

## Water: Handbook

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# Water Quality Standards Handbook – Chapter 6: Procedures for Review and Revision of Water Quality Standards (40 CFR 131 – Subpart C)

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## Introduction

The [Clean Water Act \(CWA\)](#) requires states and authorized tribes to periodically review and, as appropriate, adopt new or revised water quality standards (WQS) to meet the requirements of the CWA.<sup>1/</sup> States and tribes must submit any new or revised WQS resulting from such a review to the EPA for review and approval or disapproval action under CWA Section 303(c). This chapter provides an overview of these state, tribal, and federal processes. In particular, Section 6.1 of this chapter discusses state and tribal processes for review and revision of WQS and provides information on the regulatory requirements to which states and tribes must adhere during their WQS review, adoption, and submittal processes. Section 6.2 discusses the EPA review and approval or disapproval procedures of new or revised WQS. Section 6.3 discusses procedures for EPA promulgation of federal WQS and circumstances under which the EPA would withdraw federally promulgated WQS.

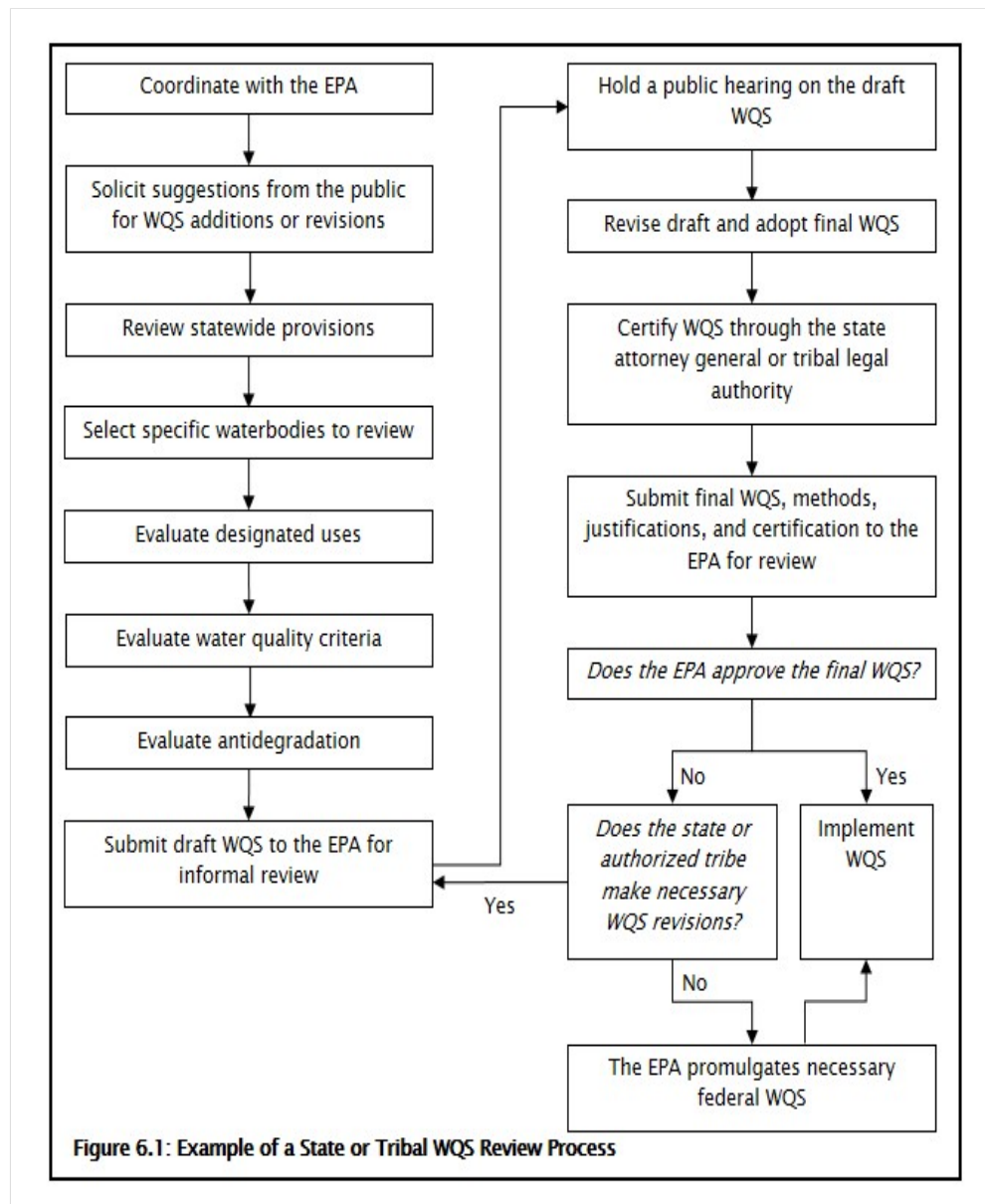
## 6.1 State and Tribal Processes for Review and Revision of Water Quality Standards

Section 303(c)(1) of the [CWA](#) and the EPA's implementing regulations at [40 CFR 131.20](#) require that states and authorized tribes, from time to time, but at least once every three years, hold public hearings to review applicable WQS and, as appropriate, modify and adopt WQS. In each WQS review cycle, states and tribes, with input from the public, review their existing WQS to identify additions and/or revisions that are necessary or appropriate to ensure that their WQS meet the requirements of the CWA and the needs of the state or tribe. States and tribes may revise their WQS in a variety of ways including additions of and revisions to designated uses, water quality criteria, antidegradation policies and adopted implementation procedures, or other general policies. The following are examples of items that states and tribes should consider when reviewing their WQS:

- New federal, state, or tribal statutes, regulations, or guidance.

- Legal decisions involving WQS.
- New or updated scientific information (e.g., new or updated Section 304(a) national criteria recommendations).
- Input from members of the public.
- Section 305(b) reports and newly available water quality monitoring data.
- Results of previous WQS triennial reviews.
- Changes in circumstances that affect the attainability of applicable WQS.
- Other necessary or appropriate clarifications or revisions.

Figure 6.1 displays an example of a state or tribal WQS review process.



### 6.1.1 Coordinate with the EPA

The EPA recommends that states and authorized tribes coordinate with the EPA when they begin the triennial review process as well as before beginning activities to adopt new or revised WQS, long before the state or tribe formally submits the WQS for EPA review. Reasons for early coordination with the EPA include the following:

- Early identification of potential areas of scientific or programmatic concern that require resolution between the EPA and the state or tribe.
- Discussion and resolution of any such concerns before the EPA receives a formal review request from the state or tribe.
- Increased likelihood that state or tribal WQS meet the requirements of the [CWA](#) and [40 CFR Part 131](#) at the time of submission to the EPA.

While not a regulatory requirement, states and tribes may send draft WQS to the EPA for early feedback. The EPA will then provide comments on the proposed revisions to assist the state or tribe in developing WQS that are approvable by the EPA. Coordination between the state or tribe and the EPA throughout the review process is key to the EPA's timely review of state and tribal WQS.

### 6.1.2 Involve the Public

An important component of both the WQS triennial review process and any WQS revisions that result from such a process is meaningful involvement of the public and intergovernmental coordination with local, state, federal, and tribal entities with an interest in water quality issues. The EPA urges states and authorized tribes to involve the public actively in the WQS review process by soliciting suggestions for additions and revisions to WQS. At a minimum, Section 303(c) of the [CWA](#) and [40 CFR 131.20](#) require states and tribes to hold a public hearing in reviewing and revising WQS and to submit the results to the EPA. The regulation at [40 CFR Part 25](#) also describes additional requirements for public involvement. State and tribal regulations may require more than one hearing. The EPA also encourages states and tribes to solicit input from the public through other means such as webinars and web postings using social media.

Engaging citizens, municipalities, industries, environmentalists, universities, other tribes, other states, and other entities in collecting and evaluating information for the decision-making process may assist the state or tribe in improving the scientific basis of and building support for WQS decisions. These partnerships ensure that ideas, data, and information are shared, which will increase the effectiveness of the water quality management process. Open discussion of the scientific evidence and analysis supporting proposed revisions to the WQS can assist the state or tribe in making its WQS decisions.

### 6.1.3 Review Provisions that are Applicable across the State or Reservation

Part of the state or tribal WQS review process includes reviewing the general policies and other provisions that are applicable across the state or reservation to determine if additions or revisions are necessary. Such policies and provisions may include, but are not limited to, the following:

- WQS coverage for all waters of the United States.
- Appropriate use designations including downstream protection provisions.
- Water quality criteria review and development.
- Antidegradation policies and implementation procedures.
- Mixing zone policies.
- Compliance schedule authorizing provisions.
- Low-flow provisions.
- Variance provisions.
- Definitions.

Under the [CWA](#), states and authorized tribes must adopt WQS for all of their intrastate and interstate navigable waters, i.e., for all "waters of the United States," within their jurisdiction. The term "waters of the United States" is defined at [40 CFR 230.3\(s\)](#) and [33 CFR Part 328](#), and other terms relevant to WQS are defined at [40 CFR 131.3](#). State and tribal WQS should contain these or equivalent definitions that are at least as inclusive of waters as the federal definitions.

### 6.1.4 Select Specific Waterbodies to Review

Consistent with [40 CFR 131.20\(a\)](#), states and authorized tribes should use any procedures they have incorporated into their Continuing Planning Process for identifying and reviewing WQS on specific waterbodies (see also [40 CFR 130.5](#)). Every three years, states and tribes must reexamine any waterbodies for which the WQS do not include the goal uses specified in Section 101(a)(2) of the [CWA](#) and, if new information indicates that such uses are attainable, revise their WQS to reflect such uses. In addition to such waterbodies, the EPA recommends that states and tribes consider conducting a detailed WQS review for waterbodies where one or more of the following occur:

- The state or tribe has identified toxic or other pollutants, such as nutrients, that may be precluding attainment of a designated use or posing an unreasonable risk to human health.
- Pollutants could have potential adverse impacts on threatened or endangered species.
- National Pollutant Discharge Elimination System permits containing water quality-based effluent limits are scheduled to be issued or reissued.
- Funding decisions for combined sewer overflows are pending.
- The public has expressed interest in having the state review the WQS that are applicable to a particular waterbody.

States and tribes may find it useful to identify such waters by examining reports and listings developed under Sections

303(d), 304(l), 305(b), and 319 as well as unclassified waters, construction grants priority lists, and expired major permits. States and tribes may have other reasons for deciding to examine a waterbody in detail such as human health problems, court orders, public input, or the economic and social impacts of implementing the existing WQS.

### 6.1.5 Evaluate Designated Uses

Once the state or authorized tribe has selected priority waterbodies for review, the state or tribe must evaluate the designated uses. An integral part of the WQS review and revision process is considering whether a selected waterbody is able to attain its designated use and, if such waters had not included the uses specified in [CWA Section 101\(a\)\(2\)](#), whether such uses are now attainable, as required by [40 CFR 131.20\(a\)](#). This consideration may involve some level of data collection up to and including a full waterbody survey and assessment; however, an intensive survey of the waterbody is not necessary if adequate data are already available. The data and information collected from the waterbody survey should provide a firm basis for evaluating whether the waterbody can attain its designated use or a designated use closer to the uses specified in Section 101(a)(2) in light of the factors precluding attainment described at [40 CFR 131.10\(g\)](#). The purpose of the evaluation is to characterize present uses, attainable/unattainable designated uses, and the reasons why uses are unattainable. Information generated in the survey also can be used to establish the basis for seasonal uses and subcategories of uses.

Where designated uses that include the uses specified in Section 101(a)(2) are not feasible to attain, states and tribes should determine the designated use that is feasible to attain in light of the factors precluding attainment and any other data that were used to evaluate attainability. To that end, the state or tribe may conduct a use attainability analysis (UAA) to demonstrate that attaining the use is not feasible based on one of the factors at [40 CFR 131.10\(g\)](#) and then designate the use(s) that can be attained given the physical, chemical, and biological limitations of the waterbody.

In designating uses and the water quality criteria necessary to protect the uses, it is important to emphasize that each state and tribe must “ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters,” as required by [40 CFR 131.10\(b\)](#). The EPA recommends that states and tribes consider the interaction between both point- and nonpoint- source discharges and downstream impacts as well as the fact that the downstream uses may not be affected by the same physical or other limitations as the upstream uses. For additional information on protecting downstream waters, see [Protection of Downstream Waters in Water Quality Standards: Frequently Asked Questions \(2014\)](#).

Please refer to [Chapter 2](#) of this Handbook for a detailed discussion of designated uses.

### 6.1.6 Evaluate Water Quality Criteria

The regulation at [40 CFR 131.11](#) provides that states and authorized tribes “must adopt those water quality criteria that protect the designated use.” If a state or tribe revises a designated use or adopts a new designated use, the state or tribe must ensure that it has adopted criteria to protect the new or revised designated use. If the state or tribe removes a designated use, the state or tribe may delete the criteria to protect the designated use as long as there are still criteria to protect the remaining uses.

The regulation at [40 CFR 131.11](#) and Section 303(c)(2)(B) of the CWA further require states and tribes to adopt numeric criteria (or narrative criteria with numeric translators) for Section 307(a) toxic pollutants, as necessary, to support state and tribal designated uses where the discharge or presence of such pollutants in the affected waters could reasonably be expected to interfere with those designated uses adopted by the state or tribe. (See [Guidance for State Implementation of Water Quality Standards for CWA Section 303\(c\)\(2\)\(B\) \(1988\)](#).) For regulatory purposes, the EPA has translated the 65 compounds and families of compounds listed under Section 307(a) into 126 specific toxic substances, which the EPA refers to as “priority pollutants,” and has published national criteria recommendations for most of these pollutants consistent with the authority provided in Section 304(a). Section 304(a)(1) requires the EPA to develop recommended criteria that accurately reflect the latest scientific knowledge, and these recommended criteria are based solely on data and scientific judgments on pollutant concentrations and environmental or human health effects.

In addition to the required criteria discussed above, the EPA recommends that all state and tribal WQS contain narrative “free from” criteria as well as numeric criteria for other water quality parameters such as temperature, dissolved oxygen, pH, and bacteria, which are typically included in state and tribal WQS. The EPA has also recognized the importance of having numeric criteria for both phosphorus and nitrogen and has urged states and tribes to prioritize waters for development of numeric nutrient criteria (see the 2011 memorandum [Working in Partnership with States to Address Phosphorus and Nitrogen Pollution through Use of a Framework for State Nutrient Reductions](#)).

As previously discussed, Section 303(c)(1) and the EPA’s implementing regulation at [40 CFR 131.20\(a\)](#) require states

and tribes to hold a public hearing for the purpose of reviewing their applicable WQS at least once each three-year period. When reviewing these applicable WQS, in addition to reviewing all applicable criteria, states and tribes must ensure that they have adopted criteria for toxic pollutants as required by Section 303(c)(2)(B). It is important to note that, although a state or tribe may have fully complied with the requirements of Section 303(c)(2)(B) previously, states and tribes may be required to adopt new toxic criteria in the following situations:

- The EPA publishes new Section 304(a) national criteria recommendations for a priority pollutant.
- New information on existing water quality and pollution sources indicates that a toxic pollutant for which a state or tribe had not previously adopted criteria could now be reasonably expected to interfere with the designated uses adopted by the state or tribe.

Please refer to [Chapter 3](#) of this Handbook to find a detailed discussion of criteria.

### 6.1.7 Evaluate Antidegradation

The EPA's regulations at [40 CFR 131.12](#) require states and authorized tribes to include antidegradation requirements and methods for implementing those requirements as part of their WQS program. Because they are parts of WQS, antidegradation policies and adopted implementation procedures are subject to review and revision as part of the WQS triennial review. Each state and tribe must develop, adopt, and retain an antidegradation policy that applies across the state or reservation and establish procedures for its implementation through the water quality management process. The state or tribal antidegradation policy and implementation procedures must be consistent with the components detailed in [40 CFR 131.12](#). State or tribal WQS regulations must specifically reference the policy if it is not included in its entirety so that the functional relationship between the policy and the other WQS is clear. Regardless of the location of the policy, it must be legally binding and meet all applicable requirements described in [40 CFR 131.12](#). Antidegradation implementation procedures should specify how the state or tribe would determine on a case-by-case basis whether, and to what extent, the permitting authority might authorize a lowering of high water quality. As a result, antidegradation implementation is an integral component of a comprehensive approach to enhancing and protecting high water quality.

Please refer to [Chapter 4](#) of this Handbook to find a more detailed discussion of antidegradation.

### 6.1.8 Submit the Water Quality Standards to the EPA

Consistent with [40 CFR 131.20\(c\)](#), states and authorized tribes must submit their new or revised WQS to the EPA for review and approval or disapproval within 30 days of their final administrative action. Final administrative action is the last action a state or tribe must take (e.g., signature, a review by a legislative committee or state board, a delay mandated by a state administrative procedures act) before its revision becomes a rule under state or tribal law. After such action, the state or tribe can officially transmit the newly adopted WQS to the EPA for review. If no revisions are made, states and tribes must submit the results of their review within 30 days of completion of the review. The state or tribal WQS submission of new or revised WQS must include, at a minimum, the six key elements described in [40 CFR 131.6](#):

- Waterbody use designations that are consistent with [CWA Sections 101\(a\)\(2\) and 303\(c\)\(2\)](#).
- Methods and analyses used to support the WQS.
- Water quality criteria sufficient to protect designated uses.
- An antidegradation policy and accompanying implementation procedures consistent with [40 CFR 131.12](#).
- Certification by the state attorney general or appropriate tribal legal authority that the WQS were duly adopted according to state or tribal law.
- General information that will help the EPA determine whether the scientific basis is adequate for WQS that do not include the uses specified in [Section 101\(a\)\(2\)](#), including UAAs as appropriate, as well as information on state or tribal policies that generally affect the application and implementation of the WQS (e.g., mixing zone and variance policies).

## 6.2 EPA Review and Approval or Disapproval of New or Revised Water Quality Standards

When states and authorized tribes adopt new or revised WQS, they are required under [CWA Section 303\(c\)](#) to submit such WQS to the EPA for review and approval or disapproval action. The EPA regional offices review state and tribal WQS submissions and serve as the primary point of contact with the states and tribes. EPA regional administrators are responsible for approving or disapproving WQS. Therefore, states and tribes should submit their new or revised WQS to the appropriate EPA [regional office](#).

Please refer to [Chapter 1](#) of this Handbook for a discussion of the types of provisions that constitute new or revised WQS that require EPA review under Section 303(c).

Under Section 303(c)(3) and [40 CFR 131.21](#), the EPA must approve within 60 days or disapprove within 90 days any new or revised WQS adopted by a state or tribe. The EPA reviews the state or tribal WQS following the requirements of Section 303(c) and 40 CFR Part 131 to ensure that the use designations, water quality criteria, antidegradation policy and adopted implementation procedures, and general policies (e.g., WQS variances and mixing zone policies) meet the minimum requirements.<sup>2/</sup> In doing so, the EPA ensures that WQS are scientifically defensible and that they adhere to all regulatory and statutory requirements. In reviewing new or revised WQS, the EPA will consider the adequacy of the analyses and the public comments received during the public hearing process. As discussed in Section 6.1.1 of this chapter, states and tribes are encouraged to provide early drafts to the EPA so that any issues can be resolved prior to the state or tribe formally proposing or adopting new or revised WQS.

The EPA only reviews state and tribal WQS provisions that are new or revised. The EPA's review of such WQS generally includes, but is not limited to, those elements listed below that are applicable to the specific new or revised WQS. It is important to note that, because each state or tribal WQS submission is unique, the EPA documents the basis for its actions including how the new or revised WQS are consistent with the CWA and 40 CFR Part 131:

#### Uses and Criteria:

- The EPA determines whether states and tribes have adopted designated uses that include the uses specified in CWA Section 101(a)(2) for all waters of the United States. For waters where Section 101(a)(2) uses have not been adopted, the EPA determines whether the designated uses were adopted consistent with the requirements at 40 CFR 131.10 and whether the bases for the use designations (e.g., UAAs) have been reviewed every three years, as required by 40 CFR 131.20(a).
- The EPA determines whether the state and tribal criteria are sufficient to protect the designated uses by ensuring that all numeric criteria are based on Section 304(a) guidance, Section 304(a) guidance modified to reflect site-specific conditions, or other scientifically defensible methods. The EPA's decision to approve or disapprove criteria based on site-specific calculations or alternative scientific methods is based on whether the resulting criteria are sufficient to protect the designated use and whether the supporting scientific methods and assumptions are valid and adequate. The EPA's decision to approve or disapprove such criteria is not based on whether the resulting criteria are more or less stringent than the EPA's Section 304(a) national recommended criteria.
- The EPA determines whether narrative "free from" criteria are included in state and tribal WQS and protect all waters at all flows. The EPA also evaluates whether the WQS include a method for implementing any narrative "free from" criteria for toxic pollutants for situations in which the EPA has not issued Section 304(a) guidance for a particular toxicant or where the toxicant causing the problem is unknown.
- The EPA determines whether the state or tribe has included criteria for Section 307(a) "priority pollutants" sufficient to satisfy the requirements of Section 303(c)(2)(B).
- The EPA determines whether designated uses and criteria apply throughout the entire waterbody.
- The EPA determines whether the information and analyses provided in support of the new or revised WQS indicate that instream designated uses and criteria will provide for the attainment and maintenance of downstream WQS.

#### Antidegradation and General Policies:

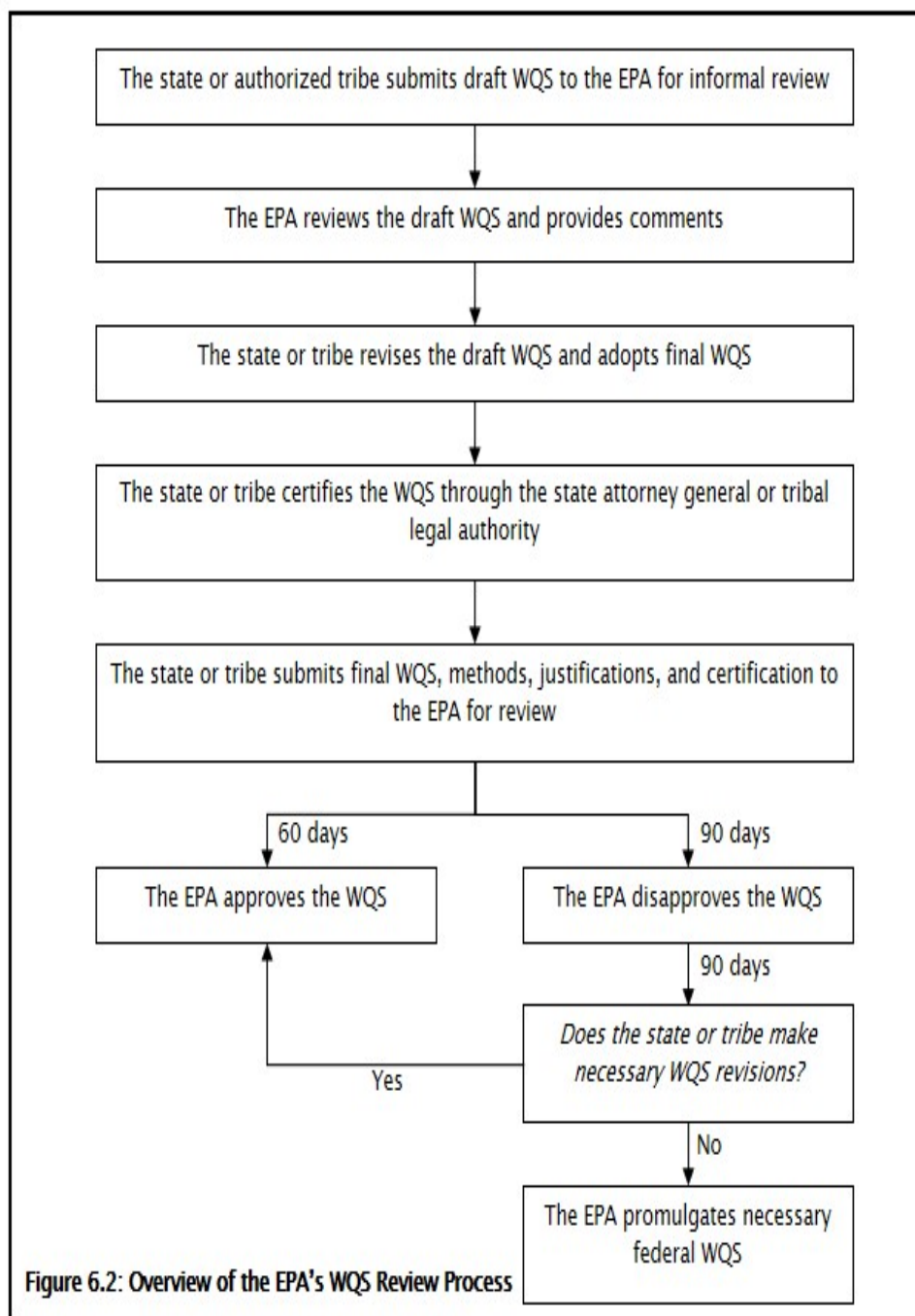
- The EPA determines whether state and tribal antidegradation policies meet the requirements of [40 CFR 131.12](#).
- The EPA determines whether the state or tribe has provided or referenced procedures for implementing the antidegradation policy.
- Where general policies (e.g., mixing zone, variance, and low-flow policies) are included in the state or tribal WQS, the EPA determines whether the policies are consistent with the CWA and 40 CFR Part 131.

#### Procedural:

- The EPA determines whether the state or tribe has met the minimum applicable requirements for a WQS submission contained in 40 CFR 131.6.
- The EPA determines whether the state or tribe has complied with the procedural requirements contained in 40 CFR 131.20 (e.g., public participation) for conducting WQS reviews.
- The EPA determines whether the new or revised WQS are consistent with the CWA and 40 CFR Part 131.
- The EPA reviews comments and suggestions that the public submitted on proposed state and tribal WQS to determine if any comments indicate that the WQS are not consistent with the CWA and 40 CFR Part 131.

After reviewing the new or revised state or tribal WQS, the EPA approves or disapproves such new or revised WQS.

Figure 6.2 provides an overview of the EPA's WQS review process.



### 6.2.1 Policies and Procedures Related to EPA Approvals

On March 30, 2000, the EPA revised its regulation at [40 CFR 131.21](#) that specifies when new or revised state and tribal WQS become effective for CWA purposes. Commonly called "the Alaska rule" (40 CFR 131.21(c)(2), 65 FR 24641, April 27, 2000), this regulation mandates that new or revised WQS adopted by states or authorized tribes and submitted to the EPA after May 30, 2000, must be approved by the EPA before they become applicable WQS for actions under the CWA (e.g., establishment of water quality-based effluent limitations under Section 301(b)(1)(C) or development of total maximum daily loads under Section 303(d)(1)(C)). The Alaska rule also provides that WQS already submitted to the EPA prior to May 30, 2000, are in effect for CWA purposes regardless of whether they were approved by the EPA unless and until the EPA has either promulgated a more stringent WQS for the state or tribe or approved a change, deletion, or addition to the specific WQS.

Consistent with 40 CFR 131.21(a)(1) and Section 303(c)(3), if the EPA determines that new or revised WQS adopted by a state or tribe meet the requirements of the CWA and 40 CFR Part 131, the EPA must notify the state or tribe within 60 days that the WQS are approved. If particular events (e.g., state implementation decisions, pending federal legislation pertaining to WQS requirements) could result in a failure of the approved WQS to continue to meet the requirements of the CWA, the EPA should identify these events in the approval letter and the administrative record for the action in order to guide future state and tribal review and revision activities.

When only a portion of the adopted state or tribal WQS submission meets the requirements of the CWA and 40 CFR Part 131, the EPA may approve only that portion.

The EPA could also issue a conditional approval. Conditional approvals should only be used as the exception, not the rule, and in limited circumstances. For additional information on conditional approvals, see [Guidance for the Use of Conditional Approvals for State Water Quality Standards \(1989\)](#).

The EPA notes that requests for clarification or additional information from the state or tribe regarding their new or revised WQS are not EPA approval or disapproval actions under Section 303(c).

The EPA has compiled state and tribal WQS that are currently in effect for CWA purposes (i.e., those approved by the EPA for CWA purposes or are otherwise in effect). Commonly referred to as the “[WQS Repository](#),” this webpage includes a clickable map that is useful for finding currently effective state and tribal WQS.

## 6.2.2 Policies and Procedures Related to EPA Disapprovals

Consistent with [40 CFR 131.21\(a\)\(2\)](#) and Section 303(c)(3) of the CWA, if the EPA determines that the new or revised state or tribal WQS do not meet the requirements of the CWA and 40 CFR Part 131, the EPA must disapprove such WQS and notify the state or authorized tribe within 90 days. In the event of a disapproval action, the EPA must also specify the revisions that the state or tribe must adopt to meet CWA requirements. If the EPA disapproves a new or revised WQS, that WQS is not in effect for CWA purposes. In such a case, the state or tribe would continue to implement the previous EPA-approved WQS until the state or tribe remedies the disapproval action and the EPA approves such remedy or until the EPA promulgates a new or revised WQS.

## 6.3 EPA Promulgation of Federal Water Quality Standards

### 6.3.1 When the EPA Might Promulgate Federal Water Quality Standards

As a matter of policy, the EPA prefers that states and authorized tribes adopt their own WQS. However, under Section 303(c)(4) of the CWA and [40 CFR 131.22](#), the EPA must promptly propose and promulgate federal WQS if either of the following conditions occur:

- The EPA determines that a new or revised WQS submitted by a state or tribe is not consistent with CWA requirements and 40 CFR Part 131, and the state or tribe does not adopt acceptable replacement WQS within 90 days.
- In any case where the EPA Administrator makes an “Administrator determination” that a new or revised WQS is necessary to meet CWA requirements and 40 CFR Part 131.

As described in Section 6.2.2, if the EPA determines, under Section 303(c)(4)(A) and 40 CFR 131.22(a), that new or revised WQS adopted by a state or tribe are not consistent with (i.e., do not meet the requirements of) the CWA and 40 CFR Part 131, the EPA must disapprove such WQS within 90 days, specifying the changes necessary to meet CWA requirements. However, under the CWA, the EPA must promptly propose federal WQS if the state or tribe fails to adopt and submit the necessary revisions within 90 days after notification of the disapproval.

If the EPA Administrator makes an “Administrator’s determination,” under Section 303(c)(4)(B) and 40 CFR 131.22(b), that a new or revised WQS is necessary to meet the requirements of the CWA, the EPA must promptly propose such WQS and then promulgate such WQS no later than 90 days after publication of the EPA’s proposed WQS. However, the EPA is not required to promulgate a new or revised WQS if, prior to the EPA’s promulgation, the state or tribe adopts and submits a new or revised WQS that the EPA determines to be consistent with the CWA.

The EPA has compiled a list of [federally promulgated WQS](#).

### 6.3.2 When the EPA Would Withdraw Federally Promulgated Water Quality Standards

Where the EPA has promulgated WQS for a state or tribe, the EPA withdraws its federally promulgated WQS after the EPA



determines that revised state or tribal WQS meet the requirements of the [CWA](#) and [40 CFR Part 131](#) and approves such WQS.

<sup>1/</sup> Throughout this document, the term “states” means the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. The term “authorized tribe” or “tribe” means an Indian tribe authorized for treatment in a manner similar to a state under [CWA](#) Section 518 for purposes of Section 303(c) WQS.

<sup>2/</sup> Under Section 510 of the [CWA](#), state and tribal WQS may be more stringent than the EPA's minimum requirements.

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