

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 – WATER QUALITY STANDARDS

DOCKET NO. 58-0102-1802

NOTICE OF INTENT TO PROMULGATE RULES – NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, Idaho Code, and IDAPA 58.01.23, Rules of Administrative Procedure Before the Board of Environmental Quality, Sections 810 through 815, notice is hereby given that this agency intends to promulgate a rule and desires public participation before publishing a proposed rule. This rulemaking action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

MEETING SCHEDULE: The negotiated rulemaking meetings will be held as follows. Additional meetings will be scheduled if necessary.

ORIGINATING LOCATION – LIVE MEETING

**DEQ State Office
Conference Center
1410 N. Hilton, Boise, Idaho**

Thursday, May 31, 2018 - 9:00 a.m. to 12:30 p.m. (MDT)

Contact the undersigned by *May 24, 2018* to make arrangements for participation by telephone and web conferencing

AND

Thursday, June 28, 2018 - 9:00 a.m. to 12:30 p.m. (MDT)

Contact the undersigned by *June 21, 2018* to make arrangements for participation by telephone and web conferencing

TELEPHONE AND WEB CONFERENCE LOCATIONS

<p>DEQ Coeur d’Alene Regional Office 2110 Ironwood Parkway Coeur d’Alene, Idaho</p>	<p>DEQ Pocatello Regional Office 444 Hospital Way #300 Pocatello, Idaho</p>
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METHOD OF PARTICIPATION: Those interested in participating in the negotiated rulemaking process are encouraged to attend the meetings at one of the following locations. The public may participate by telephone and web conferencing at any of the meeting locations or with individual connections. Individuals interested in participating by telephone and web conferencing should contact the undersigned by the date provided in the table below. For those who cannot participate by attending the meetings, information for submitting written comments is provided at the end of this notice.

The meeting locations will be accessible to persons with disabilities, and language translators will be made available upon request. Requests for these accommodations must be made no later than five (5) days prior to the meeting date. For arrangements, contact the undersigned.

PRELIMINARY DRAFT RULE: The preliminary draft rule is available at www.deq.idaho.gov/58-0102-1802 or by contacting the undersigned.

DESCRIPTIVE SUMMARY: This rulemaking has been initiated to make certain revisions identified as high priority in the 2017 Triennial Review of Idaho Water Quality Standards and to comply with federal requirements for consideration of EPA recommended (aka §304(a)) criteria (40 CFR 131.20): (1) Adopt aquatic life criteria for acrolein, carbaryl, and diazinon in accordance with EPA's current §304(a) recommended criteria, and (2) collapse recreation use subcategories into single contact recreation use and adopt EPA's current §304(a) recommended criteria for bacteria.

EPA's Recommended §304(a) Aquatic life Criteria for Acrolein, Carbaryl, and Diazinon

This rulemaking adds criteria for acrolein, carbaryl, and diazinon in Subsection 210.01. Currently, Idaho does not have aquatic life criteria for acrolein, carbaryl, and diazinon, although EPA has issued new recommended aquatic life criteria for these toxics. Acrolein is an aquatic herbicide and is known to be toxic to aquatic life, particularly amphibians and fish. In 2009, EPA added acrolein to the §304(a) list of aquatic life criteria. Carbaryl and diazinon are pesticides that are toxic to aquatic life, particularly invertebrates. EPA added diazinon to the §304(a) list of aquatic life criteria in 2005 and added carbaryl in 2012.

In order to avoid EPA promulgating federal standards for acrolein, carbaryl, and diazinon for Idaho, DEQ proposes to undertake a negotiated rulemaking to revise these aquatic life criteria in Idaho's water quality standards. By adopting these criteria, DEQ will comply with federal requirements for consideration of EPA recommended criteria (40 CFR 131.20) and ensure that its criteria provide sufficient protection of aquatic life uses.

Recreation Use Subcategories and EPA's §304(a) Recommended Criteria for Bacteria

This rulemaking collapses the subcategories of recreation use into a single contact recreation use category and adopts EPA's 2012 §304(a) recommended criteria for bacteria. EPA's 2012 §304(a) criteria includes both E. coli criteria as well as enterococci criteria; either of which would be considered protective of contact recreation. States (and dischargers) can use either criterion to demonstrate compliance with water quality standards.

Because there is no difference in the geometric mean bacteria criteria or the toxics criteria applicable to primary and secondary contact recreation uses or to public swimming beaches, there appears to be no value in maintaining a distinction between primary and secondary contact recreation. Furthermore, this distinction has led to some needless confusion in the course of antidegradation review and assessment of water quality. Collapsing the two subcategories into a single contact recreation use category could avoid this confusion and will simplify future monitoring and assessment.

Consideration of enterococci criteria as included in EPA's 2012 §304(a) recommendation is necessary to comply with federal requirements for consideration of EPA recommended criteria (40 CFR 131.20). Enterococci criteria are more directly related to incidences of gastrointestinal illnesses than E. coli criteria. In addition, rapid analytical techniques for enterococci are currently being developed. By adopting enterococci criteria, Idaho will be in a position to easily integrate any advances to improve sampling logistics (for example, extended holding times and field preservation to allow for monitoring and assessment of more remote waters, and rapid notification of affected swimming beaches and recreational facilities).

DEQ will also consider the adoption of statistical threshold values (STV) as criteria. The STV is a concentration that is not to be exceeded more frequently than 10% of valid samples collected in a 30-day period. The STV can be used as the basis of water quality based effluent limits (WQBEL) and for TMDL targets for non-continuous or episodic discharges.

By revising recreational use subcategories and adopting EPA's 2012 §304(a) criteria recommendation, DEQ can simplify monitoring and assessment and meet a recommendation of the 2017 Triennial Review while providing the same level of protection for Idaho water bodies.

The text of the rule will be drafted by DEQ in conjunction with a negotiating committee made up of persons having an interest in the development of this rule. Idahoans that recreate in, drink from, or fish Idaho's surface waters and all who discharge pollutants to those same waters may be interested in participating in this rulemaking.

Upon conclusion of negotiations, DEQ intends to publish a proposed rule for public comment in the fall of 2018 and then present the final proposal to the Idaho Board of Environmental Quality (Board) in November 2018 for adoption of a pending rule. If adopted by the Board, the rule will be reviewed by the 2019 Idaho Legislature.

EFFECTIVE FOR CLEAN WATER ACT PURPOSES: Water quality standards adopted and submitted to EPA since May 30, 2000, are not effective for federal Clean Water Act (CWA) purposes until EPA approves them (see **40 CFR 131.21**). This is known as the Alaska Rule. This rulemaking will be promulgated so that the existing rule, which continues to be effective for CWA purposes, remains in the Idaho Administrative Code until EPA approves the rule revisions. Notations explaining the effectiveness of the rule sections are also included. Upon EPA approval, the revised rule will become effective for CWA purposes and the previous rule and notations will be deleted from the Idaho Administrative Code. Information regarding the status of EPA review will be posted at <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:

For assistance on questions concerning this rulemaking, contact Jason Pappani at Jason.Pappani@deq.idaho.gov, (208) 373-0515.

Written comments may be submitted by mail, fax or email at the address below. The written comment deadline on the preliminary draft rule is June 8, 2018. Information regarding future public comment opportunities provided throughout the negotiated rulemaking process is available at www.deq.idaho.gov/58-0102-1802 or by contacting the undersigned.

Dated this 2nd day of May, 2018.

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