

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 – WATER QUALITY STANDARDS

DOCKET NO. 58-0102-2001

NOTICE OF NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, Idaho Code, 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.

METHOD OF PARTICIPATION: Those interested in participating in the negotiated rulemaking process are encouraged to attend the scheduled meeting via telephone and web conferencing. Individuals interested in participating by telephone and web conferencing should contact the undersigned. For those who cannot participate by attending the meeting, information for submitting written comments is provided at the end of this notice.

MEETING SCHEDULE: A negotiated rulemaking meeting has been scheduled. Any additional meeting dates will be posted at www.deq.idaho.gov/58-0102-2001.

MEETING SET FOR PUBLIC PARTICIPATION VIA TELEPHONE AND WEB CONFERENCING

Thursday, May 7, 2020 – 9:00 a.m. to 12:30 p.m. (MDT)

Contact the undersigned to make arrangements
for participation by telephone and web conferencing.

On March 25, 2020, Governor Little issued a [Proclamation](#) declaring an emergency and taking steps to reduce and slow coronavirus spread. In compliance with the Proclamation, DEQ will hold this meeting via telephone and web conferencing.

PRELIMINARY DRAFT RULE: DEQ did not draft a preliminary draft rule for public review prior to the first meeting. The first meeting has been scheduled for the purpose of discussing stakeholder concerns regarding the implementation of the bacteria criteria, gathering information, and setting a path forward. More information regarding this rule docket is available at www.deq.idaho.gov/58-0102-2001.

DESCRIPTIVE SUMMARY: This rulemaking has been initiated to (1) revise water quality standards based on stakeholder comments and concerns regarding the implementation of the bacteria criteria, and (2) delete obsolete rule language.

Address Concerns Regarding Implementation of Bacteria Criteria

During 2019 legislative review of pending rule [Docket No. 58-0102-1802](#), stakeholders raised concerns regarding the implementation of Idaho bacteria criteria as presented in the pending rule. On March 18, 2019, the House adopted House Concurrent Resolution No. 23 (HCR23) to reject Subsection 251.02, adopted as a pending rule under Docket No. 58-0102-1802. On March 19 2019, HCR23 was introduced in the Senate and referred to the Senate Health & Welfare Committee. HCR23 was not reported out of committee; the pending rule docket became final and effective on April 11, 2019. This rulemaking seeks to revise Idaho Water Quality Standards to address the stakeholders' unresolved concerns.

This rulemaking will consider revisions to bacteria criteria language in Section 251 regarding the geometric mean criterion for E. coli and enterococci and whether to include data sufficiency clauses or statements addressing the minimum sample number for assessing compliance with the recreational criteria. DEQ will consider revision 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. Stakeholders expressed concern with the use of the STV for determining beneficial use support.

Delete Obsolete Rule Language

DEQ proposes to delete Subsection 260.02 including footnotes. Subsection 260.02, Variances from Water Quality Standards, Specific Variances, was adopted by the Idaho Board of Environmental Quality in 2000 and approved by the Idaho Legislature in 2001 (Docket No. 58-0102-0002). On May 29, 2003, DEQ submitted the final rule to EPA. On May 7, 2010, EPA disapproved the variance; therefore, Subsection 260.02 is not effective for Clean Water Act purposes and has been identified for deletion.

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 any 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.

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 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: For assistance on questions concerning this rulemaking, contact Michelle Dale at michelle.dale@deq.idaho.gov, (208) 373-0187.

SUBMISSION OF WRITTEN COMMENTS: Written comments may be submitted by mail, fax or email at the address below. Information regarding public comment opportunities provided throughout the negotiated rulemaking process will be available at www.deq.idaho.gov/58-0102-2001. To sign up for email notifications, contact Paula Wilson at paula.wilson@deq.idaho.gov.

Dated this 1st day of April, 2020.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton Street
Boise, Idaho 83706-1255
Phone: (208) 373-0418
Fax: (208) 373-0481
paula.wilson@deq.idaho.gov