SUMMARY: The Commander, First Coast Guard District has issued a temporary 90 day deviation from the existing drawbridge operation regulations for the Metro-North Bridge, mile 1.0, at Greenwich, Connecticut. This deviation will require the bridge to open on signal, June 7, 2000 through September 4, 2000, from 9 p.m. to 5 a.m., after a four-hour advance notice is given by calling the number posted at the bridge. The bridge presently does not open for vessel traffic between 9 p.m. and 5 a.m., daily. This deviation is necessary in order to test an alternate drawbridge operation schedule.

DATES: This deviation is effective from June 7, 2000 through September 4, 2000. Comments must reach the Coast Guard on or before September 30, 2000.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, Bridge Branch, at 408 Atlantic Avenue, Boston, MA. 02110–3350, or deliver them at the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this notice by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this notice (CGD01–00–016), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Background and Purpose

The Metro-North Bridge, mile 1.0, across the Mianus River has a vertical clearance of 20 feet at mean high water and 27 feet at mean low water in the closed position. The existing operating regulations in 33 CFR 117.209 require the bridge to open on signal from 5 a.m. to 9 p.m., immediately for commercial vessels and as soon as practicable but no later than 20 minutes after the signal to open for the passage of all other vessels. When a train scheduled to cross the bridge without stopping has passed the Greenwich or Riverside stations and is in motion toward the bridge, the draw shall open as soon as the train has crossed the bridge. From 9 p.m. to 5 a.m., the draw need not be opened for the passage of vessels.

The Coast Guard received a request from a commercial vessel operator requesting a change to the operating regulations for the Metro-North Bridge. The commercial operator has five vessels that transit the Metro-North Bridge. One of the five vessels can not transit through the bridge without a bridge opening. The commercial operator would like the bridge to open for vessel traffic during the 9 p.m. to 5 a.m. time period. The commercial operator expects to make 30–40 night transits from May through October that will require bridge openings after 9 p.m., when the bridge is normally closed.

Under the deviation, the Metro-North Bridge, mile 1.0, across the Mianus River at Greenwich, from June 7, 2000 through September 4, 2000, will, from 5 a.m. to 9 p.m., open on signal immediately for commercial vessels and as soon as practicable, but no later than 20 minutes after the signal to open for the passage of all other vessels. When a train scheduled to cross the bridge without stopping has passed the Greenwich or Riverside stations and is in motion toward the bridge, the draw will open as soon as the train has crossed the bridge. From 9 p.m. to 5 a.m., the draw will open on signal if at least a four-hour advance notice is given by calling the number posted at the bridge.

It is expected that this test schedule will meet the present needs of navigation.

This deviation from the normal operating regulations is authorized under 33 CFR 117.43.

Dated: April 12 2000,

Robert F. Duncan,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 00–10452 Filed 4–26–00; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–6571–7]

RIN 2040–AD33

EPA Review and Approval of State and Tribal Water Quality Standards

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This rule specifies that new and revised standards adopted by States and authorized Tribes after the effective date of today's rule become ''applicable standards for Clean Water Act purposes'' only when approved by EPA. To facilitate transition to this approach, standards in effect under State and Tribal law and submitted to EPA before the effective date of the new rule may still be used for Clean Water Act purposes, whether or not approved by EPA, until replaced by Federal water quality standards or approved State or Tribal standards.

EFFECTIVE DATE: May 30, 2000.

ADDRESSES: This rule's administrative record is available for review and copying from 9:00 to 4:00 p.m., Monday through Friday, excluding legal holidays, at the Water Docket, East Tower Basement, Room EB57, U.S. EPA, 401 M Street, SW, Washington DC. For access to materials, please call (202) 260–3027 to schedule an appointment.

The Clean Water Act Water Quality Standards dockets discussed in III.E.4 of the **SUPPLEMENTARY INFORMATION** below are available for viewing in the Regional Offices. Regional contacts, addresses, and phone numbers are included in the supplementary section of this preamble.

FOR FURTHER INFORMATION CONTACT: William Morrow, Office of Science and Technology, Standards and Applied Science Division, (202) 260–3657, morrow.william@epa.gov.

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I. Potentially Affected Entities

Citizens concerned with water quality may be interested in this rulemaking. Entities discharging pollutants to waters of the United States could be indirectly affected by this rulemaking since water quality standards are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits. Potentially affected entities include:

Category	Examples of potentially affected entities
States, Tribes, and Territories	States, Territories, and Tribes authorized to administer water quality standards.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

Section 303(c) of the Clean Water Act requires States, which as defined include Territories and authorized Tribes, to review their water quality standards periodically, to adopt new or revised standards as needed, and to submit their standards for EPA review. Authorized Tribes are Tribes that have approved CWA section 303 authority pursuant to 40 CFR 131.8. EPA will approve or disapprove any such new or revised standards. Section 303(c)(3) states that ''If the Administrator, within sixty days after the date of submission of the revised or new standard, determines that such standard meets the requirements of this Act, such standard shall thereafter be the water quality standard for the applicable waters.'' If the Administrator determines that the new or revised standard does not meet those requirements, she shall take specified steps to ensure that an adequate standard is in place. (See preamble to proposed rule (64 FR 37072 (July 9, 1999)) for a more detailed description of the statutory background.)

Notwithstanding this statutory language, EPA's 1983 water quality standard regulations set out an interpretation of the Act which allowed State and Tribal standards to go into effect for CWA purposes as soon as they were adopted and effective under State or Tribal law, and to remain in effect unless and until replaced by another standard. The 1983 rule reflected an Agency interpretation which dated back at least to 1977. See Opinion of the General Counsel No. 58, Issue 2, In re Bethlehem Steel Corporation, March 29, 1977. On July 8, 1997, the district court issued an opinion in *Alaska Clean Water Act Alliance* v. *Clark*, No. C96–1762R (W.D. Wash.) holding that the plain meaning of the Clean Water Act was that new and revised state water quality standards were not effective for Clean Water Act purposes until approved by EPA. The parties to the lawsuit entered into a settlement agreement under which EPA agreed to propose revisions to 40 CFR 131.21(c) consistent with the Court's opinion no later than July 1, 1999, and to take final action within nine months of the proposal. Today's final rule is issued in accordance with this settlement agreement.

The proposed rule was published in the **Federal Register** on July 9, 1999, with a 45 day comment period. The public comments on the proposed rule are available in the docket for this rule.

III. Summary of Final Rule and Response to Major Comments

A. General Approach

Like the proposal, the final regulation sets out a general rule that if a State or authorized Tribe adopts a WQS that goes into effect after the effective date of this rule, that standard becomes the applicable WQS for purposes of the CWA when EPA approves it, unless or until EPA has promulgated a more stringent Federal WQS for the State or authorized Tribe. For example, where EPA has previously promulgated a more stringent Federal standard, the newly approved State or Tribal standard will go into effect for CWA purposes after EPA removes the Federal rule. Another example is where EPA approves a State or Tribal standard and at a later date, based on new information, determines that a new or revised standard is necessary. If the State or Tribe does not revise the previously approved standard, EPA would promulgate a Federal standard to supercede the previously approved standard. EPA clarified this in today's final rule by changing the heading in the table at § 131.21(c) from ''unless'' to ''unless or until.''

As discussed in section III.C., in response to comments, today's final rule modifies the proposed transition provision (referred to in the proposal as a grandfather provision) allowing standards which went into effect prior to the effective date of today's rule to be used for CWA purposes. The final rule also establishes an approach to integrate the requirements of CWA sections 303 and 510 that is different than the proposal. The following discussion summarizes the major comments, and explains why EPA did or did not modify the proposal in response to these comments. A complete response to comments is in the administrative record for this rule—see **ADDRESSES.**

The comments were divided on the general approach in the proposal. A number of commenters, especially environmental groups, strongly supported the proposal in general as mandated by the Clean Water Act and as ensuring that only standards which meet the requirements of the CWA would be used for CWA purposes (although some objected to the exceptions provided for standards adopted before the effective date of the final rule and for new, not less stringent standards). Other commenters indicated that the new approach would be acceptable if steps were taken to address delays in EPA approval of standards (*e.g.,* provide for default approvals if EPA did not act in a timely fashion). Finally, a number of commenters expressed support for retaining the current approach; particular commenters questioned the legal basis for the new approach or felt that it infringed on States' rights; or expressed concerns that the new approach would create a confusing system of dual standards and/or result in gaps when a State repealed an old standard.

The final rule retains the general approach of the proposed rule. EPA agrees that this approach (that is, standards are not effective for CWA purposes until approved by EPA)

reflects the plain language of CWA section 303(c)(3). While the commenters have raised various practical issues concerning the implementation of the proposed approach, EPA believes that these problems can generally be addressed and do not justify a different interpretation of the language of section 303(c)(3). EPA does not believe that the final rule infringes on State or Tribal rights. States and authorized Tribes will continue to have the flexibility to adopt new and revised standards whenever deemed appropriate or necessary. Today's final rule does not affect the basis for EPA review and approval/disapproval. The substantive requirements of the CWA and EPA's implementing regulations remain unchanged. Today's final rule only affects the timing of the effectiveness, for CWA purposes, of State and Tribal revisions to standards.

Many commenters noted that EPA has not always been able to meet its CWA deadlines when reviewing and taking action on (*i.e.,* approving and/or disapproving) WQS submissions and expressed concern that such delays would cause problems under the new rule. EPA acknowledges this concern and is working with its EPA Regional offices and States and authorized Tribes to streamline the EPA review and approval/disapproval process. For example, EPA has identified Endangered Species Act (ESA) consultations as one source of delay in EPA approval actions. EPA is working with both the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) to streamline the consultations. One key outcome of these discussions will be the finalization of the Memorandum of Agreement (MOA) that EPA, NMFS, and FWS solicited public comment on in January of 1999 (see 64 FR 2741). EPA, NMFS, and the FWS believe the final MOA will provide a framework for streamlining consultations in the Regional and Field offices. EPA is also discussing with States and authorized Tribes how they can assist EPA in assuring that the needs of threatened and endangered species are addressed in the development of State and Tribal standards. Although consultation under the ESA is EPA's obligation, in discussions with EPA, States have acknowledged they have a role in assuring that State standards adequately protect aquatic life and the environment, including threatened and endangered species.

EPA is also working with States and authorized Tribes to determine if it needs to further clarify the WQS program requirements in 40 CFR Part 131 (see 63 FR 36742). At a minimum, EPA will jointly develop guidance with States and authorized Tribes to improve the current State and Tribal adoption and EPA review and approval/disapproval process. EPA believes that, once completed, this guidance will inform EPA Regional offices and States and authorized Tribes on how to identify and resolve concerns early in the process, so that when new or revised State and Tribal WQS are submitted to EPA, there are no unexpected issues and EPA can act in a timely fashion. In addition, EPA will continue to provide technical assistance and training for the water quality standards program. Such training and workshops will reflect the joint strategy developed by EPA, States and authorized Tribes in the aforementioned guidance.

Several commenters expressed concern that when States adopt new or revised standards, the old ones expire as a matter of State law. They wanted to know how the old standards can be used for CWA purposes when the new or revised standards are the only standards in effect for State purposes. The old standards remain the applicable CWA standards and will be retained in the CWA WQS docket until EPA approves the State or Tribal revisions, or until EPA promulgates a more stringent standard (see also section 131.21(e) of today's final rule). There are several things States and authorized Tribes can do to avoid or minimize using such old standards pending EPA action on their replacement. First and foremost, States and authorized Tribes should submit new and revised standards to EPA for review and approval/disapproval as soon as duly adopted into State or Tribal law. Such a submission, meeting the requirements of 40 CFR 131.6, will start EPA's 60/90 day clock for review and approval/disapproval respectively under the CWA. Secondly, States and Tribes should coordinate with EPA's Regional Offices early in the State and Tribal standards development process. This will help avoid any confusion as to what is ''approvable.'' EPA believes that early and frequent communication will help ensure that States and authorized Tribes submit standards revisions that are scientifically defensible and consistent with the CWA, thus avoiding a disapproval once officially submitted to EPA. For more information on coordinating State and Tribal actions with EPA's CWA review see section E. Starting (and completing) EPA's review process as quickly as possible will minimize the number of regulatory actions a State or authorized Tribe is likely to take prior to a new or revised standard being approved by EPA. In addition, States and authorized Tribes may consider changing their procedures so that a revision to a State or Tribe's standard is not effective under State or Tribal law until after EPA approves or after a period of time—such as 90 days—that provides an opportunity for submittal and completion of EPA review while the old standard remains on the State or Tribal books. In addition, some States and authorized Tribes may decide to delay any regulatory actions (*e.g.,* draft NPDES permits) until EPA approval of revised standards.

In the (hopefully rare) event that a State or authorized Tribe does need to take a regulatory action before EPA review of a revision is complete, there are several options available. Some States or authorized Tribes may propose regulatory actions based on newly adopted standards not yet approved by EPA. For example, a State might develop a draft permit based on new or revised, less stringent standards. If the revised standards are not approved by EPA by the end of the permit review period, then EPA could object to the proposed permit, or the State could decide to withdraw and re-propose the permit based on the previous standards. Alternatively, the State could develop, and take public comment on, limits calculated from both the old and new standards with the final limits contingent on EPA's standards approval decision. This approach may avoid the need to withdraw and reissue the permit if EPA disapproves the changes to the water quality standards. EPA believes that, as a practical matter, these timing issues will only apply to new and revised standards that are less stringent than the previous standard. If the State or authorized Tribe's new and revised standard is equal to, or more stringent than the previous standard, both standards would be satisfied by implementing the more stringent standard pusuant to State or Tribal law.

B. Integration With CWA Section 510

1. Proposed Rule

Section 131.21(f) of the proposed rule specified that State or Tribal water quality standards which are not less stringent than the ''applicable water quality standards'' (that is, not less stringent than approved (or grandfathered) standards may be adopted and enforced within the boundaries of the adopting State or authorized Tribe. The preamble also specified that, under CWA sections 301(b)(1)(C) and 510, NPDES permits within the State or Tribe in question were required to assure compliance

with such a ''510 standard'' even prior to EPA approval.

2. Major Comments and Responses

The comments were almost uniformly critical of the proposed § 131.21(f) and the interpretation of section 510 which it reflected, although the nature of the objections varied.

Comment: Several commenters argued that even ''not less stringent'' standards required EPA approval before they could be used in any way under the CWA. EPA interprets these comments to argue that section 510 did not preempt EPA's section 303(c) approval requirement in such cases but simply made it clear that an approved standard could be more stringent than a minimum requirement established by the CWA. Some of these commenters also argued that the district court had already rejected the approach set out in the proposal. Others who argued that all standards needed approval before being used assumed that EPA could disapprove a ''more stringent'' standard as unjustified; and these commenters wanted EPA approval as a pre-requisite for any standard going into effect to ensure that overly stringent standards did not become effective. Commenters in both camps were concerned that making stringency determinations could be difficult, time-consuming, or open to abuse.

Response: The preamble to the proposed rule implicitly assumed that section 510 effectively waived the requirement that State and Tribal water quality standards be approved before they were used as CWA standards as long as they were ''not less stringent.'' Section 510 is a savings provision. However, as some commenters pointed out, section 510 starts with the words, ''Except as expressly provided in this Act.'' Since section 303(c)(3) expressly specifies that new or revised standards do not become the effective standards until approved by EPA, it is reasonable to read section 510 as meaning that EPA cannot disapprove a standard simply for being overly stringent, rather than that more stringent standards are effective whether or not approved by EPA. If section 510 is read this way, the reference in section 301(b)(1)(C) to standards ''established under State law under authority preserved under section 510'' is to approved standards which are more stringent than required, not—as in the proposal—to unapproved ''not less stringent'' standards. EPA agrees that this is a reasonable construction of the relevant provisions of the Act, and one that better serves the purposes of the Act.

Under this reading, one avoids the problems associated with determining whether a new or revised standard is ''not less stringent'' (under the proposal, unapproved ''not less stringent'' standards had to be reflected in a permit). If standards are not required to be used for CWA purposes until approved, there is no need to make comparative judgments of stringency. At the time of approval, the test is whether the new or revised standards meet the requirements of the CWA and EPA's implementing regulations, not whether they are more or less stringent than predecessor standards. Once such standards are approved, they are the applicable water quality standards for CWA purposes regardless of relative stringency.

Comment: Some commenters argued that ''more stringent'' standards should never need EPA review and approval.

Response: EPA does not believe that it is reasonable to interpret section 510 to dispense altogether with EPA review of such standards. Section 303(c) clearly requires States and authorized Tribes to submit all new or revised standards to EPA for review and approval or disapproval. Since section 510 begins ''Except as expressly provided in this Act,'' the authority preserved under section 510 is limited by, and does not override, the requirements for EPA review set out in section 303(c).

Comment: Many commenters argued that the proposal would lead to confusion and be difficult to implement since it would not always be obvious whether a new or revised standard was more stringent. Some of these commenters suggested that this confusion could be eliminated by having EPA review and approve or disapprove all new or revised standards regardless of stringency.

Response: EPA agrees that it is not always easy to determine whether a new or revised standard is more stringent than its predecessor, and that under the proposal there could have been a need to decide the relative stringency of a new or revised, but not yet approved, WQS. Because the proposal regarded unapproved ''not less stringent'' standards as standards adopted under authority preserved by section 510 standards, such standards would have been required to be implemented in NPDES permits under section 301(b)(1)(C) prior to approval. Accordingly, States, authorized Tribes, and the regulated public would have been forced to determine the relative stringency of as-yet-unapproved standards in pending NPDES permit proceedings to know whether permits had to assure compliance with such standards. As discussed previously in response to the first comment, the final rule addresses this issue.

Comment: Under the proposal, stringency comparisons were to be made between the new or revised standard and the previous ''applicable water quality standard'' (*i.e.,* approved or ''grandfathered'' standard). The final rule should also allow new or revised standards to be used prior to approval if they are at least as stringent as EPA's corresponding section 304(a) ambient water quality criteria, or whenever there are no corresponding section 304(a) criteria, even if the new or revised standards are less protective than the previous applicable standard in the CWA docket.

Response: As discussed above, the final rule requires that all new or revised standards be approved by EPA, regardless of stringency, before they are required to be used under the CWA. Therefore, the issue of how to make stringency comparisons is moot.

3. Final rule

The final rule deletes proposed 131.21(f). As discussed in response to previous comments, the proposal was based on an overly broad reading of CWA section 510 and would have led to substantial confusion.

However, EPA does not want to leave the impression that States and authorized Tribes will have no means to achieve the objectives of more stringent criteria while awaiting EPA approval. In the case of a proposed State or Tribal NPDES permit, as long as the permit assures compliance with approved water quality standards, EPA would not object to it as not meeting the requirements of the Act (*e.g.,* section 301(b)(1)(C)) merely because the State or authorized Tribe included effluent limitations which also meet an as-yet unapproved but more stringent State or Tribal standard. (Similarly, EPA would not disapprove a TMDL on the grounds that it was more stringent than needed to meet the applicable water quality standard.) In the case of a federally issued NPDES permit, EPA's obligation would be to include permit conditions which assured compliance with approved standards and with any conditions in a State or Tribal section 401 certification. As part of a section 401 certification, if a State or authorized Tribe includes not only water quality-based effluent limits (WQBELs) required under section 301(b)(1)(C) but also conditions needed to meet ''other appropriate requirement[s] under State law'' under section 401(d), EPA would also include those supplemental conditions in the permit. Finally, as

EPA improves the timeliness of its water quality standards actions (*i.e.,* approval and/or disapproval), more stringent standards will become the applicable standards sooner after adoption.

C. EPA Transition Strategy

1. Proposed Rule

Under the proposal, State and Tribal standards in effect (under EPA's 1983 rule) before the effective date of this new final rule would remain in effect until superseded by a standard approved or promulgated by EPA. Under the proposal, this transitional provision (referred to as ''grandfathering'' in the proposal) applied to all such pre-existing standards, whether or not they had been submitted to EPA, and, if submitted, whether or not they had been disapproved or were merely awaiting EPA approval/disapproval. This reflected the fact that under the 1983 rule such distinctions did not affect the effectiveness of State and Tribal standards.

2. Major Comments and Responses

Comment: Such a transition provision is necessary if EPA proceeds with the general approach, given EPA's backlog and the difficulty in ''resurrecting'' the previous approved standards.

Response: EPA agrees. After reviewing all the comments, EPA believes that its original conclusion—that, given the previous implementation of section 303(c), identifying and resurrecting the previous approved standards would often be difficult and in some cases impossible—is still correct. Furthermore, if no such previous standard could be identified, there could be a gap in standards to apply. None of the commenters seriously disputed those conclusions. Given the current backlog in unapproved and disapproved standards and the state of previous record keeping (*e.g.,* no CWA WQS docketing system), the only practicable way to put the new rule into effect at this time without causing serious disruption is to provide a transition provision. Moreover, some commenters mentioned their reliance on the old rule. Furthermore, the effort that would be expended in identifying previously approved water quality standards would likely detract from EPA's ability to promptly review new and revised standards submissions and to promulgate Federal water quality standards where needed.

Comment: The transition provision is inconsistent with CWA section 303(c)(3) as interpreted by the court.

Response: EPA now accepts the court's interpretation of section 303(c)(3), and also does not take the position that section 303(c)(3) itself establishes a transition provision. However, logically, that does not foreclose the use of a limited transition provision when implementing a new or revised regulation. Today's rule is not written on a blank slate. EPA believes that in revising its regulation to reflect the court's interpretation of section 303(c)(3), EPA has some discretion in constructing a transition from its longstanding previous approach. Significantly, many of the commenters who objected to the transition provision as proposed, citing its inconsistency with section 303(c)(3), nonetheless recognized the need for some transition and were accepting of, as one put it, ''a limited accommodation in light of past practices,'' *e.g.,* a grandfather or transition provision with a defined end date. However, by making such alternative suggestions, these commenters are implicitly acknowledging that having a transition provision is not *per se* illegal. For the reasons discussed in the preambles to the proposed and final rules, EPA believes that such a transition provision is needed here and that the transition provision in the final rule is a reasonable exercise of such discretion.

The water quality standards being grandfathered or transitioned are a small fraction of all State and Tribal standards currently in effect (*i.e.,* most existing standards have been approved). Further, the absolute numbers will decrease over time as EPA completes its review and takes action on (*i.e.,* approves/disapproves) backlogged submissions or, in the case of backlogged disapprovals, obtains satisfactory revisions from the State or promulgates superseding Federal standards. Most States and Territories have had their base program in place and approved by EPA for many years now. EPA is current in its review and approval of standards revisions for 19 States, 14 Tribes, 4 Territories, and the District of Columbia. EPA's backlog of unapproved standards in the remaining States consist primarily of recent refinements made by States to keep up with the latest science (*e.g.,* site-specific criteria, changes to designated uses for specific waterbodies) and to tailor standards to specific watersheds. Accordingly, EPA believes that in practice the transition provision will be fairly narrow in scope relative to approved State and Tribal standards, and that it will expire over time as EPA completes its review of the outstanding standards.

Comment: The grandfather provision should be more limited, *e.g.,* should not apply to disapproved standards or to standards which have never been submitted to EPA, should apply only to standards which were submitted more than 3 years ago, or should expire 6 months after the effective date of the rule.

Response: EPA considered ways to narrow the transition provision. EPA agrees with the suggestion that the grandfather provision be limited to standards which have been submitted to EPA as of the effective date of the final rule, and has modified the rule accordingly. As revised, the transition provision will eliminate any incentive for States and authorized Tribes not to submit pre-existing standards to EPA for review. 40 CFR 131.20(c) currently requires States and authorized Tribes to submit standards containing new or revised provisions within 30 days of adoption. If States or authorized Tribes do not comply with this requirement, EPA's review of those standards may be delayed. EPA believes it is inappropriate for States and authorized Tribes to have those standards covered by the transition policy because of their failure to submit the standards to EPA. States or authorized Tribes who have made timely submissions will not be affected by this change from the proposal.

EPA also considered whether to exclude disapproved standards from the transition provision. However, the practical difficulties in resurrecting the previous approved standard are just as likely to arise in the case of a disapproved standard as in the case of a standard for which EPA review is incomplete. In addition, because of evolving science, the previous approved standard—even if identical—may not necessarily be significantly more protective than the recently disapproved standard. Moreover, it is EPA's judgment that in the long run its resources would be better spent resolving disapprovals (either by helping the State remedy the problem or by promulgating a Federal standard) than by a time-consuming and perhaps fruitless search for the previous approved standard. It is EPA's expectation that the number of disapproved standards covered by the grandfather provision will diminish and ultimately disappear as States make acceptable revisions to the disapproved standards or EPA promulgates superseding Federal standards. While EPA acknowledges that this approach leaves inadequate standards in place temporarily, EPA believes that, on balance and considering all the factors

discussed above, this approach is the one best calculated to obtain the ultimate goal—timely approval or replacement of all new and revised water quality standards.

EPA also considered whether to provide a sunset for the transition provision. Commenters suggested times ranging from 60 days to 2 years. One commenter said EPA has not demonstrated the need for an unlimited grandfather provision for submitted but not-yet-reviewed standards, arguing that there are only 60 or so submissions awaiting EPA action, and for about half of those EPA has completed its review and is waiting for ESA consultation to conclude, and that EPA has not shown that it cannot muster the resources to complete the job in a relatively short time, such as 60 days. EPA agrees that the standards which will be covered by the transition provision are limited and believes that fact helps make the provision reasonable. However, it does not follow that a 60-day limit should be placed in the provision. EPA hopes to have a substantial part of the backlog of pending submissions dealt with by the effective date of this rule. For this reason, EPA expects the practical effect of the grandfather provision to be limited. However, it is unrealistic to expect the backlog to be eliminated entirely within the 60 days suggested by the comment. The remaining items are more complicated, *e.g.,* situations where more information is needed from the State or authorized Tribe to evaluate the adequacy of the standard or where the standard in question raises novel and unique National issues that EPA has not spoken to before (*i.e.,* precedent setting). Moreover, the 60 submissions referred to by the commenter are simply those on which EPA action is overdue; EPA staff are also engaged in reviewing more recent submissions, as well as working on resolution of previously disapproved items, where rulemaking procedures take longer than 60 days. Under the circumstances, it is impractical to specify a date certain by which all the backlogs will be completely resolved.

Comment: If the final rule contains a transition provision, it should not apply to pending water quality standards that create exceptions, variances, or exemptions from other standards. In this situation, there is no problem identifying what would be in place in lieu of the pending standard.

Response: While in theory this suggestion has some appeal, in practice implementing it would not be so simple. Water quality standards changes are not always as clear-cut or obvious as the comment suggests. Variances and other exceptions from standards are not always labeled as such. In addition, some standards submissions which create variances and exceptions from standards also modify the underlying standard (*e.g.,* add a variance process as quid pro quo for making a standard more stringent). If the applicability of the transition provision depends on subjective judgments—as opposed to an objective comparison of dates—then resources which should be spent reviewing standards would be diverted into resolving the applicability of the transition provision and suggested exception to the transition provision would be counterproductive. It is EPA's judgment that a relatively simple transition provision will in the long run result in the most expeditious and efficient elimination of the backlog.

3. Final Rule

The final rule retains a transition provision for standards adopted prior to the effective date of today's rule, but modifies it by requiring that standards must have also been submitted to EPA, that is, submitted to EPA pursuant to and consistent with the submission requirements of 40 CFR Part 131.6, by May 30, 2000 in order to qualify. A State or Tribal standard must be (1) Duly adopted, (2) in effect under State or Tribal law, and (3) submitted to EPA by May 30, 2000 in order to be in effect for CWA purposes prior to EPA approval. All three eligibility criteria must be met in order to be covered by the transition provision contained in today's rule at 131.21(c).

D. Delay Related Comments

1. Default Approval/Disapproval

A number of commenters suggested that EPA modify the final rule to specify that State and Tribal water quality standards submissions be deemed approved if EPA does not act within the 60 or 90 days required by the CWA. There were variations on the suggested default time period, and some commenters suggested a ''conditionally approved'' or ''interim approval'' label, but the general approach advocated in several of the comments was a ''default approval'' if EPA fails to take timely action. In such instances, it was suggested that the State submittal could serve as the record of decision for EPA's ''approval.'' Commenters were concerned about having to comply with outdated standards while EPA was in a prolonged review. Several commenters suggested that the ''conditionally approved'' status would allow new and revised State and Tribal standards to be used for CWA purposes unless and until subsequently disapproved by EPA. Alternatively, some commenters suggested that EPA could use its discretionary authority later on to remedy standards that it would have disapproved if it had had the resources to review and approve them on time. Conversely, a few commenters suggested that if EPA fails to act within 90 days, the WQS should be ''constructively disapproved.''

EPA acknowledges the commenters' concerns regarding the timeliness of EPA's approval action. However, the concept of a default approval of State and Tribal WQS submissions is not consistent with section 303 of the CWA. Section 303(c)(3) requires EPA to make an affirmative finding that standards revisions submitted to EPA are consistent with the CWA. EPA has responsibility to determine that State and Tribal standards revisions are protective of human health and the environment. EPA must explain its approval actions; such actions are judicially reviewable. Any type of default approval approach would result in approval actions that EPA could not justify or explain. Similarly, EPA rejects any type of default disapproval approach. Disapprovals trigger other CWA requirements for the State or authorized Tribe to rectify the disapproval and for EPA to act if the State or authorized Tribe takes no action to revise the disapproved standards. Triggering these actions by a ''default'' disapproval would cause much more confusion than any type of potential delay on EPA's part. EPA believes that section 303(c) of the CWA requires it to make an affirmative finding on whether or not a State or Tribal standard is consistent with the CWA.

The commenters advocating default approaches did so out of concern about EPA's ability to make timely WQS approvals. As explained in the preamble to the proposed rule (see 64 FR 37078), EPA has initiated a number of activities to improve the timeliness of its review and approval actions. EPA will be working closely with States and authorized Tribes over the next year to develop guidance for improving coordination between EPA and States and Tribes. Such coordination will also involve the National Marine Fisheries Service and the Fish and Wildlife Service (collectively, the Services). As explained in III.D.2., the Services have a key role in assisting EPA in timely WQS approval actions. In addition, as suggested by some commenters, EPA can always partition State or Tribal submissions and approve the unquestionable portions while continuing to address any contested or difficult issues. EPA also agrees with

comments that encouraged EPA to work with states during their promulgation process and to speak with one voice. One commenter noted that feedback on what is ''approvable'' varies depending on which EPA office is contacted. EPA is evaluating its internal coordination process as part of its overall efforts to streamline EPA review and approval of Standards submissions. EPA will work to ensure that its feedback is both timely and coordinated.

2. Integration With the Endangered Species Act

As discussed in the preamble to the proposed rule, EPA's approval of new and revised State and Tribal water quality standards is a Federal action subject to the consultation requirements of section 7 of the Endangered Species Act (ESA) (see 64 FR 37078 for further discussion). Commenters were particularly concerned with EPA's ability to make timely WQS approval/disapproval decisions in light of its ESA obligations. Several commenters suggested that in instances where the delay is attributable to the ESA consultation, EPA approve the WQS submission ''subject to'' successful completion of ESA consultation. Another commenter encouraged EPA to streamline the ESA consultation process.

EPA agrees with commenters that, in many instances, ESA consultation delays EPA's CWA approval of water quality standards revisions. EPA and the Services (NMFS & FWS) are engaged in discussions to finalize the draft Memorandum of Agreement between the Agencies to establish a clear set of guidelines for conducting ESA consultations. EPA also agrees with the comments suggesting that EPA consider utilizing ''subject to ESA'' approvals where ESA concerns cannot be resolved in a timely manner. EPA is committed to fulfilling its obligations under the ESA, and, as articulated in the draft MOA, will work with the Services early in the State and Tribal standards adoption process to ensure that the needs of threatened and endangered species are addressed when new or revised standards are being contemplated. This early coordination should help streamline the review and approval/disapproval process once the standards revisions are officially submitted to EPA for review and approval/disapproval under the CWA.

E. Other Issues

1. Integration With TMDL/NPDES Program

EPA advocates that States and authorized Tribes refine their water quality standards to more precisely reflect site-specific conditions and local species (see 63 FR 36741). Sometimes such refinements take place concurrently with the development of a Total Maximum Daily Load (TMDL) for a specific water body or when issuing a National Pollution Discharge Elimination System (NPDES) permit for a discharge to a specific water body. In these instances the regulatory authority may obtain information that can be used to more precisely define the appropriate standard. For example, a State may be establishing a TMDL for a water body with a fish advisory and after reviewing ambient water quality data realize that a site-specific criterion is necessary to address accelerated bio-magnification occurring at the site. In this example, the regulatory authority could revise the standard concurrently with establishment of the TMDL. By law, TMDLs must be reviewed and approved by EPA. The CWA specifies 30 days for EPA to review and approve TMDLs and 60 days for EPA to review and approve standards revisions. When EPA receives a WQS revision to review and approve/disapprove in conjunction with its review and approval of a TMDL, EPA expects to complete both reviews within 30 days which will satisfy the CWA requirements for both actions. In these situations, it will be particularly important for the State or authorized Tribe to coordinate with EPA early in the development process to ensure approval of the revised water quality standard because the TMDL must be established for the ''applicable'' water quality standard, which is the approved water quality standard. Similarly, in the context of drafting an NPDES permit, a regulatory authority may obtain information that shows a particular aquatic life species protected by the current criteria is absent, and as a result, adopt site-specific criteria that better reflect the indigenous aquatic life. In such instances, the regulatory authority could adopt the site-specific criteria concurrently with public notice of the draft NPDES permit. In such a case, EPA should review the site-specific criteria during the same time frame in which it reviews the draft permit. If EPA disapproves the criteria, it could also object to the permit. During the 90 day period allowed by CWA § 402(d), the State or authorized Tribe could then modify the permit to reflect the previously approved WQS, or fix the criteria to address the disapproval and modify the permit to reflect the newly revised criteria. If a State or authorized Tribe submits a draft permit based on site-specific criteria, but does not submit the criteria itself, EPA may object to the permit. Again, early coordination with EPA will expedite review and approval when the final standard is officially submitted to EPA.

Today's rule applies to the Great Lake States as well as to the rest of the nation. In 1995, EPA promulgated the Great Lakes Water Quality Guidance at 40 CFR Part 132. In that rulemaking, EPA, among other things, indicated that States and authorized Tribes may adopt variances concurrently with development of an NPDES permit and have the permit reflect the variance. Under today's rule, such variances, like other standards revisions, must be approved by EPA before they are relied on in final NPDES permits or other CWA purposes, in the Great Lakes basin as well as anywhere else.

2. Coordination Between Federal and State and Tribal Processes

EPA acknowledges the concerns expressed by some States and authorized Tribes regarding EPA's ability to make approval/disapproval decisions in the CWA time frames. However, in addition to EPA's efforts to expedite its review, States and authorized Tribes can also facilitate more timely action by EPA. For example, States and authorized Tribes are encouraged to submit advance copies of new or revised water quality standards as soon as they are considered final, even though the State or Tribe may still need time to complete certain administrative requirements (*e.g.*, Attorney General certification). These advance copies of revised standards should be sent directly to the Regional Water Quality Standards Coordinators (see table in section III.E.4). Submission of advance copies will not trigger the CWA timeframes for EPA action; however, it will allow EPA to initiate its substantive review of the new or revised standard before the complete package is officially submitted. States and authorized Tribes should also consider adopting new or revised standards with delayed effective dates, or with an effective date keyed off of EPA approval or the CWA 60 day timeframe for EPA approval. All these measures will allow closer synchronization between the transition from one standard to another under State or Tribal law and under the CWA.

As a general matter, States and authorized Tribes should also examine their administrative and rulemaking

procedures to identify opportunities by which their adoption of criteria, as well as EPA's approval, can be streamlined. One way to do this is through State or Tribal adoption of a ''performance-based'' approach. A performance-based approach relies on adoption of a process (*i.e.,* a criterion derivation methodology) rather than a specific outcome (*i.e.,* concentration limit for a pollutant) consistent with 40 CFR 131.11 & 131.13. When such a ''performance-based'' approach is sufficiently detailed and has suitable safeguards to ensure predictable, repeatable outcomes, EPA approval of such an approach can also serve as approval of the outcomes as well. If a particular State or Tribe's approach is not sufficiently detailed or lacks appropriate safeguards, then EPA review of a specific outcome is still necessary. However, even a more general performance-based approach would still help guide EPA review of specific outcomes.

The ''performance-based'' approach is particularly well suited to the derivation of site-specific numeric criteria and for interpreting narrative criteria into quantifiable measures. Proper construction and implementation of such an approach can result in consistent application of State and Tribal narrative water quality criteria and defensible site-specific adjustments to numeric ambient water quality criteria. Changes to a designated use (including temporary changes, *e.g.,* variances) do not lend themselves to a ''performance-based'' approach. Designated use changes and variances differ from criteria changes in that they modify the intended level of protection. In contrast, site specific translations of narrative water quality criteria and site-specific adjustments to numeric ambient water quality criteria take additional information into account while protecting the designated use. As such the intended level of protection is no way modified. In addition, making use changes and issuing variances must include an evaluation of ''attainability'' of a designated use, taking into account factors such as natural conditions or economic and social impacts. See 40 CFR 131.10(g).

A ''performance-based'' approach relies on the State or authorized Tribe specifying implementation procedures (methodologies, minimum data requirements, and decision thresh holds) in its water quality standards regulation. Adopting implementation procedures into State and Tribal regulations establishes a structure or decision-making framework that is binding, clear, predictable, and transparent. During the adoption of the detailed procedures, all stakeholders and EPA have an opportunity to make sure that important technical issues or concerns are adequately addressed in the procedures. The State or Tribal implementation procedures must also consider any special needs of federally listed threatened or endangered species or their critical habitat. Under section 7 of the ESA, EPA would have to consult with the Services on the detailed implementation procedures as part of its approval process if EPA's approval may affect a listed species. State and authorized Tribal water quality standards programs which include appropriate performance-based approaches for water quality criteria could benefit the authorized Tribe or State by better positioning them to tailor standards to specific watersheds and ecosystems by streamlining administrative processes associated with refining criteria necessary to protect designated uses. This approach is particularly useful for criteria which are heavily influenced by site-specific factors such as nutrient criteria or sediment guidelines. Such procedures must include a public participation step to provide all stake-holders and the public an opportunity to review the data and calculations supporting the site-specific application of the implementation procedures. The State or Tribe would need to maintain a publically available, comprehensive list of all site-by-site decisions made using the procedures; however, such decisions would not, as a Federal matter, have to be codified in State or Tribal regulation. Although the State or authorized Tribe would not need to obtain separate EPA approval for criteria derived through an approved performance-based approach, such criteria would nonetheless need to be provided to EPA for inclusion in the CWA WQS Docket. When EPA reviews the results of a State or authorized Tribes' triennial review, EPA expects to evaluate a representative subset of the site-specific decisions to ensure that the State or authorized Tribe is adhering to the EPA approved procedure.

Since the procedures would be adopted into State or Tribal regulation, the State or authorized Tribe would be bound by the decision-making framework contained therein. Any water quality criteria which were not derived in accordance with the approved implementation procedures would need separate approval from EPA to be the applicable CWA standard. If a State or authorized Tribe failed to follow those procedures and did not obtain separate EPA approval of the criteria, EPA would have a basis for disapproving a TMDL or objecting to an NPDES permit for not deriving from or complying with applicable standards (see 40 CFR 122.44(d)). Both TMDL development and NPDES permit issuance have mandatory public participation, which provides further safeguards over implementation of a performance-based approach.

EPA used this approach to ensure consistency in future ambient water quality criteria development among the eight Great Lakes States in the Great Lakes Initiative (see 40 CFR Part 132). EPA, the eight Great Lake States, and stakeholders (*e.g.,* regulated community, general public, environmental groups) developed detailed criteria methodologies that States and authorized Tribes in the Great Lakes basin are required to adopt and utilize for criteria derivation. These methodologies ensure scientific integrity and transparency in decision-making among the Great Lakes States as new or revised criteria are derived. EPA also authorized this approach in the National Toxics Rule (see 57 FR 60848). States in the NTR are allowed to modify the Federal criteria site-specifically using EPA's Water Effects Ratio (WER) methodology. EPA's WER methodology is sufficiently detailed so that its site-specific application is formulaic and predictable.

In sum, the key to a ''performance-based'' WQS program is adoption of implementation procedures of sufficient detail, and with suitable safeguards, so that additional oversight by EPA would be redundant. EPA will be developing more detailed guidance on ''performance-based'' water quality standards programs in the near future.

3. Standards Subject to Today's Rule

The preamble to the proposed rule stated that State and Tribal implementation policies and procedures are subject to EPA review and approval/disapproval and should be included in the CWA WQS docket. Many commenters claimed this exceeded EPA's statutory authority. Commenters asserted that this was a change and not appropriate because it would capture guidance that was never intended to be regulatory under State law. Some commenters did acknowledge that implementation procedures help determine the effectiveness of the standards.

EPA's reference to including policies and procedures in the CWA docket was intended only to reflect the existing requirements at 40 CFR 131.11 and 131.13, which have been in EPA's regulations since 1983. EPA's regulations at 40 CFR 131.11(a)(2)

provide that where a State adopts narrative criteria for toxic pollutants to protect designated areas, the State must provide information identifying the method by which the State intends to regulate point source discharges based on such narrative. Section 131.13 provides that, if States or authorized Tribes include in their standards policies generally affecting the application and implementation of standards (such as policies on mixing zones, low flows, and variances), those policies are subject to EPA review. EPA's intent is not to assert that all State and Tribal guidance is regulatory, but rather to lock in policies and procedures that were approved as part of a standards submission. EPA will coordinate with State and authorized Tribes individually to determine which implementation policies and procedures should be included in the CWA WQS docket. EPA's approval practice will determine what is or is not ''locked in'' as a WQS, and the CWA WQS docket will reflect that.

Some commenters were concerned that including mixing zone procedures in the docket would mean that site-specific application of the mixing zone procedure would be considered a form of site-specific standard subject to EPA review and approval. This is not EPA's intent. Mixing zone procedures must be included in the standards because otherwise a permit with a mixing zone would not assure compliance with the standards. However, once mixing zones are authorized through such an approved procedure, the calculation of permit limits consistent with such procedures does not change the water quality standard and does not need approval under CWA section 303(c). Individual mixing zones are reviewable under the NPDES process to ensure, among other things, that all applicable standards, including any procedures, have been followed.

It should be noted that in the case of variances both a State or Tribe's variance policy and its adoption of specific variances are subject to EPA review and will be included in the CWA WQS docket. A variance is a short term, facility-specific modification of the underlying standard and must be supported by a facility-specific analysis demonstrating that one of the six reasons at 40 CFR Part 131.10(g) apply. Hence, each variance is a change to standards (see 48 FR 51400).

EPA will be developing more detailed guidance with States and authorized Tribes on the types of modifications that require specific approval by EPA and the level of detail necessary to incorporate into State and Tribal standards. However, the bottom line is that today's rule does not change which State and Tribal policies and procedures need to be submitted for review and approval under 40 CFR 131.11 and 131.13.

4. CWA WQS Docket

a. Proposed Rule

Under the proposal, EPA proposed discontinuing its annual **Federal Register** publication of approval actions by deleting the annual reporting requirement at 40 CFR 131.21(d). EPA explained that the formation of a CWA WQS docket would eliminate the need for the annual **Federal Register** notice. (See 64 FR 37077 for further discussion.)

b. Major Comments and Responses

In general, most commenters supported the establishment of a CWA docket. Most supported the eventual transfer to the Internet. Comments were mixed with respect to EPA's proposed deletion of its annual **Federal Register** notice, with some comments supporting that and others advocating that EPA maintain FR notices.

Comment: Keeping a paper docket is the most effective way to make the information available in the short term; however, commenter supports effort to move towards putting the information on the Internet. There is no reason to continue EPA's annual **Federal Register** notice of approved State and Tribal water quality standards.

Response: EPA agrees with the comment, and will have a paper CWA docket available as of the effective date of this rule. EPA recognizes that paper CWA WQS dockets in the Region require some effort to access (*e.g.,* phone calls, mailings), though such effort is not any more burdensome than what would be required to obtain a copy from the State or authorized Tribe. Actually, it would be more efficient because the CWA WQS docket also contains any applicable Federal standards (*e.g.,* Federal criteria contained in the National Toxics Rule, 40 CFR Part 131.36) whereas the State or authorized Tribe may or may not supply applicable Federal standards. EPA agrees with the comment that the annual **Federal Register** notice of approved State and Tribal water quality standards is unnecessary in light of the CWA WQS docket. The CWA WQS docket is far more informative than a listing of EPA approval actions. In addition, the CWA WQS docket will be updated on a continual basis as opposed to annually EPA also agrees with the commenter that publication on the Internet would increase access to the CWA WQS docket. EPA has begun work on an electronic version of the CWA WQS docket and is designing a website for easy public access. EPA is designing the electronic CWA WQS docket to be user friendly. For example, users will be able to perform basic text searches to locate specific provisions. Over time, as EPA receives feedback from users of the electronic CWA WQS docket, EPA will revise the system to support increased search capabilities and a higher degree of organization and automation. EPA expects to publish the first version of the electronic docket on the Internet in the Spring of 2001. EPA will announce the availability of the electronic docket in the **Federal Register** at that time. The paper docket will be available in the meanwhile.

Comment: EPA's CWA WQS docket should warn people there may be other applicable standards (CWA section 510 or groundwater) which need to be addressed and direct them to the State or authorized Tribe.

Response: EPA agrees. The CWA WQS docket is intended to capture applicable water quality standards adopted pursuant to CWA section 303(c). EPA recognizes that there may be other requirements applicable to a waterbody under State or Tribal law. EPA's CWA WQS docket will identify the scope of the docket and include instructions for contacting the appropriate State or Tribal official for information regarding the applicability of additional State or Tribal requirements.

Comment: EPA should publish the initial CWA WQS docket in the **Federal Register** to facilitate public comment and scrutiny.

Response: EPA disagrees. EPA assembled a draft CWA WQS docket and solicited public comments on its content as part of the proposal for today's final rule (see 64 FR 37077). In addition, EPA consulted with States and authorized Tribes individually to confirm the contents of EPA's draft CWA WQS docket. As part of finalizing the draft CWA WQS docket, EPA is working with States and authorized Tribes to include any State or Tribal revisions that have occurred since the proposal. EPA believes that the current CWA WQS docket contains all applicable standards that have been adopted, are in effect, and have been submitted to EPA for review and approval/disapproval. Maintaining the docket will be an ongoing process for EPA because States and authorized Tribes will continue to revise their standards as part of the triennial review process, and in order to keep up with

scientific advances. The public is encouraged to provide comments or questions on the contents of the docket at any time. The utility of the docket depends on its completeness and accuracy. Additional comments or questions regarding the contents of the CWA WQS docket should be directed to the appropriate Regional contact listed in section III.E.4.c. below.

Comment: EPA should wait until the electronic CWA WQS docket is up and running before discontinuing the annual **Federal Register** notice of approvals.

Response: EPA disagrees. EPA believes its **Federal Register** notice of approvals is redundant with the paper CWA WQS docket. The CWA WQS is more informative and comprehensive than the **Federal Register** notice of approvals. However, there will be one additional **Federal Register** notice reporting all of the approval actions that occurred up to May 30, 2000. EPA expects to publish this last report later this summer.

c. Final Rule

Today's final rule deletes EPA's annual reporting requirement of approval actions. As explained above, EPA believes that the formation of a CWA WQS docket eliminates the need for the annual **Federal Register** notice. Anyone interested in viewing the docket for a particular State or authorized Tribe should contact one of the EPA Regional offices listed below to make arrangements.

EPA is in the process of converting this hardcopy docket into an electronic format so that it can be published on the Internet. EPA is designing the electronic CWA WQS docket to be user friendly. For example, users will be able to perform basic text searches to locate specific provisions. Over time, as EPA receives feedback from users of the electronic CWA WQS docket, EPA will revise the system to support increased search capabilities and a higher degree of organization and automation. EPA expects to publish the first version of the electronic docket on the Internet in the Spring of 2001. EPA will announce the availability of the electronic docket in the **Federal Register** at that time. In the meantime, hardcopy CWA WQS dockets for local State and Tribal standards are available in the following EPA Regional offices during normal business hours.

State	EPA regional office	EPA contact
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.	EPA Region 1, 1 Congress Street, Suite 1100, CWQ, Boston, MA 02114–2023.	Bill Beckwith, 617–918–1544.
New Jersey, New York, Puerto Rico, Virgin Islands	EPA Region 2, 290 Broadway, New York, NY 10007.	Wayne Jackson, 212–637–3807.
Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.	EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103–2029.	Denise Hakowski, 215–814–5726.
Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.	EPA Region 4, Water Division—15th Floor, Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, GA 30303.	Fritz Wagener, 404–562–9267.
Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.	EPA Region 5, Water Division, 77 West Jackson Boulevard, Chicago, IL 60604–3507.	David Pfeifer, 312–353–9024.
Arkansas, Louisiana, New Mexico, Oklahoma, Texas.	EPA Region 6, Water Division, 1445 Ross Avenue, First Interstate Bank Tower, Dallas, TX 75202.	Russell Nelson, 214–665–6646.
Iowa, Kansas, Missouri, Nebraska	EPA Region 7, 726 Minnesota Avenue, Kansas City, KS 66101.	Ann Jacobs, 913–551–7930.
Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.	EPA Region 8, 999 18th Street, Suite 500, Denver, CO 80202–2466.	Bill Wuerthele, 303–312–6943.
Arizona, California, Hawaii, Nevada, American Samoa, Guam.	EPA Region 9, Water Division, 75 Hawthorne Street, San Francisco, CA 94105.	Phil Woods, 415–744–1997.
Alaska, Idaho, Oregon, Washington	EPA Region 10, Water Division, 1200 Sixth Avenue, Seattle, WA 98101.	Lisa Macchio, 206–553–1834.

IV. Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business according to RFA default definitions for small business (based on SBA size standards); (2) a small governmental jurisdication that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule will not impose any requirements on small entities.

Under the CWA water quality standards program, States (and Tribes) must adopt water quality standards for their waters that must be submitted to EPA for approval. These State or Tribal standards (or EPA-promulgated standards) are implemented through various water quality control programs, including the NPDES program which limits discharges to navigable waters in compliance with an EPA permit or permit issued under an approved State or Tribal NPDES program. The CWA requires that all NPDES permits include any limits on discharges that are necessary to meet State or Tribal water quality standards. A State or Tribe has discretion in deciding how to achieve compliance with its water quality standards and in developing discharge limits as needed to meet the standards. For example, in circumstances where there is more than one discharger to a water body that is subject to a water quality standard, a State or Tribe has discretion in deciding which dischargers will be subject to permit discharge limits necessary to meet the revised standards.

As explained earlier, this rule merely defers the effectiveness of State or Tribal

water quality standards pending EPA approval. Under existing NPDES regulations, where a State or Tribe has, as a matter of State or Tribal law, modified an existing water quality standard, a State or Tribal Authority may not modify existing NPDES permit limits to take account of the revised standard until EPA has approved the standard. As a result, until EPA approves the revised standard and a State or Tribe has decided how it will implement the revised standard among the dischargers on that water body, each discharger must continue to comply with its permit limits that were designed to meet the more stringent standard. Moreover, just as under the previous rule, there is no certainty that, even after EPA approval of the revised standard, the permitting agency will necessarily amend a particular discharger's permit to modify its limitation. Instead, a State or Tribe may choose to allocate the loading associated with the less stringent standard to a new or different discharger. Given these circumstances, the impact of today's rule on individual dischargers will depend on State or Tribal actions that EPA neither controls nor can predict.

Courts have consistently held that the RFA imposes no obligation on an agency to prepare a small entity analysis of effects on entities it does not regulate. *Motor & Equip. Mrfrs. Ass'n* v. *Nichols,* 142 F.3d 449, 467 & n.18 (D.C. Cir. 1998)(quoting *United States Distribution Companies* v. *FERC,* 88 F.3d 1105, 1170 (D.C. Cir. 1996); see also *American Trucking Association, Inc.* v. *EPA,* 175 F.3d 1027 (D.C. Cir. 1999). This final rule will have a direct effect only on States and authorized Tribes which are not small entities under the RFA. The rule establishes requirements that are applicable to water quality standards submitted by States and authorized Tribes to EPA for approval. The rule defers the effective date for CWA purposes of any new or less-stringent, revised water quality standard until EPA has approved the standard. Individual dischargers, including small entities, are not directly subject to the requirements of the rule. Moreover, because of State and Tribal discretion in adopting and implementing their water quality standards, EPA cannot assess the extent to which the promulgation of this rule may subsequently affect any dischargers, including small entities. Consequently, certification under section 605(b) is appropriate. *State of Michigan, et al.* v. *U.S. Environmental Protection Agency,* No. 98–1497 (D.C. Cir. Mar. 3, 2000), slip op. at 41–42.

V. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. The final rule does not affect the process by which State or Tribal water quality standards are adopted under State or Tribal law, but simply specifies when a State or Tribal adoption will be recognized as the applicable water quality standard for general CWA purposes. The rule imposes no enforceable duty on any State, local or Tribal governments or the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA's final rule will only address a single administrative aspect of the water quality standards approval process (*i.e.*, the timing of the ''effectiveness'' of State or Tribal standards under the CWA). There will be no revisions to existing submission requirements and no revisions to EPA's standards for review. Thus, this final rule is not subject to the requirements of section 203 of UMRA.

VI. Regulatory Planning and Review, Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.''

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

VII. Federalism, Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule merely specifies when new or revised State or Tribal-adopted standards will be recognized as the applicable WQS for CWA purposes, as mandated by section 303(c)(3) of the CWA. It does not address the process by which States and Tribes adopt standards, nor does it alter the grounds for approving or disapproving such new or revised standards. States and Tribes continue to have the primary responsibility for deciding when and in what way to revise their standards. If a State or Tribe fails to promulgate a needed standard or to revise a standard which has been disapproved by EPA, EPA will, as under the previous rule, exercise its authority to promulgate a Federal standard. This rule will not impose substantial direct compliance costs on State or local government, nor will it preempt state law. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with representatives of State and local governments early in the process of developing the proposed regulation to permit them to have meaningful and timely input into its development. Since the court's ruling in 1997, EPA has met with State government representatives on several occasions in various forums and discussed implications for State programs. From those discussions, EPA learned that States are primarily concerned with EPA streamlining its review and approval process to avoid delays after this rule goes final. EPA believes that today's rule is necessary to conform Part 131 to the court's opinion and to section 303(c)(3), but agrees that streamlining the review and approval process will facilitate implementation of the rule. EPA has already taken steps to reduce the backlog pending at the time of proposal. In addition, EPA is considering modifying its regulations to clarify Federal WQS requirements in greater detail (see 63 FR 36742), and at a minimum will be jointly developing with State representatives guidance to improve the current State and Tribal adoption and EPA review and approval process. EPA believes that, once completed, this guidance will inform EPA Regional offices and States on how to get concerns identified and resolved early in the process so that, when revised State WQS are submitted to EPA, there are no unexpected issues and EPA can act in a timely fashion.

VIII. Consultation and Coordination With Indian Tribal Governments, Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's final rule does not significantly or uniquely affect the communities of Indian tribal governments, nor does it impose substantial direct compliance costs on them. Today's final rule only addresses a single administrative aspect of the WQS approval process (*i.e.*, the timing of the ''effectiveness'' of State and Tribal WQS under the CWA). There will be no revisions to existing submission requirements and no revisions to EPA's standards for review. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Paperwork Reduction Act

This action requires no new information collection activities. Thus, this rule is not subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

X. Protection of Children From Environmental Health Risks and Safety Risks, Executive Order 13045

Executive Order 13045: ''Protection of Children from Environmental health Risks and Safety Risks'' (62FR19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to Executive Order 13045 because it is not economically significant as defined under Executive Order 12866. Further, it does not concern an environmental health or safety risks that EPA has reason to believe may have a disproportionate effect on children. This rule merely defers the effectiveness of State or Tribal water quality standards pending EPA approval.

XI. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rule does not involve technical standards. Therefore, EPA did

not consider the use of any voluntary consensus standards.

XII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective May 30, 2000.

List of Subjects in 40 CFR Part 131

Environmental protection, Indians-lands, Intergovernmental relations, Water pollution control, Water quality standards.

Dated: March 30, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR Part 131 is amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for Part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart C—[Amended]

2. Existing 131.21 is amended by revising paragraphs (c) and (d) and by adding paragraphs (e), and (f) to read as follows:

§ 131.21 EPA review and approval of water quality standards.

* * * * *

(c) *How do I determine which water quality standards are applicable for purposes of the Act?* You may determine which water quality standards are applicable water quality standards for purposes of the Act from the following table:

If—	Then—	Unless or until—	In which case—
(1) A State or authorized Tribe has adopted a water quality standard that is effective under State or Tribal law and has been submitted to EPA before May 30, 2000 . . .	. . . the State or Tribe's water quality standard is the applicable water quality standard for purposes of the Act . . .	. . . EPA has promulgated a more stringent water quality standard for the State or Tribe that is in effect . . .	. . . the EPA-promulgated water quality standard is the applicable water quality standard for purposes of the Act until EPA withdraws the Federal water quality standard.
(2) A State or authorized Tribe adopts a water quality standard that goes into effect under State or Tribal law on or *after* May 30, 2000 . . .	. . . once EPA approves that water quality standard, it becomes the applicable water quality standard for purposes of the Act . . .	. . . EPA has promulgated a more stringent water quality standard for the State or Tribe that is in effect . . .	. . . the EPA promulgated water quality standard is the applicable water quality standard for purposes of the Act until EPA withdraws the Federal water quality standard.

(d) *When do I use the applicable water quality standards identified in paragraph (c) above?*

Applicable water quality standards for purposes of the Act are the minimum standards which must be used when the CWA and regulations implementing the CWA refer to water quality standards, for example, in identifying impaired waters and calculating TMDLs under section 303(d), developing NPDES permit limitations under section 301(b)(1)(C), evaluating proposed discharges of dredged or fill material under section 404, and in issuing certifications under section 401 of the Act.

(e) *For how long does an applicable water quality standard for purposes of the Act remain the applicable water quality standard for purposes of the Act?*

A State or authorized Tribe's applicable water quality standard for purposes of the Act remains the applicable standard until EPA approves a change, deletion, or addition to that water quality standard, or until EPA promulgates a more stringent water quality standard.

(f) *How can I find out what the applicable standards are for purposes of the Act?*

In each Regional office, EPA maintains a docket system for the States and authorized Tribes in that Region, available to the public, identifying the applicable water quality standards for purposes of the Act.

[FR Doc. 00–8536 Filed 4–26–00; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 20

[CC Docket No. 99–301; FCC 00–114]

Local Competition and Broadband Reporting; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of April 12, 2000 (65 FR 19675) final rules in 47 CFR 1, Subpart U, concerning data collection. As such, the document, as published, inadvertently assigned portions of the final rules to subpart U that already exists. The purpose of this correction is to reassign the rules to a new subpart V.

DATES: Effective April 27, 2000.

FOR FURTHER INFORMATION CONTACT: Gregory Guice, Industry Analysis Division, Common Carrier Bureau at (202) 418–0095.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a report and order and final rules in the **Federal Register** of April 12, 2000 (65 FR 19675). As published, the final rules, § 1.6000 through § 1.6002 inadvertently assigned the final rules to an existing subpart. This correction redesignates the subpart U as subpart V. We further make conforming edits to § 20.15.

In rule FR Doc. 00–9187 published on April 12, 2000 (65 FR 19675), make the following corrections:

1. On page 19684, in the third column, amendatory instruction 2 of Part 1—Practice and Procedures,