EFFECTIVE DATE: The effective date of the temporary rules being adopted through this omnibus rulemaking, as listed in the descriptive summary of this notice, is July 1, 2021.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules. The action is authorized by the following Idaho Code provisions. Citations to any federal statutes that provide the basis of authority or requirement for the rulemaking are also included.

IDAPA 58.01.02 - Chapters 1 and 36, Title 39, Idaho Code; Clean Water Act, 33 U.S.C. § 1251 et seq.
IDAPA 58.01.03 - Chapters 1 and 36, Title 39, Idaho Code
IDAPA 58.01.04 - Chapters 1 and 36, Title 39, Idaho Code; Clean Water Act, 33 U.S.C. § 1251 et seq.
IDAPA 58.01.10 - Section 39-4405, Idaho Code
IDAPA 58.01.16 - Chapters 1 and 36, Title 39, Idaho Code
IDAPA 58.01.17 - Chapter 1, Title 39, Idaho Code
IDAPA 58.01.21 - Sections 39-105, 39-107, and 74-114(8), Idaho Code
IDAPA 58.01.22 - Chapters 1 and 36, Title 39, Idaho Code; Safe Drinking Water Act, 42 U.S.C. § 300f et seq.
IDAPA 58.01.23 - Sections 39-105, 39-107 and 67-5206, Idaho Code
IDAPA 58.01.24 - Chapters 1, 36, 44, 72 and 74, Title 39, Idaho Code

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting the temporary rules:

On May 20, 2021, the Idaho Board of Environmental Quality (Board) adopted, as temporary rules, the existing and previously approved codified IDAPA 58 rule chapters. This action includes revisions in IDAPA 58.01.02, 58.01.03, 58.01.04, and 58.01.22 adopted by the Board as pending rule docket in 2020 and submitted to the First Regular Session of the 66th Idaho Legislature for review (2021 session). The pending rule docket are posted in the 2021 Legislative Rules Review Books for the Senate Resources & Environment and House Environment, Energy & Technology Committees. The IDAPA 58 rule chapters and the pending rule docket are listed below.

This temporary rulemaking adopts and republishes the following existing rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 58, rules of the Department of Environmental Quality:

IDAPA 58
• IDAPA 58.01.02, Water Quality Standards – including revisions in pending rule docket 58-0102-2001;
• IDAPA 58.01.03, Subsurface Sewage Disposal Rules and Rules for Cleaning of Septic Tanks – including revisions in pending rule docket 58-0103-1901;
• IDAPA 58.01.04, Rules for Administration of Wastewater Treatment Facility Grants – including revisions in pending rule docket 58-0104-1901 (chapter repeal);
• IDAPA 58.01.10, Rules Regulating the Disposal of Radioactive Materials Not Regulated Under the Atomic Energy Act of 1954, As Amended;
• IDAPA 58.01.16, Wastewater Rules;
• IDAPA 58.01.17, Recycled Water Rules;
• IDAPA 58.01.21, Rules Governing the Protection and Disclosure of Records in the Possession of DEQ;
• IDAPA 58.01.22, Rules for Administration of Planning Grants for Drinking Water and Wastewater Facilities – including revisions in pending rule docket 58-0122-1901;
• IDAPA 58.01.23, Rules of Administrative Procedure Before the Board of Environmental Quality; and
• IDAPA 58.01.24, Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites.


TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(a), (b) and (c), Idaho Code, the Governor has found that temporary adoption of these rules is appropriate for the following reasons:
These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These temporary rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. DEQ would not be able to fulfill its statutory obligations without these rules. The state of Idaho would lose primacy over federal environmental laws without these rules. These rules are central to DEQ’s mission to protect human health and the quality of Idaho’s air, land, and water.

**FEE SUMMARY:** This rulemaking does not impose a fee or charge.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rules, contact the undersigned.

DATED this 1st day of July, 2021.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton Street  
Boise, Idaho 83706  
Phone: (208) 373-0418  
Fax: (208) 373-0481  
paula.wilson@deq.idaho.gov
a. Dissolved oxygen concentrations exceeding five (5) mg/l at all times. In lakes and reservoirs this standard does not apply to:

   i. The bottom twenty percent (20%) of the water depth in natural lakes and reservoirs where depths are thirty-five (35) meters or less. (7-1-21)T

   ii. The bottom seven (7) meters of water depth in natural lakes and reservoirs where depths are greater than thirty-five (35) meters. (7-1-21)T

   iii. Those waters of the hypolimnion in stratified lakes and reservoirs. (7-1-21)T

b. Water temperatures of thirty-three (33) degrees C or less with a maximum daily average not greater than twenty-nine (29) degrees C. (7-1-21)T
c. Temperature in lakes shall have no measurable change from natural background conditions. Reservoirs with mean detention times of greater than fifteen (15) days are considered lakes for this purpose. (7-1-21)T
d. Ammonia. The following criteria are to be met dependent upon the temperature, T (degrees C), and pH of the water body:

   i. Acute Criterion (Criterion Maximum Concentration (CMC)). The one (1) hour average concentration of total ammonia nitrogen (in mg N/L) is not to exceed, more than once every three (3) years, the value calculated using the following equation:

   \[
   CMC = \frac{0.411}{1 + 10^{7.204 - pH}} + \frac{58.4}{1 + 10^{pH - 7.204}}
   \]  

   (7-1-21)T

   ii. Chronic Criterion (Criterion Continuous Concentration (CCC)). Concentrations of ammonia are not to exceed the criteria defined at Subsection 250.02.d.ii. (7-1-21)T

05. **Modified.** Water quality criteria for modified aquatic life will be determined on a case-by-case basis reflecting the chemical, physical, and biological levels necessary to attain the existing aquatic life community. These criteria, when determined, will be adopted into these rules. (7-1-21)T

251. **SURFACE WATER QUALITY CRITERIA FOR RECREATION USE DESIGNATIONS.**

Effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-2001 have been approved.

01. **E. Coli Bacteria.** Waters designated for recreation are not to contain *E. coli* bacteria, used as indicators of human pathogens, in concentrations exceeding:

   a. Geometric Mean Criterion. Waters designated for primary or secondary contact recreation are not to contain *E. coli* bacteria in concentrations exceeding a geometric mean of one hundred twenty-six (126) *E. coli* organisms per one hundred (100) mL based on a minimum of five (5) samples taken every three (3) to seven (7) days over a thirty (30) day period. (7-1-21)T

   b. Use of Single Sample Values. A water sample exceeding the *E. coli* single sample maximums below indicates likely exceedance of the geometric mean criterion, but is not alone a violation of water quality standards. If a single sample exceeds the maximums set forth in Subsections 251.01.b.i., 251.01.b.ii., and 251.01.b.iii., then additional samples must be taken as specified in Subsection 251.01.c.:(7-1-21)T

   i. For waters designated as secondary contact recreation, a single sample maximum of five hundred
seventy-six (576) *E. coli* organisms per one hundred (100) mL; or

ii. For waters designated as primary contact recreation, a single sample maximum of four hundred six (406) *E. coli* organisms per one hundred (100) mL; or

iii. For areas within waters designated for primary contact recreation that are additionally specified as public swimming beaches, a single sample maximum of two hundred thirty-five (235) *E. coli* organisms per one hundred (100) mL. Single sample counts above this value should be used in considering beach closures.

**c. Additional Sampling.** When a single sample maximum, as set forth in Subsections 251.01.b.i., 251.01.b.ii., and 251.01.b.iii., is exceeded, additional samples should be taken to assess compliance with the geometric mean *E. coli* criteria in Subsection 251.01.a. Sufficient additional samples should be taken by the Department to calculate a geometric mean in accordance with Subsection 251.01.a. This provision does not require additional ambient monitoring responsibilities for dischargers.

251. **SURFACE WATER QUALITY CRITERIA FOR RECREATION USE DESIGNATIONS.**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Text</th>
</tr>
</thead>
<tbody>
<tr>
<td>01.</td>
<td><strong>Toxics Criteria.</strong> Waters designated for recreation must meet the Fish Only water quality criteria set forth in Subsection 210.01.b.</td>
<td>(7-1-21)T</td>
</tr>
<tr>
<td>02.</td>
<td><strong>Fecal Indicators.</strong> Waters designated for recreation must meet criteria for indicator bacteria of fecal contamination. Either of the following indicators is sufficient for determining compliance with the fecal indicator criteria:</td>
<td>(7-1-21)T</td>
</tr>
<tr>
<td>a.</td>
<td><em>E. Coli</em> Bacteria.</td>
<td>(7-1-21)T</td>
</tr>
<tr>
<td>i.</td>
<td>Waters designated for recreation are not to contain <em>E. coli</em> bacteria, used as indicators of human pathogens, in concentrations exceeding:</td>
<td>(7-1-21)T</td>
</tr>
<tr>
<td>(1)</td>
<td>A geometric mean of one hundred twenty-six (126) <em>E. coli</em> counts per one hundred (100) mL based on a minimum of five (5) samples taken every three (3) to eleven (11) days over a forty-five (45) day period; or</td>
<td>(7-1-21)T</td>
</tr>
<tr>
<td>(2)</td>
<td>A statistical threshold value (STV) of four hundred and ten (410) <em>E. coli</em> counts per one hundred (100) mL in more than ten percent (10%) of samples collected over a forty-five (45) day period. The Department will ensure samples collected represent the forty-five (45) day duration.</td>
<td>(7-1-21)T</td>
</tr>
<tr>
<td>ii.</td>
<td>For public swimming beaches, a single sample value of two hundred thirty-five (235) <em>E. coli</em> counts per one hundred (100) mL should be used in considering beach closures.</td>
<td>(7-1-21)T</td>
</tr>
<tr>
<td>b.</td>
<td>Enterococci. Waters designated for recreation are not to contain enterococci bacteria, used as indicators of human pathogens, in concentrations exceeding:</td>
<td>(7-1-21)T</td>
</tr>
<tr>
<td>i.</td>
<td>A geometric mean of thirty-five (35) enterococci counts per one hundred (100) mL based on a minimum of five (5) samples taken every three (3) to eleven (11) days over a forty-five (45) day period; or</td>
<td>(7-1-21)T</td>
</tr>
<tr>
<td>ii.</td>
<td>A statistical threshold value (STV) of one hundred and thirty (130) enterococci counts per one hundred (100) mL in more than ten percent (10%) of samples collected over forty-five (45) day period. The Department will ensure samples collected represent the forty-five (45) day duration.</td>
<td>(7-1-21)T</td>
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<tr>
<td>c.</td>
<td>For comparing permit effluent bacteria samples to the criteria, the averaging period shall be thirty (30) days or less based on a minimum of five (5) samples.</td>
<td>(7-1-21)T</td>
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252. **SURFACE WATER QUALITY CRITERIA FOR WATER SUPPLY USE DESIGNATION.**
01. Domestic. Waters designated for domestic water supplies are to exhibit the following characteristics: (7-1-21)

a. Must meet general water quality criteria set forth in Section 200 and the Water & Fish criteria set forth in Subsection 210.01.b. (7-1-21)

b. Turbidity. (7-1-21)

i. Turbidity as measured at any public water intake shall not be:

(1) Increased by more than five (5) NTU above background when background turbidity is fifty (50) NTU or less; (7-1-21)

(2) Increased by more than ten percent (10%) above background when background turbidity is greater than fifty (50) NTU and less than two hundred and fifty (250) NTU; or (7-1-21)

(3) Increased by more than twenty-five (25) NTU above background when background turbidity is two hundred and fifty (250) NTU or greater. (7-1-21)

ii. Turbidity Background/Criteria Table.

<table>
<thead>
<tr>
<th>Turbidity Background</th>
<th>Turbidity Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>≤ 50 NTUs</td>
<td>5 NTUs above background</td>
</tr>
<tr>
<td>&gt; 50 – &lt; 250 NTUs</td>
<td>10% above background</td>
</tr>
<tr>
<td>≥ 250 NTUs</td>
<td>25 NTUs</td>
</tr>
</tbody>
</table>

(7-1-21)

02. Agricultural. Water quality criteria for agricultural water supplies will generally be satisfied by the water quality criteria set forth in Section 200. Should specificity be desirable or necessary to protect a specific use, “Water Quality Criteria 1972” (Blue Book), Section V, Agricultural Uses of Water, EPA, March, 1973 will be used for determining criteria. This document is available for review at the Idaho Department of Environmental Quality, or can be obtained from EPA or the U.S. Government Printing Office. (7-1-21)

03. Industrial. Water quality criteria for industrial water supplies will generally be satisfied by the general water quality criteria set forth in Section 200. Should specificity be desirable or necessary to protect a specific use, appropriate criteria will be adopted in Sections 252 or 275 through 298. (7-1-21)

253. SURFACE WATER QUALITY CRITERIA FOR WILDLIFE AND AESTHETICS USE DESIGNATIONS.

01. Wildlife Habitats. Water quality criteria for wildlife habitats will generally be satisfied by the general water quality criteria set forth in Section 200. Should specificity be desirable or necessary to protect a specific use, appropriate criteria will be adopted in Sections 253 or 275 through 298. (7-1-21)

02. Aesthetics. Water quality criteria for aesthetics will generally be satisfied by the general water quality criteria set forth in Section 200. Should specificity be desirable or necessary to protect a specific use, appropriate criteria will be adopted in Sections 253 or 275 through 298. (7-1-21)

254. -- 259. (RESERVED)

260. VARIANCES FROM WATER QUALITY STANDARDS.

Variances from meeting certain water quality standards may be granted by the Department provided they are consistent with the following requirements: (7-1-21)
01. **Procedure.** Individual variances are to be pollutant and discharger specific, and shall be granted pursuant to the following:

a. Prior to granting a variance, the Department will publish notice of the Department’s tentative determination to grant a variance and will receive written comments for not less than thirty (30) days after the date the notice is published. The notice will contain a clear description of the impacts of the variance upon the receiving stream segment. The Department will also provide an opportunity for oral presentation of comments, if requested in writing within fourteen (14) days of the notice, by twenty-five (25) persons, a political subdivision, or an agency.

b. The Department’s final variance decision may be appealed pursuant to IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality.” The Department will maintain and make available to the public an updated list of variances.

02. **Attainability.** In order to obtain a variance from a water quality standard, the discharger must demonstrate that meeting the standard is unattainable based on one or more of the following grounds:

a. Naturally occurring pollutant concentrations prevent the attainment of the standard; or

b. Natural, intermittent, or low flow conditions or water levels prevent the attainment of the standard; or

c. Human caused conditions or sources of pollution prevent the attainment of the standard and cannot be remedied or would cause more environmental damage to correct than to leave in place; or

d. Dams, diversions or other types of hydrologic modifications preclude the attainment of the standard, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in attainment of the standard; or

e. Physical conditions related to the natural features of the water body, unrelated to water quality, preclude attainment of the standard; or

f. Controls more stringent than technology-based effluent limitations would result in substantial and widespread economic and social impact.

03. **Documentation.** The discharger must submit to the Department documentation that treatment more advanced than required by technology-based effluent limitations have been considered and that alternative effluent control strategies have been evaluated.

04. **Effective Period.** Any variance granted by the Department will remain in effect for a period of five (5) years or the life of the permit.

a. Upon expiration, the discharger must either meet the standard or re-apply for the variance in accordance with these rules.

b. The discharger must demonstrate reasonable progress towards meeting the standard when reapplying for a variance.

261. -- 274. (RESERVED)

275. **SITE-SPECIFIC SURFACE WATER QUALITY CRITERIA.**

01. **Procedures for Establishing Site-specific Water Quality Criteria.** The water quality criteria adopted in these standards may not always reflect the toxicity of a pollutant in a specific water body. These criteria also represent a limited number of the natural and human-made chemicals that exist in the environment which may pose a threat to designated or existing beneficial uses. Thus, it may be possible in some water bodies to develop new