

U.S. Environmental Protection Agency

Information Collection Request

Title: *Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights (Final Rule)*

OMB Control Number: 2040-0309

EPA ICR Number: 2700.02

Abstract: Under the Clean Water Act (CWA), states¹ and authorized Tribes² establish water quality standards (WQS) for waters of the United States under their jurisdiction. WQS establish goals to protect public health or welfare, enhance the quality of water, and serve the purposes of the CWA. WQS serve as the regulatory basis for other CWA actions, including impairment and listing decisions under CWA Section 303(d) and establishing water quality-based effluent limits issued through state or National Pollutant Discharge Elimination System (NPDES) Programs under CWA Section 402. Any new or revised WQS must be submitted to the EPA for review and approval or disapproval.

Many federally recognized Tribes hold rights to CWA-protected aquatic and aquatic-dependent resources through treaties, statutes, or executive orders, in waters of the U.S. subject to state WQS. In implementing CWA Section 303(c), the EPA has an obligation to ensure that its actions are consistent with treaties, statutes, and executive orders reserving Tribal rights. This rule establishes a framework for how Tribal reserved rights, as defined in this final rule, must be considered in establishing WQS. In this final rule, the EPA is amending the federal WQS regulation at 40 CFR 131 to: (1) define Tribal reserved rights for purposes of that regulation; (2) establish and clarify the responsibilities of states with regard to Tribal reserved rights in the WQS context; and (3) establish and clarify the EPA's related responsibilities and oversight role.

The EPA's implementing regulation at 40 CFR Part 131 specifies requirements for states and authorized Tribes to develop WQS for EPA review that are consistent with the CWA. This rule requires that if a right holder asserts a Tribal reserved right in writing to a state and the EPA for consideration in establishment of WQS, the state must, to the extent supported by available data and information 1) take into consideration the use and value of its waters for protecting the Tribal reserved right in adopting or revising designated uses; 2) take into consideration the anticipated future exercise of the Tribal reserved right unsuppressed by water quality in establishing relevant WQS; and 3) establish water quality criteria to protect the Tribal reserved right where the state has adopted designated uses that either expressly incorporate protection of or encompass the right.

The current WQS regulation at 40 CFR Part 131 requires states and authorized Tribes to include supporting information to accompany WQS submissions to help the EPA determine whether the

¹ Includes the 50 states, the District of Columbia, Guam, the Commonwealth of Puerto Rico, Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

²“Authorized Tribes” for the purpose of this document refers to those federally recognized Tribes with authority to administer a CWA WQS program in the same manner as states.

submitted new and revised WQS are consistent with the CWA. The rule adds two new requirements to 40 CFR Part 131:

1) by defining Tribal reserved rights as, for purposes of this part, “any rights to CWA-protected aquatic and/or aquatic-dependent resources reserved by right holders, either expressly or implicitly, through Federal treaties, statutes, or executive orders” and specifying that the requirements are applicable “where a right holders has asserted a Tribal reserved right in writing to the state and the EPA for consideration in establishment of water quality standards,” the rule adds a condition that right holders must assert their rights in writing before their rights can be considered for protection by the rule.

2) where applicable, state and authorized Tribal WQS submissions must provide the following supporting information: “Any information provided by right holders about relevant Tribal reserved rights and documentation of how that information was considered; and data and methods used to develop the water quality standards.”

This ICR provides estimates of burden and cost to all federally recognized Tribes asserting reserved rights and to states and authorized Tribes with WQS to implement new collection requirements in the rule. These estimates represent the incremental burden and cost over and above the estimates presented in the ICR entitled *Water Quality Standards Regulation (Renewal)* (EPA ICR Number 0988.15, OMB Control Number 2040-0049). The burden and cost in this ICR are the same as the burden and cost the EPA estimated in the Economic Analysis for the final rule, which is available in the docket for this rule, except that for the purposes of this ICR, costs have been annualized.

Supporting Statement A

1. NEED AND AUTHORITY FOR THE COLLECTION

Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.

The EPA’s existing WQS regulation at 40 CFR Part 131 does not explicitly address how WQS must protect Tribal reserved rights. In this rule the EPA is exercising its discretion in implementing CWA Section 303(c) to add new regulatory requirements to ensure that WQS give effect to rights to CWA-protected aquatic and aquatic-dependent resources reserved in federal laws. The rule establishes a transparent and consistent process by which states, authorized Tribes and the EPA can set WQS that protect applicable reserved rights. The rule adds new requirements to 40 CFR Part 131 to require that federally recognized Tribes must assert their rights in writing to the state or authorized Tribe and the EPA before their rights can be considered for protection by the rule, and that, where applicable, state and authorized Tribal WQS submissions must provide additional supporting information about whether the submitted WQS protect Tribal reserved rights. This mandatory information collection would provide the EPA with information necessary to review and approve or disapprove water quality standards in accordance with the CWA and 40 CFR Part 131.

2. PRACTICAL UTILITY/USERS OF THE DATA

Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The rule includes a new definition of Tribal reserved rights at § 131.3 providing that it is necessary for a federally recognized Tribe to affirmatively assert an applicable right for that right to be considered a “Tribal reserved right” for the purposes of this rule. This revision provides two important clarifications. First, it provides federally recognized Tribes with control regarding how their rights are invoked and initially interpreted for WQS purposes. Second, it provides states and authorized Tribes with requested clarity regarding the scope of rights that they need to consider, limiting the scope of the rule to those rights asserted in writing by federally recognized Tribes. The rule also includes a new regulatory section at § 131.6 requiring that when states and authorized Tribes submit WQS to the EPA for approval or disapproval, they must include additional supporting information that would allow the EPA to evaluate if a WQS protects Tribal reserved rights, where applicable. The EPA would use the information collected as a result of this rule to inform its review and approval or disapproval decisions on submitted new and revised WQS in accordance with the requirements of the rule. If the information collection activities in this rule are not carried out, states, Tribes, and the EPA may not be able to ensure that WQS are consistent with treaties and other federal laws. In some cases, this could result in implementation steps such as TMDLs and NPDES permits that also are not consistent with treaties and other federal laws.

3. USE OF TECHNOLOGY

Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

The preamble to the final rule specifies that “an email with information about the right” would be a sufficient assertion of a Tribal reserved right in writing to the state and the EPA for consideration in establishment of WQS. The EPA decided to allow emailed assertions because the EPA does not intend for this assertion requirement to be onerous, and email may be less onerous for Tribes than other means of communication.

States already submit their revised WQS via e-mail to their EPA regional office and they would include the additional information specified by this rule, where relevant, in that same email submission. Regional offices have the responsibility to review the submissions for consistency with the CWA and regulation, and approve or disapprove the WQS. The WQS staff in regional offices work closely with their states on WQS issues, including the review of both draft and final submissions of WQS. EPA headquarters provides support to the regional offices in the review of these submissions. The EPA posts approved state and authorized Tribal WQS at <https://www.epa.gov/wqs-tech/state-specific-water-quality-standards-effective-under-clean-water-act-cwa>. The EPA provides links to promulgated WQS for states and Tribes at <https://www.epa.gov/wqs-tech/federally-promulgated-water-quality-standards-specific-states-territories-and-tribes>.

The EPA also maintains informational copies of state submission materials and EPA decisions in an internal system.

4. EFFORTS TO IDENTIFY DUPLICATION

Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

The EPA carefully reviewed existing ICRs and determined that the information collection requirements described in this ICR do not duplicate the information collection requirements described in other ICRs provided by the EPA. No other ICRs collect information related to federally recognized Tribes' assertions of Tribal reserved rights for consideration in establishment of WQS, nor to states' consideration of those rights in the development of WQS. The burden and cost estimated in this ICR are in addition to the burden and cost provided in the ICR entitled *Water Quality Standards Regulation (Renewal)* (EPA ICR Number 0988.15, OMB Control Number 2040-0049).

5. MINIMIZING BURDEN ON SMALL BUSINESSES AND SMALL ENTITIES

If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

The 1995 Paperwork Reduction Act (PRA) incorporates the Regulatory Flexibility Act (RFA). The RFA requires the EPA to prepare a regulatory flexibility analysis for any rule that has a "significant economic impact on a substantial number of small entities." The EPA must also consider the requirements of the Small Business Regulatory Enforcement Fairness Act of 1996. Small entities warrant special consideration because they generally cannot devote staff resources to follow regulatory developments and often are less likely to have their interests represented by lobbyists and associations. In addition, smaller entities may be less able to bear the burden of an information collection because of their small staff and resources.

The Small Business Administration (SBA) establishes size eligibility provisions and standards (codified at 13 CFR Part 121). The RFA also provides some guidance for defining a small entity. Section 601 of the RFA defines a "small entity" to include "small business," "small organization," and "small governmental jurisdiction." The RFA defines these terms as follows:

- "Small Business" is any business that is independently owned and operated and not dominant in its field as defined by the Small Business Administration (SBA) regulations under Section 3 of the Small Business Act.
- "Small Organization" is any not-for-profit enterprise that is independently owned and operated and not dominant in its field (e.g., private hospitals and educational institutions).
- "Small Governmental Jurisdiction" is the governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000, and may also include Indian Tribes.

The EPA may also develop regulation-specific definitions of small entities when the above definitions are not appropriate.

This rule would have no direct impact on small businesses because the primary impact would be on state and Tribal governments. There may be a secondary impact on some permitted facilities, including businesses, federal government entities, and local governments with publicly owned treatment works. However, the EPA has no means to estimate secondary impacts.

The Agency has instituted several efforts to minimize the impact of its regulations on small businesses. The EPA's Small Business Division (SBD) maintains a website and a telephone hotline that small businesses can access with their questions about complying with environmental requirements. Small businesses are assisted by programs in the states, so partnerships between the EPA and the states are essential. The Agency has also developed an extensive network with State Compliance Advisory Panels, Small Business Ombudsmen and Small Business Assistance Providers. The EPA's SBD hosts an annual conference providing an opportunity for state small business assistance providers, Compliance Advisory Panel members, trade association representatives, the EPA, and other federal agency staff to learn and share information about helping the small business community and better coordinate their small business assistance delivery mechanisms. The EPA Small Business Ombudsman also periodically reports to Congress on the activities and progress of the state Small Business Assistance Programs.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION

Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

Pursuant to the language in § 131.9(a), this rule's requirements are triggered when right holders assert their reserved rights to CWA-protected aquatic and aquatic-dependent resources for consideration in the establishment of WQS. The right holders' calculus in whether to assert a right entails numerous considerations, such as whether the WQS revisions at issue are focused on pollutants that impact the right holders' ability to exercise their right. If this information on reserved rights were not collected from Tribes, establishment of WQS to protect right holders would not be properly informed by the right holders' decisions regarding when and how they choose to seek that protection.

For states or authorized Tribes, the information collection schedule is applicable when states or authorized Tribes review WQS following the assertion of a reserved right by a right holder. At a minimum, CWA Section 303(c) requires states and authorized Tribes to review WQS once every three years. Less frequent data collection would result in WQS submissions that are not appropriately responsive to new information to meet the goals of the CWA. If the information collection is not conducted at all, the EPA would lack the information necessary to determine whether there are any Tribal reserved rights applicable to the submission, and if yes, whether the submission protects those rights. This would mean that the EPA would be unable to determine compliance with the rule and the CWA and would not have enough information to make the approval or disapproval decision required by CWA Section 303(c).

The EPA anticipates that once a state or authorized Tribe takes into consideration and, where it determines is necessary, adopts new or revised WQS to protect Tribal reserved rights, it will not have any recurring burden (i.e., ongoing annual burden and costs) that would be specifically attributable to the rule revisions to 40 CFR 131.20, because periodic evaluation of and revision to WQS is already a requirement of the CWA and WQS regulation. The EPA also determined that a federally recognized Tribe's evaluation of whether they wish to assert their reserved rights in the context of WQS development was best modeled as a one-time burden, although the right may be asserted in stages.

7. GENERAL GUIDELINES

Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

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

8. PUBLIC COMMENT AND CONSULTATIONS

8a. Public Comment

If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the Agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the Agency in response to these comments. Specifically address comments received on cost and hour burden.

On December 5, 2022, the EPA published a Federal Register notice requesting comments on the proposed rule, including the ICR, and provided a 90-day public notice and comment period.

The EPA received 162 unique written public comments on the proposed rule. Several of these asserted that the costs of the rule were underestimated. In response to these comments, the EPA increased its low-end burden estimate five-fold and doubled its high-end burden estimate.

8b. Consultations

Describe efforts to consult with persons outside the Agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported. Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years – even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

During development of the proposed rule the EPA held a presentation and Q&A session in September 2021 with the Association of Clean Water Agencies (ACWA) Monitoring, Standards, and Assessment (MSA) Subcommittee at which the EPA provided an overview of the Agency's preliminary thinking on potential regulatory revisions, received feedback, and answered questions. The EPA also met with representatives of state agencies responsible for WQS development from Idaho, Oklahoma, and Minnesota.

The EPA also held a 90-day pre-proposal Tribal consultation and coordination period from June 15 through September 13, 2021 to inform development of the proposed rule. The EPA conducted the consultation and coordination process in accordance with the EPA Policy on Consultation and Coordination with Indian Tribes (<https://www.epa.gov/tribal/epa-policy-consultation-and-coordination-indian-tribes>). In addition to two national Tribal listening sessions held in July and August 2021, the EPA presented at 20 meetings of Tribal staff and leadership, as well as held seven staff-level coordination meetings and seven leader-to-leader meetings at the request of Tribes. The EPA continued outreach and engagement with Tribes at national and regional Tribal meetings after the end of the consultation period before publishing the proposed rule. A total of 21 Tribes and Tribal organizations submitted written pre-proposal comments to the EPA. These are included in the docket for the rule.

Early feedback received during these pre-proposal meetings with Tribes, ACWA and states helped inform the EPA's proposed regulatory revisions.

During the public comment period, the EPA presented an overview of the proposed rule to ACWA's MSA Subcommittee in January 2023. EPA provided additional engagement during three subsequent meetings with ACWA representatives in 2023. Participants reiterated concerns raised in their comment letters but did not comment on the ICR specifically. The EPA also held two public hearings during the public comment period where it provided an overview of the proposal and opportunity for public comment. There were no comments at the public hearings related to the ICR.

Finally, the EPA opened a 90-day Tribal consultation and coordination period from December 6, 2022, through March 6, 2023, after the Administrator signed the proposed rule, during which it held two national Tribal listening sessions, seven leader-to-leader meetings with representatives of Tribal governments, and six staff-level coordination meetings with representatives of individual Tribes upon request. The EPA also presented on the proposal at six staff-level engagement meetings upon request. The EPA did not receive any comments relevant to the ICR.

9. PAYMENTS OR GIFTS TO RESPONDENTS

Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

No payments or gifts to respondents are contemplated as part of this action.

10. ASSURANCE OF CONFIDENTIALITY

Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or Agency policy. If the collection requires a systems of records notice (SORN) or privacy impact assessment (PIA), those should be cited and described here.

The EPA is subject to the Freedom of Information Act (FOIA), and accordingly, FOIA disclosure requirements would apply to information provided to the EPA by federally recognized Tribes and by states and authorized Tribes. In addition to FOIA, as noted in the preamble to the final rule, the EPA, states, and authorized Tribes are unlikely to be able to keep most information provided by Tribes confidential because, to have any bearing on a WQS action, a right holder's assertion of a right would need to be part of the public record for any related WQS action. CWA Section 101(e) provides that "public participation in the development, revision, and enforcement of any regulations, standard, effluent limitation, plan, or program established ... under this Act shall be provided for, encouraged, and assisted..." In addition, the EPA's regulation related to public participation in the development of WQS, § 131.20(b), references 40 CFR 25, which requires states to provide "[r]eports, documents and data" relevant to discussion of proposed WQS revisions in advance of public hearings on such revisions. Information relevant to the proposed WQS and their relationship to Tribal reserved rights would therefore be subject to public review and comment.

11. JUSTIFICATION FOR SENSITIVE QUESTIONS

Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the Agency considers the questions necessary, the specific uses to be

made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

This action does not pose any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

12. RESPONDENT BURDEN HOURS & LABOR COSTS

Provide estimates of the hour burden of the collection of information. The statement should:

- *Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Generally, estimates should not include burden hours for customary and usual business practices.*
 - *If this request for approval covers more than one form, provide separate hour burden estimates for each form and the aggregate the hour burdens.*
 - *Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included as O&M costs under non-labor costs covered under question 13.*
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12a. Respondents/NAICS Codes

The WQS regulation at 40 CFR Part 131 requires reporting at least once every three years from 105 jurisdictions – 50 states, 5 territories, the District of Columbia, and a subset of authorized Tribes (those that have been authorized for treatment in a manner similar to a state (TAS) for purposes of establishing WQS under the CWA and also have EPA-approved WQS in place).³ There are currently 84 authorized Tribes, however, only 49 of these have EPA-approved WQS in place. For the purposes of the economic analysis and this ICR, the EPA assumed that the remaining 35 authorized Tribes without EPA-approved WQS in place will eventually have EPA-approved WQS, and that once they do, all 84 authorized Tribes could be subject to this rule. The EPA does not anticipate this rule will impose any compliance costs on the District of Columbia or any U.S. territories because the EPA is not aware of any federally recognized Tribes with reserved rights in or downstream of these jurisdictions. Additionally, in order to benefit from this rule, any of the 574 federally recognized Tribes would need to report by asserting their rights in the WQS context.

Therefore, the EPA anticipates the universe of potential respondents to be the 574 federally recognized Tribes, 50 states and 84 authorized Tribes.

The respondents affected by this collection activity are in NAICS code 92411 “Administration of Air and Water Resources and Solid Waste Management Programs,” formerly SIC 9511.

12b. Information Requested

The rule may require states and authorized Tribes to perform a WQS rulemaking for the purpose of ensuring state and authorized Tribal WQS protect Tribal reserved rights. State and authorized Tribal WQS are subject to EPA review and approval, and states and authorized Tribes must submit new and

³ 49 federally recognized Tribes have received EPA authorization to administer the WQS program under 40 CFR 131.8 and have EPA-approved WQS. The EPA maintains a current list of Tribes authorized to administer WQS at <http://water.epa.gov/scitech/swguidance/standards/wqslibrary/approvable.cfm>.

revised WQS to the EPA along with supporting information documenting the WQS' compliance with the CWA and implementing regulations at 40 CFR Part 131.

The rule would require that, where applicable, states and authorized Tribes include in their submission information which will aid the EPA in evaluating whether the submission is consistent with new 40 CFR 131.9, including:

- (1) Any information provided by the right holder about relevant Tribal reserved rights and documentation of how that information was considered; and,
- (2) Data and methods used to develop the water quality standards.

Where federal recognized Tribes choose to have their Tribal reserved rights considered in establishing WQS, the rule requires those federally recognized Tribes to assert those rights in writing to the EPA and the relevant state(s) and authorized Tribe(s).

12c. Respondent Activities

The EPA identified the following activities that federally recognized Tribes may need to undertake as a result of the rule:

- Evaluating whether to assert their rights for consideration in establishment of state or authorized Tribal WQS.
- Communicating in writing with states, authorized Tribes, and the EPA to assert their rights.

The EPA identified the following activities states and authorized Tribes may need to undertake as a result of the rule:

- Searching data sources to evaluate reserved rights asserted by Tribes and the level of protection necessary to protect those rights.
- Coordinating as necessary with the EPA, other state and federal agencies, and federally recognized Tribes within their jurisdiction as well as those outside their jurisdiction who may hold reserved rights to CWA-protected aquatic and aquatic-dependent resources within their jurisdiction.
- Identifying and prioritizing WQS that need to be updated, gathering and analyzing existing water quality data and waterbody use information as needed, and planning activities such as developing site-specific criteria and revising waterbody designated uses.
- Initiating rulemaking activities, including new efforts or increasing the scope of other planned regulatory changes.
- Compiling and developing materials to support public proposals of revised WQS and submission to the EPA.
- Preparing, reviewing and completing the revised WQS package.
- Adopting the revised WQS according to states' or authorized Tribes' internal administrative procedures and the EPA's public participation requirements, including conducting public hearings.
- Submitting revised WQS to the EPA for review and approval or disapproval.

12d. Respondent Burden Hours and Labor Costs

The CWA requires states and authorized Tribes to review WQS at least once every three years and provide the results to the EPA. In practice, some states choose to review and revise portions of their WQS more frequently. The EPA estimates that all 50 states will each undertake three WQS rulemakings to protect Tribal reserved rights and all 84 authorized Tribes will each undertake two WQS rulemakings to protect Tribal reserved rights.

Estimating Respondent Burden

The EPA estimated the incremental number of labor hours required to comply with the rule based on past experience estimating the burden of state WQS rulemaking efforts to comply with the EPA's 2015 WQS regulation revisions and the best professional judgment of the EPA's personnel with experience administering the WQS program.

Federally Recognized Tribes

The EPA assumed all 574 federally recognized Tribes could incur 10 hours each, on average, to evaluate whether to assert their reserved rights and to assert those rights for consideration in development of WQS if they choose to do so. This is likely an overestimate given that not all federally recognized Tribes likely have relevant reserved rights. Some Tribes may also have already decided whether to assert their rights in the WQS context and therefore may not incur any additional burden to consider their decision. Since attributing costs to all currently federally recognized Tribes is likely an overestimate, the EPA anticipates that this accounts for any additional Tribes that gain federal recognition in the foreseeable future. Additionally, while many Tribes may not incur costs, some may incur greater costs. For example, some Tribes may elect to incur a higher burden to coordinate with states and authorized Tribes to facilitate a better understanding of the scope and nature of the rights. As a result, the burden estimate described below should be considered an average value for all federally recognized Tribes. In total, the agency estimated a burden of (574 respondents) * (10 hours on average/respondent) = 5,740 hours and assumed that those hours would be spread out over a 10-year period. A Tribe's assertion of its reserved rights in the WQS context is not anticipated to be a recurring burden at regular intervals. For the purpose of this annualization, the EPA estimated that this activity would occur at different times during a 10-year period for different Tribes. In addition, a Tribe may assert different rights at different points of time during the 10-year period, although the overall burden per Tribe is anticipated to be the same on average. Thus, the total estimated annual burden is (5,740 hours) ÷ (10 years) = **574 hours**.

States

In order to minimize the risk of underestimating potential burden, the EPA assumed that all 50 states will each undertake three WQS rulemakings to protect Tribal reserved rights. The Agency assumed one rulemaking per triennial review for each of the following purposes:

- To evaluate or revise WQS for protection of human health;
- To evaluate or revise WQS for protection of aquatic life; and
- To account for any other WQS changes needed to protect Tribal reserved rights, e.g. ceremonial rights and addressing the emergence of any information in the future that informs either the applicability of the reserved rights or the necessary level of water quality.

The EPA estimated that the incremental labor hours needed to complete the first rulemaking to protect Tribal reserved rights would range from 500 hours for a relatively small change to 1,000 hours for a more complex rulemaking. The EPA assumed that each subsequent rulemaking would benefit from the

data, information, and experience gained from the prior rulemaking(s) and would require a smaller level of effort. The EPA assumed that the second rulemaking would require 90% of the level of effort of the first rulemaking and the third rulemaking would require 75% of the level of effort of the first rulemaking. The EPA included burden and cost estimates for states to revise WQS for protection of aquatic life as a result of this rule, even though the final rule is not expected to result in widespread changes to aquatic life criteria. In some cases, the rule may prompt a state to consider adjusting aquatic life criteria in a certain area to protect a culturally important species or to advance the scientific understanding of pollutant impacts to wildlife and plants that have not been the historic focus of criteria development. In addition, a state may choose to revise one or more designated uses to explicitly denote protection of particular aquatic species to which a Tribal reserved right applies, even if the state concludes that existing aquatic life criteria for the relevant water bodies are protective of those species. The EPA included burden and cost related to aquatic life rulemakings to ensure that these burdens, if they occur, would be covered.

As shown in Table 3 below, the average burden per response therefore ranges from 375-1,000 hours. The EPA was not able to apportion the burden estimate by professional category required for each activity as it does not have information on the division of labor hours by professional category that states use to administer their WQS programs. Thus, the agency used the above approaches for rule scaling (500 or 1000 hours) and level of effort over three successive rulemakings and triennial review periods (100%, 90%, 75%) to estimate a total burden range of (1,325-2,650 hours/respondent) * (50 respondents) = 66,250-132,500 hours. To estimate an annual burden, the agency divided the mean of the range (given uncertainty in where costs might fall for any particular entity and the assumption that complexity balances out on an annual basis) by a timeframe that included three consecutive ICR cycles plus an additional year for conservative rounding, resulting in a total estimated annual burden of $(99,375 \text{ hours}) \div (10 \text{ years}) = \mathbf{9,938 \text{ hours}}$.

Authorized Tribes

The EPA estimated that the final rule could require each authorized Tribe to complete one rulemaking with equivalent burden to state rulemaking #1 (ranging from 500 to 1,000 hours/respondent) and a second, lower complexity rulemaking with a burden half that of rulemaking #1 (ranging from 250 to 500 hours/respondent) to update its WQS. The EPA assumed that authorized Tribes would undertake fewer and less complex rulemakings than states given the smaller geographic area of waters under the WQS jurisdiction of authorized Tribes compared to the geographic area of states and since the EPA anticipates that few authorized Tribes will have to revise their WQS to protect another Tribe's reserved rights, either because no other Tribes hold reserved rights in the authorized Tribe's waters, or because the authorized Tribe's WQS already protect reserved rights of other Tribes with reserved rights in their waters. The agency added the ranges for both rulemakings to estimate a total burden range of (750-1,500 hours/respondent) * (84 authorized Tribes) = 63,000-126,000 hours. To estimate an annual burden, the agency assumed that these hours would be spread out over 10 years to be consistent with the assumptions for staggered assertion of Tribal rights over a 10-year period as well as to be consistent with the overall time period assumed for state rulemaking. The agency then used the mean of the range (given uncertainty in where costs might fall for any particular entity and the assumption that complexity balances out on an annual basis) to estimate a total annual burden of $(94,500 \text{ hours}) \div (10 \text{ years}) = \mathbf{9,450 \text{ hours}}$.

Estimating Respondent Labor Costs

This section describes how the EPA estimated respondent **labor costs** per reporting activity and for all respondents.

The EPA estimated the cost of labor from data on state government hourly wage rates. Table 1 shows the 2022 labor rates for the categories the EPA identifies as applicable to the rule, accounting for benefits using the Bureau of Labor Statistics Employer Cost for Employee Compensation for state and local government workers (38.3% of total compensation is attributable to benefits). The EPA estimated overhead costs at 29 percent of wages based on an example of evaluating the value of work time and the cost to state agencies for a 2016 EPA Information Collection Request as summarized in EPA's 2020 *Handbook on Valuing Changes in Time Use Induced by Regulatory Requirements and Other EPA Actions*. The EPA used an average wage rate because it does not have information on the division of labor hours by professional category that states use to administer their WQS programs.

Table 1: Summary of State¹ Government Average Hourly Wage Rates (2022\$)

Labor Category	Hourly Wage Rate ²	Hourly Benefits	Hourly Overhead	Hourly Labor Rate
Economist (19-3011)	\$38.87	\$24.14	\$11.27	\$74.28
Environmental Engineer (17-2081)	\$45.10	\$28.01	\$13.08	\$86.19
Environmental Scientist (19-2041)	\$35.43	\$22.00	\$10.27	\$67.70
Lawyer (23-1011)	\$49.71	\$30.87	\$14.42	\$95.00
Natural Sciences Manager (11-9121)	\$44.21	\$27.45	\$12.82	\$84.48
Average	--	--	--	\$81.53

¹Assumes that Tribal government labor rates are the same as state government labor rates.

²Occupational Employment and Wage Statistics for May 2022 (USBLS 2022a); Employer Cost for Employee Compensation—June 2022 (USBLS 2022b); *Handbook on Valuing Changes in Time Use Induced by Regulatory Requirements and Other EPA Actions* (USEPA 2020a)

Federally Recognized Tribes

The EPA estimated a total, one-time burden of 10 hours per Tribe on average, half for a lawyer and half for a natural sciences manager, for all 574 federally recognized Tribes. The EPA considered it most likely that Tribes would utilize these two professional categories for tasks related to these efforts because of the legal and decision-making nature of the activities, and that assertions of rights do not inherently raise technical or economic issues. The estimated total one-time cost for federally recognized Tribes to comply with the rule is \$515,000, as detailed in Table 2 below. The EPA divided this total cost (rounded to \$520,000) by 10 years to generate a total estimated annual cost of $(\$520,000) \div (10 \text{ years}) = \mathbf{\$52,000}$.

Table 2: Potential One-Time Burden and Cost for Federally Recognized Tribes to Evaluate Whether to Assert Reserved Rights in the WQS Context or to Assert Reserved Rights (2022 \$)

Occupation	Burden per Tribe (hours)	Cost per Tribe ¹	Number of Potentially Affected Tribes ²	Total Burden for All Tribes (hours) ³	Total Cost for All Tribes (2022 \$; one-time) ⁴
Lawyer (23-1011)	5	\$475.00	574	2870	\$272,600

Natural Sciences Manager (11-9121)	5	\$422.40	574	2870	\$242,400
Total	--	\$897.40	574	5740	\$515,000

¹ Hours per Tribe multiplied by corresponding hourly labor rate on Table 1.

² Includes 574 federally recognized Tribes.

³ Burden per Tribe multiplied by total number of potentially affected Tribes.

⁴ Total burden for all potentially affected Tribes multiplied by corresponding hourly labor rate on Table 1.

States

The estimated total cost per state to comply with the rule ranges from \$108,027 to \$216,050, as detailed in Table 3 below. The EPA estimated that the total cost associated with WQS review and rulemaking activities for all 50 states would range from approximately \$5,401,000 (\$81.53 per hour * 66,250 hours) to \$10,802,000 (\$81.53 per hour * 132,500 hours). Lacking information on the division of labor hours by professional category that states use to administer their WQS programs, use of the average hourly labor rate reflects the EPA's assumption of equal usage of each labor category represented. The EPA anticipates that once a state updates its WQS to protect all applicable Tribal reserved rights, it will not have any recurring costs (i.e., ongoing annual burden and costs) that would be specifically attributable to the rule, because periodic evaluation of and revision to state WQS is already a requirement of the CWA and WQS regulation. To calculate annual costs, the agency divided the mean of the total estimated range (rounded to \$8,102,000) by the 10-year timeframe for all 50 states to undertake three WQS rulemakings to generate a total estimated annual cost of $(\$8,102,000) \div (10 \text{ years}) = \$810,200$.

Table 3: Potential One-Time Burden and Cost Associated with State Rulemaking Activities

Rulemaking Effort ¹	Burden per State (hours)	Cost per State (2022 \$) ²	Number of Potentially Affected States ³	Total Burden (hours) ⁴	Total Cost (2022 \$; one-time) ⁵
Rulemaking #1	500-1,000	\$40,760- \$81,530	50	25,000-50,000	\$2,038,000- \$4,076,000
Rulemaking #2	450-900	\$36,690- \$73,380	50	22,500-45,000	\$1,834,000 - \$3,668,000
Rulemaking #3	375-750	\$30,570- \$61,150	50	18,750-37,500	\$1,528,000- \$3,058,000
Total	1,325-2,650	\$108,027- \$216,050	50	66,250- 132,500	\$5,401,000- \$10,802,000

¹ Reflects potential new or increased rulemaking activities to adopt provisions consistent with the rule into WQS.

² Hours per state multiplied by average hourly labor rate of \$81.53 and rounded to the nearest dollar.

³ Includes 50 states, but no territories or Tribes.

⁴ Burden per state multiplied by total number of potentially affected states.

⁵ Total burden for all potentially affected states multiplied by average hourly labor rate of \$81.53.

Authorized Tribes

The estimated total cost per authorized Tribe to comply with the rule ranges from \$61,142–\$122,295, as detailed in Table 4 below. The EPA estimated that the total cost associated with WQS review and rulemaking activities for all 84 authorized Tribes would range from approximately \$5,136,000 (\$81.53 per hour * 63,000 hours) to \$10,272,000 (\$81.53 per hour * 126,000 hours). Lacking information on the division of labor hours by professional category that authorized Tribes use to administer their WQS programs, use of the average hourly labor rate reflects the EPA’s assumption of equal usage of each labor category represented. The EPA’s assumption that the final rule will impose burden on all 84 authorized Tribes is likely an overestimate since the EPA anticipates that very few authorized Tribes will have to revise their WQS to protect another Tribe’s reserved rights, either because no other tribes hold reserved rights in the authorized Tribe’s waters, or because the authorized Tribe’s WQS already protect reserved rights of other Tribes with reserved rights in their waters. However, the EPA anticipates that this overestimate accounts for additional Tribes that may be authorized to administer the WQS program in the foreseeable future that may need to account for reserved rights of other Tribes in their waters.

The EPA anticipates that once an authorized Tribe updates its WQS to protect all applicable Tribal reserved rights, it will not have any recurring costs (i.e., ongoing annual burden and costs) that would be specifically attributable to the rule, because periodic evaluation of and revision to state WQS is already a requirement of the CWA and WQS regulation. To calculate annual costs, the agency divided the mean of the total estimated cost range (rounded to \$7,700,000) by the 10-year timeframe for all 84 authorized Tribes to undertake two WQS rulemakings to generate a total estimated annual cost of $(\$7,700,000) \div (10 \text{ years}) = \$770,000$.

Table 4: Potential One-Time Burden and Cost to Authorized Tribes Associated with WQS Review and Rulemaking Activities

Rulemaking Effort ¹	Burden per Tribe (hours)	Cost per Tribe (2022 \$) ²	Number of Potentially Affected Tribes ³	Total Burden (hours) ⁴	Total Cost (2022 \$; one-time) ⁵
Rulemaking #1	500–1,000	\$40,760–\$81,530	84	42,000–84,000	\$3,424,000–\$6,848,000
Rulemaking #2	250–500	\$20,382–\$40,760	84	21,000–42,000	\$1,712,000–\$3,424,000
Total	750–1,500	\$61,142–\$122,295	84	63,000–126,000	\$5,136,000–\$10,272,000

¹ Reflects potential new or increased rulemaking activities.

² Hours per Tribe multiplied by average hourly labor rate of \$81.53 and rounded to the nearest dollar.

³ Includes 84 Tribes with TAS.

⁴ Burden per Tribe multiplied by total number of potentially affected Tribes.

⁵ Total burden for all potentially affected Tribes multiplied by average hourly labor rate of \$81.53.

Summary of Total Estimated Burden and Cost to Federally Recognized Tribes, States and Authorized Tribes

Table 5 below summarizes the estimated national burden and cost to all federally recognized Tribes, states, and authorized Tribes to comply with the rule. The total estimated annual burden is **19,962 hours**. The total estimated annual labor costs is **\$1,632,000**. There are no annualized capital or operation and maintenance costs anticipated with this ICR. The incremental burdens for states and authorized Tribes to comply with the regulatory revisions are likely specific to each state or Tribe and will depend on the scope and nature of applicable Tribal reserved rights, the number of Tribes with applicable reserved rights, where Tribes choose to assert applicable reserved rights, the amount of available scientific data and level of certainty about the level of water quality necessary to protect the applicable reserved rights, the level of public interest, and the state or authorized Tribe’s administrative procedures.

Table 5. Summary of Total Potential One-Time Burden and Cost of the Final Rule to Federally Recognized Tribes, States and Authorized Tribes

Government Entity	Burden per Entity (hours)	Cost per Entity (2022\$)	Number of Potentially Affected Entities	Total Burden (hours)	Total Cost (2022\$; one-time)
Federally Recognized Tribes	10	\$897.40	574	5740	\$515,100
States	1,325-2,650	\$108,020-\$216,055	50	66,250-132,500	\$5,401,000 - \$10,802,000
Authorized Tribes	750-1,500	\$61,147.50-\$122,295	84	63,000-126,000	\$5,136,000 - \$10,272,000
Total	-	-	-	134,990-264,240	\$11,052,000-\$21,589,000

A summary of the uncertainties associated with the estimates is provided below:

Key Assumption/Uncertainty	Potential Impact on Estimated Burden and Cost	Comment
Labor hours required to implement various provisions based on best professional judgment.	?	Labor hours needed for a given state or Tribe depend on several factors, including the scope and nature of applicable Tribal reserved rights, the number of Tribes with applicable reserved rights, where Tribes choose to assert applicable reserved rights, the amount of available scientific data and level of certainty about the level of water quality necessary to protect the applicable reserved rights, the level of public interest, and the state or Tribe's administrative procedures. Labor hours may be higher or lower than the EPA's estimates.
Labor cost based on state government wage and labor rates.	?	The mix of labor categories (economist, environmental engineer, environmental scientist, lawyer, natural sciences manager) may be different for individual states and Tribes from the mix that the EPA used to calculate hourly wage and labor rates.
The number of rulemakings to ensure reserved rights are protected in WQS is unknown.	?	The number of rulemakings will depend on the extent of reserved rights to CWA-protected aquatic and aquatic-dependent resources across the country, where Tribes choose to assert applicable reserved rights, and the extent to which existing WQS already protect reserved resources. It is also uncertain how states and authorized Tribes will elect to conduct rulemakings (e.g., all at once or in stages) and whether new information about reserved rights will become available over time.

Key Assumption/Uncertainty	Potential Impact on Estimated Burden and Cost	Comment
In addition to other activities undertaken as a result of this rule, states will undertake a rulemaking to consider and revise WQS for protection of aquatic life, and authorized Tribes will undertake more than one rulemaking (with the second rulemaking potentially including consideration and revision of WQS for protection of aquatic life).	+	The final rule is not expected to result in widespread changes to aquatic life criteria.
In some cases, federally recognized Tribes, states, and/or authorized Tribes, may want to collect additional data to evaluate the level of water quality necessary to protect those rights.	?	The cost of resources required to collect data and perform analyses is unknown, and likely specific to the reserved rights under consideration. The number of analyses will depend on the number of WQS changes needed to protect reserved rights and the sufficiency of existing, readily available data on the scope of the right(s) and level of water quality necessary to protect those rights.
All states and authorized Tribes undertake a rulemaking effort in response to the rule and all federally recognized Tribes evaluate whether to assert their reserved rights for consideration in the establishment of WQS.	+	The cost may be overestimated because there may not be Tribal reserved rights applicable to waterbodies within the jurisdiction of all 50 states and all 84 authorized Tribes; some resources reserved to Tribes may already be protected by existing WQS; and some federally recognized Tribes may not need to expend any effort to determine whether to assert their rights, either because they don't have any rights or already know whether they wish to assert their rights.
<p>Key: "+" = Burden and cost potentially overestimated "?" = Impact on burden and cost uncertain</p>		

Given the uncertainties in the analysis, the EPA expects to revise estimates based on experience gained as this collection is renewed (and/or when these collection activities are folded into the base ICR for WQS).

13. RESPONDENT CAPITAL AND O&M COSTS

Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).

The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should consider costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling, and testing equipment; and record storage facilities. If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate.

Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

This section is not applicable to this action.

14. AGENCY COSTS

Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.

14a. Agency Activities

The CWA and implementing regulation require states to review and, as appropriate, revise WQS at least once every three years. States must submit the results of such reviews to the EPA for approval or disapproval. The EPA reviews the states' WQS for consistency with the CWA and the WQS regulation at 40 CFR Part 131. If the WQS are found by the EPA to be inconsistent with the Act or regulation and the state does not revise their WQS accordingly, the EPA must promptly propose federal replacement WQS.

The EPA conducts a range of activities to manage the WQS program. Activities related to but not included in this ICR include:

- Transmission of policy and guidance to the states,
- Development of CWA Section 304(a) national recommended water quality criteria,
- Assistance to states in interpretation and implementation of laws and regulations,
- Coordination of activities related to WQS with other CWA programs, with other federal agencies, and for interstate and international waters.

See the EPA's website, <http://water.epa.gov/scitech/>, for more information.

For this ICR, EPA activities associated with WQS review include:

- Reviewing new and revised WQS for consistency with the CWA, including protection of Tribal reserved rights.
- Initiating government-to-government consultation with all federally recognized Tribes whose rights or interests may be affected by the WQS revision.
- Preparing and sending a letter to the state conveying the EPA's approval or disapproval decision(s) and the rationale for those decisions.
- Determining whether federal WQS are necessary to meet the requirements of the CWA.
- Proposing and promulgating federal replacement WQS when necessary.
- Proposing and finalizing the withdrawal of federal WQS when a state adopts WQS that meet CWA requirements.

14b. Agency Labor Cost

In addition to the potential burden and cost to federally recognized Tribes, states, and authorized Tribes, the rule could result in incremental burden and cost to the EPA associated with reviewing the assertions of Tribal reserved rights submitted by federally recognized Tribes as well as documentation of how that information was considered and data and methods used to develop any resulting WQS submitted by states and authorized Tribes. On the basis of best professional judgment, the EPA conservatively estimates the incremental cost to the EPA as approximately 20% of the total cost to federally recognized Tribes, states and authorized Tribes, as summarized in Table 5 above. Thus, the EPA estimates that one-time incremental cost to the Agency could range from \$2,210,400 ($\$11,052,000 * 20\%$) to \$4,317,800 ($\$21,589,000 * 20\%$). To generate an annual cost estimate, the agency divided the mean of the range (rounded to \$3,264,000) by the assumed 10-year timeframe for states and Tribes to complete their activities associated with implementing the final rule, resulting in a total estimated annual cost of $(\$3,264,000) \div (10 \text{ years}) = \mathbf{\$326,400}$.

The EPA assumes that review of WQS program submissions would be performed by General Schedule (GS) 13, Step 5 federal employees (including EPA regional staff). Using the Washington, D.C. salary table as a conservative estimate, in 2022 the hourly wage rate for all federal employees at this grade and step receiving the Washington, D.C. locality pay adjustment was \$58.01 per hour.⁴ Assuming that benefits and overhead are equal to 60% of the hourly wage, the average loaded hourly wage rate for federal employees is equal to \$92.82 ($\$58.01 \text{ per hour} + (60\% * (\$58.01 \text{ per hour}))$). Full-time equivalent (FTE) employees work 2,080 hours per year (40 hours per week * 52 weeks).

Using the loaded wage rate and the number of hours worked per FTE, the EPA estimates the burden and EPA FTEs associated with the incremental effort. Burden to the EPA associated with one-time incremental activities ranges from 23,815 hours ($\$2,210,400 \div \92.82 per hour) to 46,520 hours ($\$4,317,800 \div \92.82 per hour). These one-time incremental burden estimates correspond to 11.4 FTEs (23,815 burden hours \div 2,080 hours worked per FTE) to 22.4 FTEs (46,520 burden hours \div 2,080 hours worked per FTE). To generate an annual burden estimate, the agency divided the mean of the range of burden hours (rounded to 35,200 hours) by the assumed 10-year timeframe for states and Tribes to complete their activities associated with implementing the final rule., resulting in a total estimated annual burden of $(35,200 \text{ hours}) \div (10 \text{ years}) = \mathbf{3,520 \text{ hours}}$.

⁴ <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2022/general-schedule/>

Framed another way, considering a total of 150 state and 168 Tribal WQS submissions to the EPA, or approximately 32 per year over a 10-year period, the burden estimate reflects approximately 110 hours per submission. This is a reasonable estimate of the effort it takes to review each submission.

14c. Agency Non-Labor Costs

This section is not applicable to this action.

15) REASONS FOR CHANGE IN BURDEN

Explain the reasons for any program changes or adjustments reported in the burden or capital/O&M cost estimates.

The EPA is revising the WQS regulation at 40 CFR Part 131. The rule would add new burden as described in this ICR.

16) PUBLICATION OF DATA

For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

The EPA posts approved state and authorized Tribal WQS at <https://www.epa.gov/wqs-tech/state-specific-water-quality-standards-effective-under-clean-water-act-cwa>. The EPA provides links to promulgated WQS for states and Tribes at <https://www.epa.gov/wqs-tech/federally-promulgated-water-quality-standards-specific-states-territories-and-tribes>.

The EPA also maintains informational copies of state submission materials and EPA decisions in an internal system.

17) DISPLAY OF EXPIRATION DATE

If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

This section is not applicable to this action.

18) CERTIFICATION STATEMENT

Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."

This section is not applicable to this action.

