Negotiated Rulemaking
Docket No. 58-0102-2001
Revision of Idaho Bacteria Criteria
Michelle Dale
May 7, 2020
Agenda

• Idaho Rulemaking Process
• Background
• Current Rule vs. Pre-2019
• Rulemaking Proposal Considerations
• Next Steps
Idaho Rulemaking Process

- Idaho Administrative Procedure Act (Idaho Code Title 67, Chapter 52):
  - Negotiated
Idaho Rulemaking Process

- Idaho Administrative Procedure Act (Idaho Code Title 67, Chapter 52):
  - Negotiated
  - Proposed
Idaho Rulemaking Process

- Idaho Administrative Procedure Act (Idaho Code Title 67, Chapter 52):
  - Negotiated
  - Proposed
  - Pending
Idaho Rulemaking Process

- Idaho Administrative Procedure Act (Idaho Code Title 67, Chapter 52):
  - Negotiated
  - Proposed
  - Pending
  - Final
Idaho Rulemaking Process

• Idaho Administrative Procedure Act (Idaho Code Title 67, Chapter 52):
  – Negotiated
  – Proposed
  – Pending
  – Final

• EPA approval
Background

• Federal regulations require states to consider EPA §304(a) recommendations as part of triennial review (40 CFR 131.20)

• Bacteria in recreational waters criteria published in 2012

<table>
<thead>
<tr>
<th>Year</th>
<th>Triennial Review: consideration of revised §304(a)</th>
<th>Priority</th>
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<tbody>
<tr>
<td>2014</td>
<td>Triennial Review: consideration of revised §304(a)</td>
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<td>2017</td>
<td>Triennial Review: consideration of revised §304(a)</td>
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Background

**2018 rulemakings**

- Adopt aquatic life criteria for acrolein, carbaryl, and diazinon in accordance with EPA’s current §304(a) recommended criteria
- Adopt EPA’s current §304(a) recommended criteria for bacteria and clarify the definition of recreational use

**2019 Legislature**

- Approved Rule Docket No. 58-0102-1802
- Approved April 2019
2018 rulemakings

- Adopt aquatic life criteria for acrolein, carbaryl, and diazinon in accordance with EPA's current §304(a) recommended criteria
- Adopt EPA's current §304(a) recommended criteria for bacteria

2019 Legislature

- Approved Rule Docket No. 58-0102-1802
- Approved April 2019

Delete Obsolete Rule Language
# Current Rule vs. Pre-2019

<table>
<thead>
<tr>
<th></th>
<th>Current Rule</th>
<th>(^2)SSM</th>
<th>Public Swimming Beach</th>
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<tbody>
<tr>
<td></td>
<td>Geomean</td>
<td>STV</td>
<td>PCR</td>
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<tr>
<td><strong>E. coli</strong></td>
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<tr>
<td>Magnitude (CFU/mL)</td>
<td>126</td>
<td>410</td>
<td>--</td>
</tr>
<tr>
<td>Duration</td>
<td>30 days</td>
<td>30 days</td>
<td></td>
</tr>
<tr>
<td>Frequency</td>
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<td>10%</td>
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<tr>
<td><strong>Enterococci</strong></td>
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<td></td>
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<tr>
<td>Magnitude (CFU/mL)</td>
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<td>130</td>
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<td>Duration</td>
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</tr>
<tr>
<td>Frequency</td>
<td>--</td>
<td>10%</td>
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</tr>
</tbody>
</table>

## Pre-2019

|                     |            |           |                       |            |
| **E. coli**         |            |           |                       |            |
| Magnitude (org/100mL) | 126   | --        | 406                   | 576        | 235        |
| **Enterococci**     | --         | --        | --                    |            |            |

\(^1\)Geometric Mean based on a minimum of 5 samples taken every 3 to 7 days over a 30-day period.
\(^2\)Single sample maximum value (SSM) is not criteria, and exceedance of the SSM alone is not considered a criterion violation. Rather, it is considered a “trigger value” that initiates additional sampling.
Rulemaking Proposal Considerations

• Beneficial use impairment determinations based on a single sample STV

• Based on 10% excursion frequency

NO ACTION REQUIRED
Rulemaking Proposal Considerations

Revision of STV as criteria for determining beneficial use support
What Next?

PUBLIC COMMENTS WELCOME!

• Seeking public comments providing specific remedies or rule language
• Comments due May 18
  – Negotiated rulemaking on June 11, 2020
SUBMIT A PUBLIC COMMENT

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