

FINAL PROPOSAL
Dated November 1, 2017

WATER QUALITY STANDARDS, DOCKET NO. 58-0102-1702

The proposed rule was published in the Idaho Administrative Bulletin, August 2, 2017, Vol. 17-8, pages 128 through 159. The Department of Environmental Quality recommends that the Board take the following action:

IDAPA 58.01.02

Section 007	ADOPT AS REVISED
Section 010	ADOPT AS PROPOSED
Section 210	ADOPT AS REVISED
Section 401	ADOPT AS PROPOSED

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 – WATER QUALITY STANDARDS

DOCKET NO. 58-0102-1702

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2018 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment *sine die* of the Second Regular Session of the Sixty-fourth Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Sections 39-105, 39-107, and 39-3601 *et seq.*, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 2, 2017, Vol. 17-8, pages 128 through 159. After consideration of public comments, Sections 007 and 210 have been revised. The remainder of the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at www.deq.idaho.gov/58-0102-1702 or by contacting the undersigned.

IDAHO CODE SECTION 39-107D STATEMENT: This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Paula Wilson at paula.wilson@deq.idaho.gov, (208)373-0418.

Dated this 3rd day of January, 2018

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**Revisions to Proposed Rule for Board Consideration, Docket No. 58-0102-1702
(dated November 1, 2017)**

The revisions made to the proposed rule are highlighted. Only the rule sections containing revisions are included.

007. Effective For Clean Water Act Purposes.

01. Alaska Rule. 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. The process for revising the Idaho water quality standards subject to EPA review and approval, while also retaining the rules effective for CWA purposes, is set out in Subsections 007.02 and 007.03.

02. Existing Rule Retained for Clean Water Act Purposes Until EPA Approval of Rule Revisions.

a. When making-proposing revisions-to-the-Water-Quality-Standards, IDAPA 58.01.02, the Department-shall will make the proposed revisions using legislative format and, in the same rule docket, retain the existing rule that continues to be effective for CWA purposes until the date EPA issues written notification that the rule revisions have been approved.

b. Notations explaining the effectiveness of both versions of the rule sections-shall will be included along with the rule revisions-text.

c. Upon the date EPA issues written notification that the rule revisions have been approved, the revised rule will become effective for CWA purposes and the previous rule and notations will be deleted from the Idaho Administrative Code.

d. In the event EPA issues written notification that the rule revisions have been disapproved, the existing rule effective rule for CWA purposes will continue to apply. The disapproved rule revisions and notations will be deleted from the Idaho Administrative Code.

03. Previously Approved Rules. Pursuant to 40 CFR 131.21(e), previously approved rules remain in effect for CWA purposes until a replacement water quality standard is promulgated by the state and approved by EPA or a more stringent federal standard is promulgated.

04. Information Regarding the Status of EPA Review. Information regarding the status of EPA review will be posted at <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

(BREAK IN CONTINUITY OF SECTIONS)

210. NUMERIC CRITERIA FOR TOXIC SUBSTANCES FOR WATERS DESIGNATED FOR AQUATIC LIFE, RECREATION, OR DOMESTIC WATER SUPPLY USE.

01. Criteria for Toxic Substances. The criteria of Section 210 apply to surface waters of the state as provided in Tables 1 and 2. ()

b. Table 2 contains criteria set for protection of human health. The Water & Fish criteria apply to waters designated for domestic water supply use. The Fish Only criteria apply to waters designated for primary or secondary contact recreation use. ()

Table 2. Criteria for Protection of Human Health (based on consumption of:)						
Compound	a	Carcinogen?	Water & Fish (ug/L)		Fish Only (ug/L)	
	CAS Number					
Inorganic Compounds/Metals						
Antimony	7440360		5.2	b	190	b
Arsenic	7440382	Y	10	cdi	10	cdi

The note box for arsenic criteria contains explanatory information and is not rule text. The note box in the Idaho Administrative Code has been updated with the following revisions.

Note: In 2008, Idaho adopted 10 ug/L as its CWA arsenic criterion for both exposure through fish consumption only and exposure through drinking water+fish consumption, choosing the SDWA MCL due to concerns about background levels that exceed EPA's 304(a) criteria (docket 58-0102-0801). EPA approved this action in 2010. In June 2016 2015, Northwest Environmental Advocates challenged EPA's 2010 approval. Court remanded action back to EPA. On September 15, 2016 EPA disapproved Idaho's adoption of 10 ug/L. Neither EPA nor the state of Idaho has promulgated replacement criteria. Until new criteria are adopted, EPA will use criteria of 6.2 ug/L for exposure through fish consumption only and 0.02 ug/L for exposure through both drinking water + consumption of fish in its NPDES permitting actions. These criteria are published in 1996 Idaho Administrative Code (Subsections 250.01.c, 250.02.a.iv, 250.03.a.i). For more information, go to <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.