

Water Quality Standards Triennial Review— Issue Paper #6

EPA Review and Approval of State Water Quality Standards ("Alaska Rule")

Currently, Idaho has water quality standards (WQS) that have been duly adopted under Idaho law but have not received US Environmental Protection Agency (EPA) approval.¹ According to [40 CFR 131.21](#), WQS adopted and submitted to EPA after May 30, 2000, become "applicable for Clean Water Act purposes" only when EPA approves them, a condition known as the "Alaska Rule." The WQS applicable for Clean Water Act purposes are the standards used to implement Clean Water Act programs and regulations, such as developing total maximum daily loads, establishing water quality-based effluent limits in National Pollutant Discharge Elimination System discharge permits, or identifying impaired waters for the Integrated Report.

Table 1 lists the sections of Idaho's WQS that are currently under EPA review and thus subject to the Alaska Rule. The table also identifies WQS that have been disapproved and may require additional rulemaking to remedy. In addition, several sections of Idaho's WQS include notations alerting the reader to situations where the Alaska Rule applies. These notations refer the reader to the following DEQ website, which provides additional details: www.deq.idaho.gov/water-quality/surface-water/standards/epa-actions-on-proposed-standards.

To avoid confusion over which standards are EPA approved and applicable for Clean Water Act purposes, DEQ is considering rulemaking to clarify how 40 CFR 131.21 affects Idaho WQS and to identify standards for which EPA action is still pending.

¹ Documents regarding DEQ submittal and EPA review are available at www.deq.idaho.gov/laws-rules-etc/deq-rulemakings.

Table 1. EPA actions on proposed Idaho water quality standards.

Subject Matter Docket Number	Effective Date of State Rule	Date of Submittal to EPA	Summary	Affected Sections of IDAPA 58.01.02	Applicable for CWA Purposes	Status of EPA Review
Designation and Revision of Beneficial Uses (Use Attainability Analysis) 58-0102-1501	03/25/16	12/30/16	Added language consistent with the federal regulations for designating and revising uses assigned to water bodies, providing basis for guidance on the use designation/revision process.	010 (definition: Use Attainability) 102	The previous standards published in 2015 Idaho Administrative Code continue to apply.	Pending
Mixing Zone Policy 58-0102-1401	04/11/15	12/22/16	Updated DEQ's Mixing Zone Policy to account for modern tools for evaluating mixing and lessons learned from years of implementation. Provides greater clarity for DEQ and the regulated community.	010 (definitions: Bioaccumulative Pollutants, Thermal Shock, and Zone of Initial Dilution) 060	The previous standards published in 2014 Idaho Administrative Code continue to apply.	Pending
Update Idaho's Human Health Criteria 58-0102-0503 58-0102-1201	 04/11/06 03/25/16	 07/07/06 12/13/16	Updated 167 human health criteria for 88 compounds. Updated human health criteria for 104 toxic substances (10 of which are new), plus an additional fish-plus-water criterion for copper based on the drinking water maximum contaminant level (MCL). There are 208 revised or new criteria, consisting of 94 revised and 10 new criteria based on exposure to toxic substances from the consumption of fish and ingestion of water plus an additional fish-plus-water criterion for copper, and 94 revised and 10 new criteria based on exposure to toxic substances from the consumption of fish alone. In addition, although new input values were used, the values for the antimony fish only criterion and the bromoform fish-plus-water criterion did not change; these are counted as revised criteria. With this revision, Idaho will have updated all of its human health criteria except those for arsenic, methylmercury, and asbestos.	010 (definition: Harmonic Mean) 070.08 210.01 210.03 210.04 210.05 400.06	<ul style="list-style-type: none"> • 210.01 The previous human health criteria published in 2005 Idaho Administrative Code continue to apply. These criteria are listed in Numeric Criteria for Toxic Substances (2005). • 210.05.b.i The previous human health criteria based on fish consumption rate of 6.5 g/day published in 2005 Idaho Administrative Code continue to apply. • 010 (definition: Harmonic Mean) • 070.08 • 210.03 	58-0102-0503 Disapproved on 05/10/12 (EPA disapproval letter) On 08/06/12, DEQ notified EPA of its intention to initiate a negotiated rulemaking to revise the human health criteria for toxic pollutants (DEQ response letter). 58-0102-1201 Review pending

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					<ul style="list-style-type: none"> • 210.04 • 210.05.b.ii • 400.06 The previous standards published in 2015 Idaho Administrative Code continue to apply.	
Reinstatement of Aquatic Life Use Designations for Eight Boise Tributaries				140.12 278	The previous standards published in 2001 Idaho Administrative Code continue to apply.	58-0102-0101 Aquatic life use designations disapproved on 11/29/04 (EPA disapproval letter)
58-0102-0101 Revised use designations for Boise River tributaries	03/15/02	03/18/02	Revised use designations for Boise River tributaries.			
58-0102-1103 Reinstated disapproved aquatic life use designations	03/29/12	06/08/12	Reinstated aquatic life use designations for eight Boise River tributaries to address EPA's November 29, 2004, disapproval.			58-0102-1103 Review pending
Hells Canyon Site-Specific Salmonid Spawning Criterion for Temperature 58-0102-1102	03/29/12	06/08/12	Modified the existing site-specific temperature criterion to protect fall Chinook spawning below Hells Canyon Dam by providing for a 2-week transition in temperatures from October 23 through November 6.	130.01 286	The previous criterion published in 2005 Idaho Administrative Code continues to apply.	Pending
Thermal Treatment Requirements 58-0102-1101	06/30/11 (temporary rule) 03/29/12 (final rule)	07/20/11 08/07/12	Removed the numeric limits on point source induced changes in receiving water temperature.	401.01	The previous treatment requirements published in 2011 Idaho Administrative Code continue to apply.	Pending
Mercury/Aquatic Life 58-0102-0302	04/06/05	08/08/05 (EPA submittal letter)	In 2005, Idaho adopted EPA's recommended methylmercury fish tissue criterion for protection of human health. The decision was made to remove the old tissue-based aquatic life criteria	210.01	The water column criteria for total recoverable mercury published in 2004 Idaho	Disapproved on 12/12/08 (EPA disapproval letter)

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			and rely on the fish tissue criterion to provide protection for aquatic life as well as human health. Thus, published Idaho WQS do not have mercury water column criteria for the protection of aquatic life. While EPA approved Idaho's adoption of the fish tissue criterion in September 2005, it had withheld judgment on Idaho's removal of aquatic life criteria.		Administrative Code continue to apply.	
Seasonal Cold Water Use and Temperature Criteria 16-0102-9704 seasonal cold water use and temperature criteria adopted 58-0102-0002 temperature criteria for seasonal cold water use revised	04/05/00 03/30/01	04/26/00 <i>(EPA submittal letter)</i> 05/29/03	Idaho first adopted seasonal cold water use and temperature criteria in April 2000. In March 2001, Idaho revised its temperature criteria for the seasonal cold water use.	250.03	Although the seasonal cold water use and temperature criteria adopted in 2000 have not been acted on by EPA, they were adopted by Idaho and submitted to EPA prior to May 30, 2000. Therefore, the seasonal cold water use and temperature criteria published in 2000 Idaho Administrative Code continue to apply.	Pending
Bull Trout Temperature Criterion 58-0102-0002	03/30/01	2001	Idaho first adopted Bull Trout temperature criteria in 1998. These criteria were revised in 2001 and submitted to EPA for approval. EPA has not taken action and so the Bull Trout temperature criterion effective for CWA purposes is the 1997 federally promulgated temperature criterion of 10 °C for 7-day average maximum daily temperatures from June through September for waters specified in the federal rule (see 40 CFR 131.33).	250.02.g	Bull Trout temperature criterion effective for CWA purposes is the 1997 federally promulgated temperature criterion of 10 °C for 7-day average maximum daily temperatures from June through September for waters specified in the federal rule (see 40 CFR 131.33). However, a few waters identified in Governor Batt's 1996 <i>Bull Trout Conservation Plan</i> are not listed in 40 CFR	Pending

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					131.33. For these waters, the criteria published in 1998 Idaho Administrative Code continue to apply.	
<p>Arsenic Human Health Criteria</p> <p>16-0102-9501 6.2 µg/L 0.02 µg/L adopted</p> <p>16-0102-9801 50 µg/L adopted</p> <p>58-0102-0801 10 µg/L adopted</p>	<p>03/08/95</p> <p>12/01/97 (temporary rule) 03/19/99 (final rule)</p> <p>03/29/10</p>	<p>1996</p> <p>1999</p> <p>06/21/10 <i>(EPA submittal letter)</i></p>	<ul style="list-style-type: none"> In 2010, Idaho adopted 10 µg/L as its CWA arsenic criterion for both exposure through fish consumption only and exposure through drinking water + fish consumption, choosing the Safe Drinking Water Act maximum contaminant level due to concerns about background levels that exceed EPA's 304(a) criteria. EPA approved this action in 2010. In June 2016, Northwest Environmental Advocates challenged EPA's 2010 approval. The court remanded the action back to EPA. On 09/15/16, EPA disapproved Idaho's adoption of 10 µg/L. Until new criteria are adopted, EPA will use criteria of 6.2 µg/L for exposure through fish consumption only and 0.02 µg/L for exposure through both drinking water + fish consumption in its National Pollutant Discharge Elimination System permitting actions. These are the previously approved criteria and will be used as an interpretation of Idaho's narrative criterion for toxics. 	<p>210.01</p>	<p>The criteria adopted under Docket No. 16-0102-9501 and published in 1996 Idaho Administrative Code continue to apply (Subsections 250.01.c, 250.02.a.iv, 250.03.a.i).</p>	<p>16-0102-9501 Approved on 06/25/96</p> <p>58-0102-0801 16-0102-9801 Disapproved on 09/15/16 following NWEA v EPA litigation <i>(EPA disapproval letter)</i></p>