

ICR SUPPORTING STATEMENT

1. IDENTIFICATION OF THE INFORMATION COLLECTION

1.1 TITLE OF THE INFORMATION COLLECTION

Treatment of Indian Tribes in a Similar Manner as States for Purposes of Section 303(d) of the Clean Water Act (Renewal).

EPA ICR No.2553.03

OMB Control No. 2040-0290

1.2 SHORT CHARACTERIZATION/ABSTRACT

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 previously had 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. Over 50 tribes, for example, have obtained TAS authority to issue water quality standards under CWA section 303(c). EPA, in 2016, promulgated regulations expressly establishing a process for 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. 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 regulation enables eligible tribes to obtain authority to identify impaired waters on their reservations and establish TMDLs, which serve as plans for attaining and maintaining applicable water quality standards (WQS). The regulation is comparable to similar regulations that EPA issued in the 1990s for the CWA section 303(c) WQS and CWA sections 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 establish a priority ranking for waters that do not meet EPA-approved or promulgated water quality standards (WQS) following the implementation of technology-based controls. For waters so identified, section 303(d) requires states, territories, and authorized tribes to establish TMDLs in accordance with their priority ranking for those pollutants the Administrator identified as suitable for TMDL calculation. 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 approves 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 1560.12 (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 (Renewal)*, 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, (b) EPA assumed that all applications would be submitted in the first year of this ICR cycle, and (c) EPA used estimates based on state and territory burden to implement the 303(d) Program.

This ICR renewal updates some estimates used in the currently approved ICR. Estimates from the 2016 303(d)/305(b) *National Water Quality Inventory Reports (Renewal)* (OMB Control Number 2040-0071; ICR Number 1560.11) have been updated to include changes due to the newly redesigned ATTAINS data system. Estimates from the 2016 pre-final rule, *Revised Interpretation of Clean Water Act Tribal Provision (Final Interpretive Rule)* (OMB Control Number 2040-0289; ICR Number 2515.02) have been updated to those of the post-final rule. Labor rates have also increased.

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. The regulation promulgated in 2016, *Treatment of Indian Tribes in a Similar Manner as States for Purposes of Section 303(d) of the Clean Water Act*, satisfies 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 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

¹ The National Water Quality Reports (EPA ICR 1560.12) <http://www.reginfo.gov/>

information is summarized in section 4.2.

As described in ICR 1560.12, *National Water Quality Inventory Reports (Renewal)*, 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.”

- “(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 are required to submit their "303(d) lists" to EPA for approval every two years on April 1. As indicated in section 130.16(c)(3) of the rule, a tribe gaining TAS status is 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. 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. 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 lack of knowledge concerning the relationship between effluent limitations and water quality." Calculations to establish TMDLs must be subject to public review.² Once established, the state or authorized tribe submits the TMDL to EPA for review.³

EPA encourages tribes to submit their 303(d) impaired waters list electronically through the Assessment TMDL Tracking and Implementation System (ATTAINS). In 2014, EPA initiated activities to redesign ATTAINS to streamline reporting and Agency processing of data and information, including 303(d) lists and TMDLs. EPA is currently working on a pilot with several tribes and EPA regions to explore options for submitting electronic assessment information, in an effort to streamline tribal reporting under the CWA.

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.

If these information collection activities are 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* under the CWA 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.

² 40 CFR 130.7(c)(1)(ii)

³ CWA section 303(d)(2)

The Watershed Restoration, Assessment and Protection Division (WRAPD), along with other divisions within EPA, would utilize the tribal data and information generated through implementation of the 303(d) Program (similarly to entities described in ICR 1560.12, *National Water Quality Inventory Reports (Renewal)*). 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 ATTAINS database to summarize water pollution information by interstate and interregional hydrological units. 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.

WRAPD would use the information submitted under CWA section 303(d) to track tribal 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 would review TMDLs developed and submitted by the tribes 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.⁴

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) also requires EPA to review and approve or disapprove TMDLs submitted by tribes.

⁴ Over 50 tribes are authorized as TAS under CWA section 303(c).

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 ICR for a 30-day period. EPA did not receive any comments while announcing the availability of and seeking public comment on this revised ICR, referred to as the “60-day” or “first FR notice,” published on April 15th, 2019. EPA has established a docket for this renewal No. EPA-HQ-OW-2019-0143. All documents in the docket are listed and accessible for viewing at <http://www.regulations.gov>.

3.3 CONSULTATIONS

In developing the 2016 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 initial burden estimates for the 2016 ICR associated with the rule, EPA worked with relevant information gathered for a related ICR, *Revised Interpretation of Clean Water Act Tribal Provision (Final Interpretive Rule)* (ICR number 2515.02)^{5,6} and information within ICR 1560.12, *National Water Quality Inventory Reports (Renewal)*. In preparing ICR number 2515.02, EPA consulted with eight tribes that have been approved for TAS to administer the Water Quality Standard Program.⁷ In preparation for this 2019 ICR Renewal (ICR 2553.03), EPA contacted four tribes to review burden and costs estimates and received responses from two tribes.⁸ The information reviewed 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. Feedback indicated that the estimates were reasonable, while also recognizing that there are still a number of unknowns because no application has yet been submitted. The tribes provided resource information in interviews conducted by EPA staff members in the respective Regional offices.

Additionally, EPA regularly solicits feedback from tribes through ongoing programmatic activities. EPA conducts annual workshops with technical and managerial state, tribal, and territorial representatives from around the country. Individual 303(d) TAS breakout sessions were held during the 2017, 2018, and 2019 workshops at which attending tribes were involved in both planning and facilitation, and provided the opportunity to submit feedback and engage directly with program staff. Twelve attendees representing a total of ten tribes attended the workshop in 2019.

For each two-year listing cycle, EPA has typically developed a reporting memorandum to help

⁵ <https://www.regulations.gov/document?D=EPA-HQ-OW-2014-0461-0117>

⁶ In the 2016 ICR, EPA used *pre-rule tribal burden*. This ICR used *post-rule tribal burden*.

⁷ 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).

⁸ EPA solicited feedback from the Navajo Nation, the Southern Ute Indian Tribe, the Gila River Indian Community, and the Red Lake Band of Chippewa Indians; and received feedback from the Gila River Indian Community and the Red Lake Band of Chippewa Indians in August 2019.

states, territories, and authorized tribes prepare for biennial reporting to EPA on the conditions of waters within their boundaries, including information on listing impaired waters. For each reporting cycle, EPA generally has distributed the draft reporting memorandum to all respondents for comment before issuing a final memorandum. 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 each could possibly 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.⁹

3.5 GENERAL GUIDELINES

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

3.6 CONFIDENTIALITY AND SENSITIVE QUESTIONS

Tribal program applications under this ICR should 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 may 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

⁹ CWA sections 303(d)(1)(C) and 303(d)(2)

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

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 are valid unless rescinded. Therefore, EPA anticipates an interested tribe typically needs 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 must submit to EPA, for review and approval and/or 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 may 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 must 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 and/or disapproval action. Occasionally EPA may 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:

- (1)** Reading the statutory and regulatory requirements and EPA guidance, obtaining any necessary background understanding, obtaining clarifications from EPA.
- (2)** 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.
- (3)** Developing any of the above materials that do not already exist, or revising existing materials, as necessary, for inclusion in the application.
- (4)** Generating any needed data, including conducting water quality monitoring, and conducting scientific analyses of the data, to assist as necessary with the application.
- (5)** Analyzing the assembled information, and analyzing any issues identified by the tribe or EPA.
- (6)** Developing, as necessary, a statement by the tribal legal counsel discussing the legal basis for the tribe's assertion of authority.
- (7)** Developing, as necessary, a description of the technical and administrative capabilities of the staff to administer the program.
- (8)** 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.
- (9)** Assembling and writing the application and transmittal documents.
- (10)** Meeting with EPA as needed to discuss plans, progress and any issues in developing the application.
- (11)** Responding to comments from EPA or others.
- (12)** Transmitting the draft and final application to EPA.

- (13)** 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:

- (1)** Reviewing the CWA, regulations and guidance for CWA section 303(d).
- (2)** Developing, reviewing, and updating 303(d) assessment methodology.
- (3)** Preparing the 303(d) list. Specific activities include identifying waters (including wetlands and coastal and marine waters), establishing priorities, and determining schedules and targets.
- (4)** 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.
- (5)** Submitting the 303(d) list to EPA and responding to EPA comments.
- (6)** Occasionally assisting EPA with evaluating program management and its effectiveness in attaining applicable WQS.
- (7)** Conducting watershed characterization, compiling available information, creating database or electronic files, reviewing available information, and selecting the technical approach.
- (8)** Modeling and analyzing data. Selecting, setting up, and calibrating the model.
- (9)** Conducting analyses of pollutant source allocations. Evaluating allocation scenarios and selecting the allocation.
- (10)** Developing TMDL documents for public review. Preparing technical reports documenting analyses and assumptions. For each TMDL, documenting the waste load allocation (WLA), load allocation (LA), loading capacity, margin of safety, and seasonality.
- (11)** Preparing an administrative record.
- (12)** Conducting public outreach with public participation. Holding public meeting(s) and disseminating information prior to TMDL submittal.
- (13)** Tracking, planning, developing legal support, *etc.* Completing miscellaneous tasks needed to support TMDL development.

These activities are generally carried out by the tribe 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 will 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.

According to the regulation, EPA will 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.¹⁰ If EPA disapproves the list or TMDL, EPA must establish a replacement list or TMDL within thirty days of disapproval.¹¹ Additional Agency activities include preparing 303(d) memoranda and providing technical assistance to authorized tribes for 303(d) listing and TMDLs.

5.2 COLLECTION METHODOLOGY AND MANAGEMENT

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

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

5.3 SMALL ENTITY FLEXIBILITY

¹⁰ CWA section 303(d)(2).

¹¹ 40 CFR section 130.7(d)(2).

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 is provided at least 24 months to submit its first section 303(d) list to EPA. The tribe's first impaired waters list is 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 are due April 1st of even-numbered years (e.g., April 1, 2024, 2026...). 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 CWA section 303(d).

6. ESTIMATING THE BURDEN AND COST OF THE COLLECTION

6.1 ESTIMATING RESPONDENT BURDEN

To develop burden estimates for submitting a TAS application, the 303(d) Program evaluated information for a related ICR, *Revised Interpretation of Clean Water Act Tribal Provisions* (ICR number 2515.02). In preparing ICR 2515.02, 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 Agency also worked with 303(d) Program experts in the Regions for additional information to estimate tribal burden. EPA's methodology and results are described in the Appendix: Derivation of Burden Estimates.

To date, no tribes have applied for TAS status. For this ICR renewal, EPA is basing its estimate of the number of tribes that may apply for TAS over the next three years on recent interactions with tribes and information from EPA regions. Over the past three years fourteen separate tribes have attended EPA's annual Section 303(d) Training Workshop.¹² This workshop is held each year to bring states, territories and tribes together to enhance collaboration and address challenging issues. Five of the fourteen tribes attended multiple years. In addition, Regional 303(d) coordinators predict nine tribes may seek TAS status in coming years, though not necessarily over the next three-year ICR cycle. For the 2016 ICR, EPA had estimated that 12 tribes may seek TAS status; zero tribes have applied to date. Thus, for the next three-year ICR cycle, EPA estimates that about half the potential interested tribes, or five tribes, may submit tribal TAS applications for the 303(d) Program.¹³

¹² Environmental Law Institute <https://www.eli.org/freshwater-ocean/cwa-303d-training-workshops>

¹³ To calculate 303(d) program implementation burden, EPA assumed that all applications would be submitted in the first year of this ICR cycle. EPA acknowledges the TAS application burden is a one-time burden, thus EPA's approach of annualizing TAS application burden is likely a conservative overestimate.

EPA estimates that a tribe would expend 270 staff hours and \$7,466 on contractor costs to develop a section 303(d) TAS application.¹⁴ Thus, this one-time burden is: (5 tribes) * (270 hours/application) = 1,350 hour/application. Similarly, the one-time cost is: (5 tribes) * (\$7,466) = \$37,330. Distributing these over the three-year ICR cycle results in a burden of 450 hours/year and a contractor cost of \$12,443/year.

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 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 1560.12, *National Water Quality Inventory Reports (Renewal)* EPA estimates that an authorized tribe would expend 3,158 hours per respondent, per year (Table 1) on listing activities. EPA estimates that each tribe would develop five TMDLs per year. This estimate is based on: 1) tribal 303(d) programs being at the beginning stages of program development and 2) the number of TMDLs developed in recent years by U.S. territories, which share some similarities with developing tribal programs. EPA estimates that each tribe would expend 740 hours per TMDL.¹⁵ Thus, EPA estimates that an authorized tribe would expend 3,700 hours per year on TMDL activities. In addition, because lists are required biannually, and the tribal 303(d) rule provides at least two years for a tribe to initiate its listing program, only the tribes that apply for TAS status in the first year of this ICR will be fully impacted.¹⁶ Therefore, annual burden and cost estimates will be higher than what actually may be incurred.

Table 1. Respondent Annual Average Burden on Listing Activities

Program Activity	Burden (hours)
Develop listing methodologies	831
Prepare 303(d) list	1877
Release list for public comment	265
Submit list, response to comments, and TMDL rankings	185

¹⁴ A burden of 270 hours for developing a TAS for 303(d) application is about 17% of the burden of the 1,607 burden hours estimated for developing a TAS application according to ICR number 2515.02, *Revised Interpretation of Clean Water Act Tribal Provision (Final Interpreted Rule)*. EPA used 17% of \$43,920 or about \$7,466, as the estimated contractor costs of developing a TAS for 303(d) application.

¹⁵ Level of effort is estimated to be 740 hours per TMDL, representing mid-level efficiency and mid-range analysis, according to *The National Costs to Develop TMDLs (Draft Report): Support Document #1*, July 31, 2001.

¹⁶ As indicated in section 130.16(c)(6), a tribe gaining TAS status is provided at least 24 months to submit its first impaired waters list to EPA. In other words, the tribe’s first impaired waters list is 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 June 15, 2021, and the tribe’s WQS on June 30, 2021, the tribe’s first list would be due on April 1, 2024. The tribe could submit its list to EPA prior to that date, if it chooses.

TOTAL Listing Activities	3,158
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Annual tribal burden (Table 2)

TAS application: (270 hrs/application) * 5 applications/3 years) = 450 hours/year

Listing activities: (3,158 hrs/tribe) * 5tribes) = 15,790 hours/year

TMDL development activities: (740 hrs/TMDL) * (5 TMDLs/tribe) * (5tribes) = 18,517 hrs/year

Table 2. Estimated Annual Tribal Burden

Program Activity	Hours
TAS application	450
Listing activities	15,790
TMDL activities	18,517
TOTAL BURDEN	34,757

6.2 ESTIMATING RESPONDENT COSTS

To estimate the cost for TAS applications, EPA used post-final rule information from *Revised Interpretation of Clean Water Act Tribal Provisions (Final Interpretive Rule)* (ICR number 2515.02).

Utilizing estimates in ICR No. 1560.12 *National Water Quality Inventory Reports (Renewal)* States indicated that a typical or average labor cost, including overhead, is \$54.39/hour. To reflect current cost (2018) a factor of 1.054¹⁷ was used to derive a typical fully loaded labor rate of \$57.30/hour.⁹ Estimated respondent costs are reflected in Table 3. The cost estimates for TAS applications include \$7,466 for contract support.

Annual tribal cost (Table 3)

TAS application:

(270 hours/application) * (\$57.30/hour) + (\$7,466 contractor cost) = \$22,937/year.

(5 tribes/ 3 yrs) * (\$22,937/application) = \$ 38,228/year.

Listing activities: (3,158 hours/tribe) * (\$57.30/hr) * (5 tribes) = \$904,767/yr

TMDL development activities:

(740 hours/TMDL) * (5 TMDLs/tribe) * (\$57.30/hr) * (5 tribes) = \$1,060,050/yr.

¹⁷ Consumer Price Index, May 2015, Consumer Price Index, April 2018

The cost for 303(d) listing is derived from burden estimates for developing listing methodologies, identifying those that are impaired and submitting a report to EPA. While it is unlikely that a tribe will complete a TMDL within this ICR cycle, EPA’s assumption in its estimates is more conservative. (Table 3)

Table 3. Estimated Annual Tribal Cost *

Program Activity	
TAS application	\$38,228
Listing activities	\$904,767
TMDL development	\$1,060,050
TOTAL COST	\$2,003,045

*Calculated at \$57.30/hour

** Includes \$7,466 contractor costs

As mentioned, the burden estimates are informed by the ICR 1560.12 *National Water Quality Inventory Reports (Renewal)* and are based upon information currently available to EPA plus some projections. For example, 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 used some projections and assumptions on cost savings from the Water Quality Framework in its burden estimates in ICR 1560.12 and expects to revise the ICR burden after the new information system is fully implemented and additional actual data can be used. EPA plans to revise the ICR burden when it merges 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.

6.3 ESTIMATING AGENCY BURDEN AND COST

Annual burden and costs to the Federal Government regarding CWA section 303(d) program implementation reflect those in ICR 1560.12, *National Water Quality Inventory Report*.¹⁸ The hourly cost estimates are calculated for a federal position, Grade 10 Step 7 at \$27.77/hour.¹⁹ The total costs are based on an overhead rate of 110 percent including benefits and are calculated to be \$57.30 per hour.

¹⁸ Worksheet 3: Prepare 303(d) listing guidance (62 hours), Provide technical assistance (236 hours), Review draft 303(d) lists (142 hours), and Review final 303(d) lists and resolve disapprovals (300 hours), Review TMDLs and respond to states (11,200 hours). These numbers reflect 303(d) listing and TMDL burden for 56 respondents. Thus, per respondent burden is 213 EPA burden hours for listing and TMDL activities.

Worksheet 4: Prepare 303(d) listing guidance (\$3,614), Provide technical assistance (\$13,757), Review draft 303(d) lists (\$8,254), and Review final 303(d) lists and resolve disapprovals (\$17,488), Review TMDLs and respond to states (\$652,872).

¹⁹ ICR 1560.12, *National Water Quality Inventory Report (Renewal)*

EPA estimates that reviewing a typical TAS application requires approximately 205 Agency hours²⁰ from regional and headquarters offices. The annual Agency burden estimated:
 (205 hours/application) * (\$57.30/hour) = \$11,746/application.
 (\$11,746/application) * (5applications/3 years) = \$19,577/year

The average annual Agency burden for a single tribe for 303(d) listing and TMDL activities is estimated at 213 hours. For five tribes, the total average annual Agency burden is estimated at (5tribes) * (213 hours per tribes) = 1,065 hours at a cost of \$57.30 per hour.

Annual Agency burden and cost (Table 4)

TAS application:
 (205 hrs/application) * (5applications)/3 yrs = 342 hours/yr
 (\$11,746/application) * (5 application/3 yrs) = \$19,577/yr

Listing and TMDL reviews:
 (213 hrs/tribe) * (5 tribes) = 1,065 hours/yr
 (\$57.3) * (1,065hours) = \$61,024/yr

Table 4. Estimating Annual Agency Burden and Cost

303(d) Program Activities	Burden (hours)	Cost
TAS application review	1,025	\$58,730
List and TMDL review	1,065	\$61,024
TOTAL	2,090	\$119,754

6.4 REASONS FOR CHANGE IN BURDEN/COSTS

There is a decrease of 55,147 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. These decreases are due to: (1) the estimated annual number of respondents decreasing from twelve to five; (2) new and better data that parses out labor and costs per activity; and (3) TAS application burden and cost estimates from post-final rule, Revised Interpretation of Clean Water Act Tribal Provision (the previous ICR used pre-final rule estimates).

7 BURDEN STATEMENT

The respondent burden for applying for TAS status under the 303(d) Program is estimated to be 270 hours plus \$7,466 in contract support per tribe. Predicting five tribes will submit applications over the three-year ICR cycle, the total annual burden is 450 hours and cost \$38,228.

²⁰ ICR No. 2515.02 Revised Interpretation of Clean Water Act Tribal Provision (Final Interpretive Rule)

The annual tribal burden and cost for responsibilities related to implementation of the 303(d) Program for five tribes are estimated to be 15,790 hours and \$904,767 for listing activities and 18,517 hours and \$1,060,050 for TMDL development activities.

The total annual burden of this ICR is 34,757 hours

The total annual cost, including labor costs derived from the 34,757 burden hour estimate, of this ICR is \$2,003,045.

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.

EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OW-2019-0143 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 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.

APPENDIX

Derivation of Burden Estimates

Methodology

To evaluate the burden under this rule, EPA considered *Revised Interpretation of Clean Water Act Tribal Provision* (ICR number 2515.02). ICR number 2515.02 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 1560.12, *National Water Quality Inventory Report* for information related to EPA 303(d) listing activities and TMDL development burden evaluation.

Utility and Limitations

The estimates based on tribal input reflect the best available information, consistent with *Revised Interpretation of Clean Water Act Tribal Provision* (ICR number 2515.02). EPA selected the tribes because of their knowledge of the TAS process and willingness to participate. The tribal 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. Second, this analysis estimates the number of TAS for 303(d) applications EPA would receive from tribes 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, yet a more realistic one compared to the previous ICR, of the annual rate of tribal applications and expected 303(d) tribal activity. 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

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.

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 1560.12 and are based upon information available to EPA at this time. EPA is in the final phases of 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. Agency estimates assume a total of five tribes participating in the 303(d) Program. Participation, however, will be gradual and most activity will more likely to take place in the final year of this ICR rather than the first. In the first and second year of this ICR, EPA expects implementation of the 303(d) Program may be minimal as tribes would be ramping up their programs. Final listing activities and preliminary TMDL activities may occur more toward year three of this ICR cycle. Thus, the burden and cost estimates in this ICR are likely conservatively high.

More data will be available to revise the ICR burden as EPA merges 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 \$7,466 of contractor support. EPA used an average for the burden hours and a proportional contractor support value from ICR number 2515.02, *Revised Interpretation of Clean Water Act Tribal Provision*. In other words, the 270 burden hours and \$7,466 of contractor support are roughly proportional to the 1,607 hours and \$43,920 of contractor support median per-tribe burden estimates, post-rule estimates from ICR number 2515.02.²¹

In summary, the respondent burden for applying for TAS status under the 303(d) Program is estimated to be 270 hours plus \$7,466 in contract support per tribe. Predicting five tribes will submit an application over the three-year ICR cycle, the total annual burden is 450 hours and cost \$38,228.

The annual tribal burden and cost for responsibilities related to implementation of the 303(d) Program for five tribes is estimated to be 15,790 hours and \$904,767 for listing activities and 18,517 hours and \$1,060,050 for TMDL development activities.

The annual burden of this ICR is 34,757 hours
The annual cost of this ICR is \$2,003,045.

²¹ https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201810-2040-001