted by tribes already having TAS for the CWA Section 303(c) WQS Program; thus the tribes would be able to rely on materials from previous applications. The tribe would need to submit only material that had not been provided as part of the WQS TAS application process.

This analysis assumes EPA's current interpretation of CWA section 518, consistent with the existing TAS regulation at 40 C.F.R. 131.8 that establishes the TAS process for tribes seeking eligibility for section 303(c) WQS. In other words, for this analysis, "pre-rule" tribal burden estimates from draft ICR number 2515.01, *Revised Interpretation of Clean Water Act Tribal Provision (Proposed Rule)*, were considered; however "post-rule" tribal burden estimates (projecting finalization of the Revised Interpretation Proposed Rule) from draft ICR number 2515.01 were not considered.

ICR burdens are stated as annualized burdens. In the analysis below, EPA has used a steady-state assumption to simplify the calculations of annual burden. Specifically, the analysis assumes that the rates of new tribal applications for CWA regulatory programs and TMDL development are steady at the same number from one year to the next. This assumption enables EPA to assume that the entire burden for a tribe occurs within the first year when calculating annual burden rates (in reality, applications by tribes may require multiple years). This is because in a steady-state situation, assuming all burden occurs within one year is mathematically equivalent to a two-year process with one-half of the burden occurring in each year.

Burden estimates are informed by the ICR 1560.10, and are based upon information available to EPA at this time. As the draft renewal 1560.11 states, "EPA is currently designing the Water Quality Framework, which is a new way of integrating EPA's data and information systems to more effectively support reporting and tracking water quality protection and restoration actions. EPA expects that the reporting burden will decrease and will revise the ICR burden after the new information system is implemented for the 2018 reporting cycle."³⁹ EPA

³⁸ *The National Costs to Develop TMDLs (Draft Report)*, July 31, 2001, referenced within EPA ICR No. 1560.10, is available at <http://www.epa.gov/owow/tmdl/coststudy/costsupp1.pdf>.

³⁹ EPA ICR No. 1560.10 is located at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201112-2040-007. A draft renewal ICR number 1560.11 is available at <http://www.gpo.gov/fdsys/pkg/FR-2015-07-07/pdf/2015-16638.pdf>.

expects to revise the ICR burden after the new information system is implemented for the 2018 reporting cycle. Estimates assume an average of twelve tribes per year implementing the 303(d) Program; this scenario seems more likely to take place in the final year this ICR is in effect rather than the first year this ICR is in effect.⁴⁰ In the first and second years this ICR is in effect, EPA expects implementation of the 303(d) Program may be minimal as tribes would be ramping up to apply for TAS and implement their CWA Section 303(d) Impaired Water Listing and TMDL Program; 303(d) listing activities and TMDL development may occur more as the three years of this ICR progress. Thus, the estimate of an annual average of twelve tribes per year implementing the 303(d) Program is very conservative.

More data will be available to revise the ICR burden as EPA melds this ICR, *Treatment of Indian Tribes in a Similar Manner as States for Purposes of Section 303(d) of the Clean Water Act*, with the National Water Quality Inventory Reports ICR in a future renewal cycle.

Estimates of total burden

EPA estimates that the TAS for 303(d) application burden for a typical tribe would be 270 burden hours and \$11,000 of contractor support. EPA used an average for the burden hours and a proportional contractor support value from draft ICR number 2515.01, *Revised Interpretation of Clean Water Act Tribal Provision (Proposed Rule)*. In other words, the 270 burden hours and \$11,000 of contractor support are roughly proportional to the 2,190 hours and \$90,000 of contractor support median “Per-tribe burden estimates, pre rule” estimates from draft ICR number 2515.01.⁴¹

EPA estimates that the annual post-rule TAS for 303(d) application burden for the next few years would comprise (12 tribes) * (270 hours) = 3,240 staff hours and (12 tribes) * (\$11,000/application) = \$132,000 in contractor costs. Cost per application = (270 hours/application) * (\$42.62/hour) + \$11,000 contractor costs = \$22,507. Total annual cost = (12 Tribes) * (\$22,507/application) = \$270,089.

EPA estimates that the annual 303(d) Program implementation burden for a tribe with TAS for 303(d) would be 7,222 hours. Thus, EPA estimates that the annual post-rule CWA Section 303(d) Program implementation burden would comprise (12 tribes) * (7,222 hours) = 86,664 hours. As described in section 6.2, the estimated cost to each respondent for 303(d)

⁴⁰ Like states, authorized tribes would be required to submit their 303(d) lists to EPA for approval every two years on April 1st (lists are due April 1 of even-numbered years). As indicated in section 130.16(c)(6) of the proposed rule, a tribe gaining TAS status would be provided at least 24 months to submit its first impaired waters list to EPA. In other words, the tribe’s first impaired waters list would be due to EPA the next listing cycle due date that is at least 24 months from (1) the date the tribe’s TAS application for 303(d) is approved or (2) the date EPA-approved/promulgated WQS for the tribe’s waters are effective, whichever comes later. Thus, for example, if EPA approves a tribe’s TAS application on March, 15, 2016, and the tribe’s WQS on June 30, 2016, the tribe’s first list would be due on April 1, 2020. The tribe could submit its list to EPA prior to that date, if it chooses.

⁴¹ A burden of 270 hours for developing a TAS for 303(d) application is about 12% of the burden of the 2,190 burden hours estimated for developing a TAS application according to draft ICR number 2515.01, *Revised Interpretation of Clean Water Act Tribal Provision (Proposed Rule)*. Thus, EPA estimated 12% of \$90,000 in contractor cost (estimate from ICR number 2515.01) is about \$11,000, so estimated contractor costs of developing a TAS for 303(d) application is about \$11,000.

listing and TMDL development is \$182,370⁴² and \$143,895⁴³, respectively. The total annual cost for 12 authorized tribe respondents with 303(d) responsibilities is estimated at (12 tribes) * (\$182,370) = \$2,188,440. Total annual cost for TMDL development is estimated at (12 tribes) * (\$143,895) = \$1,726,740. The total annual implementation cost for all respondents is estimated at (\$2,188,440 + \$1,726,740 =) \$3,915,180.

In summary, as described in section 6.1, EPA estimates that the annual post-rule TAS for 303(d) application burden and 303(d) Program implementation burden for a tribe with TAS for 303(d) would be (270 + 7,222 =) 7,492 hours. EPA estimates that the annual post-rule TAS for 303(d) application burden and 303(d) Program implementation burden would comprise (12 tribes) * (7,492 hours) = 89,904 hours. As described in section 6.2, total respondent cost for application for TAS for 303(d) and implementation of the 303(d) Program for all respondents is estimated to be \$4,185,269 (*i.e.*, \$270,089 total annual cost for 12 tribes applying for TAS + \$3,915,180 total annual implementation cost for all respondents).

42 The average annual cost to each respondent for current 303(b) and 303(d) reporting is estimated to be \$371,832. The average annual cost to a respondent with 305(b) responsibility only is \$189,462. Thus, the cost for 303(d) listing only is estimated to be (\$371,832-\$189,462=) \$182,370.

43 Level of effort is estimated to be 740 hours per TMDL and cost of \$28,779 per TMDL, representing mid-level efficiency and mid-range analysis, according to *The National Costs to Develop TMDLs (Draft Report)*, July 31, 2001, available at <http://www.epa.gov/owow/tmdl/coststudy/costsupp1.pdf>. Annual TMDL development cost per respondent tribe is estimated at (5 TMDLs) * (\$28,779 /TMDL) = \$143,895.