

Negotiated Rule Draft No. 4
Docket No. 58-0102-1802, Dated July 26, 2018

This draft includes revisions based on the June 28, 2018, meeting discussion and review of written comments received. These revisions are highlighted in yellow.

DEQ is not requesting public comments on this draft. The next comment period will commence upon publication of the proposed rule in the September 5, 2018, issue of the Idaho Administrative Bulletin. The proposed rule comment deadline is October 5, 2018.

Water Quality Standards
IDAPA 58.01.02

100. SURFACE WATER USE DESIGNATIONS.

Waterbodies are designated in Idaho to protect water quality for existing or designated uses. The designated use of a waterbody does not imply any rights to access or ability to conduct any activity related to the use designation, nor does it imply that an activity is safe. For example, a designation of **primary or secondary contact** recreation may occur in areas where it is unsafe to enter the water due to water flows, depth or other hazardous conditions. Another example is that aquatic life uses may be designated in areas that are closed to fishing or access is not allowed by property owners. Wherever attainable, the designated beneficial uses for which the surface waters of the state are to be protected include: (3-15-02)

(Break)

02. Recreation (REC). ~~Water Quality appropriate for recreational uses in or on the water where ingestion of small quantities of raw water or consumption of fish may occur. These activities may include, but are not limited to, swimming, fishing, boating, and wading.~~ (7-1-93)

a. Primary contact recreation (PCR): water quality appropriate for prolonged and intimate contact by humans or for recreational activities when the ingestion of small quantities of water is likely to occur. Such activities include, but are not restricted to, those used for swimming, water skiing, or skin diving. (4-5-00)

~~Effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-1802 have been approved.~~

a. Primary contact recreation (PCR): water quality appropriate for prolonged and intimate contact by humans or for recreational activities when the ingestion of small quantities of water is likely to occur. Such activities include, but are not restricted to, those used for swimming, water skiing, or skin diving. **PCR includes all activities associated with secondary contact recreation (SCR).**

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(4-5-00)

b. Secondary contact recreation (SCR): water quality appropriate for recreational uses on or about the water and which are not included in the primary contact category. These activities may include fishing, boating, wading, infrequent swimming, and other activities where ingestion of raw water is not likely to occur. (4-5-00)

(Break)

101. NONDESIGNATED SURFACE WATERS.

01. Undesignated Surface Waters. Surface waters not designated in Sections 110 through 160 shall be designated according to Section 39-3604, Idaho Code, taking into consideration the use of the surface water and such physical, geological, chemical, and biological measures as may affect the surface water. Prior to designation, undesignated waters shall be protected for beneficial uses, which includes all recreational use in and on the water and the protection and propagation of fish, shellfish, and wildlife, wherever attainable. (3-23-98)

a. Because the Department presumes most waters in the state will support cold water aquatic life and primary or secondary contact recreation beneficial uses, the Department will apply cold water aquatic life and primary or secondary contact recreation criteria to undesignated waters unless Sections 101.01.b and 101.01.c. are followed. (4-5-00)

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a. Because the Department presumes most waters in the state will support cold water aquatic life and primary or secondary contact recreation beneficial uses, the Department will apply cold water aquatic life and primary or secondary contact recreation criteria to undesignated waters unless Sections 101.01.b and 101.01.c. are followed. (4-5-00)

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b. During the review of any new or existing activity on an undesignated water, the Department may examine all relevant data or may require the gathering of relevant data on beneficial uses; pending determination in Section 101.01.c. existing activities will be allowed to continue. (3-23-98)

c. If, after review and public notice of relevant data, it is determined that beneficial uses in addition to or other than cold water aquatic life and primary or secondary contact recreation are appropriate, then the Department will: (4-5-00)

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c. If, after review and public notice of relevant data, it is determined that beneficial uses in addition to or other than cold water aquatic life and primary or secondary contact recreation are appropriate, then the Department will: (4-5-00)

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i. Complete the review and compliance determination of the activity in context with the new information on beneficial uses, and (3-23-98)

ii. Initiate rulemaking necessary to designate the undesignated water, including providing all necessary data and information to support the proposed designation. (3-23-98)

(Break)

109. HUC INDEX AND ABBREVIATIONS FOR SECTIONS 110, 120, 130, 140, 150, AND 160.

(Break)

03. Abbreviations. (4-5-00)

~~Effective for CWA purposes until the date EPA issues written notification that the revisions have been approved.
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a. COLD -- Cold Water Communities. (4-5-00)

b. SS -- Salmonid Spawning. (4-5-00)

c. SC -- Seasonal Cold Water Communities. (4-5-00)

d. WARM -- Warm Water Communities. (4-5-00)

e. MOD -- Modified Communities. (4-5-00)

f. PCR -- Primary Contact Recreation. (4-5-00)

g. SCR -- Secondary Contact Recreation. (4-5-00)

- h. DWS -- Domestic Water Supply. (4-5-00)
- i. NONE -- Use Unattainable. (4-5-00)
- j. No entry in the Aquatic Life or Recreation columns -- nondesignated waters for those uses. (3-15-02)

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- c. SC -- Seasonal Cold Water Communities. (4-5-00)
- d. WARM -- Warm Water Communities. (4-5-00)
- e. MOD -- Modified Communities. (4-5-00)
- f. **PCRREC** -- **Primary Contact** Recreation. (4-5-00)
- g. **SCR** -- **Secondary Contact Recreation.** (4-5-00)
- hg. DWS -- Domestic Water Supply. (4-5-00)
- ih. NONE -- Use Unattainable. (4-5-00)
- ji. No entry in the Aquatic Life or Recreation columns -- nondesignated waters for those uses. (3-15-02)

[The following portion of Section 110 has been included as an example of the format that will be used to revise recreation designated use in Sections 110 through 160.]

110. PANHANDLE BASIN.

Surface waters found within the Panhandle basin total fourteen (14) subbasins and are designated as follows:

(4-5-00)

01. Upper Kootenai Subbasin. The Upper Kootenai Subbasin, HUC 17010101, is comprised of six (6) water body units.

Effective for CWA purposes until the date EPA issues written notification that the revisions have been approved. Docket No. 58-0102-1802 (REC)

Unit	Waters	Aquatic Life	Recreation	Other
P-1	Star Creek - source to Idaho/Montana border	COLD SS	PCR ¹ PCR REC²	

(3-30-01)

02. Lower Kootenai Subbasin. The Lower Kootenai Subbasin, HUC 17010104, is comprised of forty (40) water body units.

Effective for CWA purposes until the date EPA issues written notification that the revisions have been approved. Docket No. 58-0102-1802 (REC)

(Break)

Unit	Waters	Aquatic Life	Recreation	Other
P-24	Dodge Creek - source to mouth	COLD SS	SCR ² SCR ² REG ²	

(3-29-12)

(Break)

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

Note: In 2016, Idaho updated human health criteria for 104 toxic substances (10 of which are new). Final rule submitted to EPA on December 13, 2016 (docket 58-0102-1201). Until EPA approves the revisions in this rule docket, the human health criteria published in 2005 Idaho Administrative Code in Subsection 210.01 continue to apply and are effective for CWA purposes. These criteria are listed in Numeric Criteria for Toxic Substances (2005). The previous human health criteria based on a fish consumption rate of 6.5 g/day published in 2005 Idaho Administrative Code in Subsection 210.05.b.i. continue to apply and are effective for CWA purposes. Until EPA approves the revisions in this rule docket, the additional fish-plus-water criterion for copper; the revisions in Subsections 070.08, 210.03, 210.04, 210.05.b.ii. and 400.06; and the definition of harmonic mean published in 2015 Idaho Administrative Code continue to apply and are effective for CWA purposes. For more information, go to <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

01. Criteria for Toxic Substances. The criteria of Section 210 apply to surface waters of the state as provided in Tables 1 and 2. (3-28-18)

a. Table 1 contains criteria set for protection of aquatic life. Criteria for metals (arsenic through zinc) are expressed as dissolved fraction unless otherwise noted. For purposes of these criteria, dissolved fraction means that which passes through a forty-five hundredths (0.45) micron filter. (3-28-18)

Table 1. Criteria for Protection of Aquatic Life				
Compound	^a CAS Number	^b CMC (µg/L)		^b CCC (µg/L)
Inorganic Compounds/Metals				
Arsenic	7440382	340	c	150 c
Cadmium	7440439	1.3	f	0.6 f
Chromium III	16065831	570	f	74 f
Chromium VI	18540299	16	c	11 c
Copper ¹	7440508	17	f	11 f

¹ Effective for CWA purposes. The CMC, CCC, and footnote are effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1502 have been approved.					
Copper ²	7440508	12.3	k	7.6	k
² Not yet effective for CWA purposes. The CMC, CCC, and footnote are not effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1502 have been approved.					
Lead	7439921	65	f	2.5	f
Mercury	7439976		e		e
Note: In 2005, Idaho adopted EPA's recommended methylmercury fish tissue criterion for protection of human health (docket 58-0102-0302). The decision was made to remove the old tissue-based aquatic life criteria and rely on the fish tissue criterion to provide protection for aquatic life as well as human health. Thus, current Idaho water quality standards 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. On December 12, 2008, EPA disapproved Idaho's removal of the old aquatic life criteria. The water column criteria for total recoverable mercury published in 2004 Idaho Administrative Code continue to apply and are effective for CWA purposes. For more information go to http://www.deq.idaho.gov/epa-actions-on-proposed-standards .					
Nickel	7440020	470	f	52	f
Selenium ¹	7782492	20	d	5	d
¹ Effective for CWA purposes. The CMC value and footnote and the CCC value are effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1701 have been approved.					
Selenium ²	7782492	m		l	d
² Not yet effective for CWA purposes. CMC footnote m . and CCC footnote l . are not effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1701 have been approved.					
Silver	7440224	3.4	f		
Zinc	7440666	120	f	120	f
<u>Inorganic Compounds/Non-Metals</u>					
Chlorine		19	h	11	h
Cyanide	57125	22	g	5.2	g
<u>Organic Compounds</u>					
<u>Acrolein</u>	<u>107028</u>	<u>--¹</u>		<u>--¹</u>	
		<u>3²</u>		<u>3²</u>	
¹ Effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-1802 have been approved.					
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Aldrin	309002	3			

gamma-BHC (Lindane)	58899	2	0.08
<u>Carbaryl</u>	<u>63252</u>	<u>--¹</u>	<u>--¹</u>
		<u>2.1²</u>	<u>2.1²</u>
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Chlordane	57749	2.4	0.0043
4,4'-DDT	50293	1.1	0.001
<u>Diazinon</u>	<u>333415</u>	<u>--¹</u>	<u>--¹</u>
		<u>0.17²</u>	<u>0.17²</u>
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Dieldrin	60571	2.5	0.0019
alpha-Endosulfan	959988	0.22	0.056
beta-Endosulfan	33213659	0.22	0.056
Endrin	72208	0.18	0.0023
Heptachlor	76448	0.52	0.0038
Heptachlor Epoxide	1024573	0.52	0.0038
Pentachlorophenol	87865	20	13
		i	i
Polychlorinated Biphenyls PCBs	j		0.014
			j
Toxaphene	8001352	0.73	0.0002

Footnotes for Table 1. Criteria for Protection of Aquatic Life
a. Chemical Abstracts Service (CAS) registry numbers which provide a unique identification for each chemical.
b. See definitions of Acute Criteria (CMC) and Chronic Criteria (CCC), Section 010 of these rules.
c. Criteria for these metals are expressed as a function of the water effect ratio, WER, as defined in Subsection 210.03.c.iii. CMC = CMC column value X WER. CCC = CCC column value X WER.
d. Criterion expressed as total recoverable (unfiltered) concentrations.
e. No aquatic life criterion is adopted for inorganic mercury. However, the narrative criteria for toxics in Section 200 of these rules applies. The Department believes application of the human health criterion for methylmercury will be protective of aquatic life in most situations.

<p>f. Aquatic life criteria for these metals are a function of total hardness (mg/L as calcium carbonate), the pollutant's water effect ratio (WER) as defined in Subsection 210.03.c.iii. and multiplied by an appropriate dissolved conversion factor as defined in Subsection 210.02. For comparative purposes only, the example values displayed in this table are shown as dissolved metal and correspond to a total hardness of one hundred (100) mg/L and a water effect ratio of one (1.0).</p>					
<p>g. Criteria are expressed as weak acid dissociable (WAD) cyanide.</p>					
<p>h. Total chlorine residual concentrations.</p>					
<p>i. Aquatic life criteria for pentachlorophenol are expressed as a function of pH, and are calculated as follows. Values displayed above in the table correspond to a pH of seven and eight tenths (7.8). CMC = $\exp(1.005(\text{pH})-4.830)$ CCC = $\exp(1.005(\text{pH})-5.290)$</p>					
<p>j. PCBs are a class of chemicals which include Aroclors, 1242, 1254, 1221, 1232, 1248, 1260, and 1016, CAS numbers 53469219, 11097691, 11104282, 11141165, 12672296, 11096825 and 12674112 respectively. The aquatic life criteria apply to this set of PCBs.</p>					
<p>k. Aquatic life criteria for copper shall be derived in accordance with Subsection 210.03.c.v. For comparative purposes only, the example values displayed in this table correspond to the Biotic Ligand Model output based on the following inputs: temperature = 14.9°C, pH = 8.16, dissolved organic carbon = 1.4 mg/L, humic acid fraction = 10%, calcium = 44.6 mg/L, magnesium = 11.0 mg/L, sodium = 11.7 mg/L, potassium = 2.12 mg/L, sulfate = 46.2 mg/L, chloride = 12.7 mg/L, alkalinity = 123 mg/L CaCO₃, and sulfide = 1.00×10^{-8} mg/L.</p> <p>(Footnote k. is not effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1502 have been approved.)</p>					
<p>l.</p>					
<p>Chronic</p>					<p>Short-term</p>
<p>Egg-Ovary (mg/kg dw)</p>	<p>Fish Tissue (mg/kg dw)</p>		<p>Water Column (µg/L)</p>		<p>Water Column (µg/L)</p>
<p>Egg-Ovary</p>	<p>Whole-Body</p>	<p>Muscle</p>	<p>Water Lentic</p>	<p>Water Lotic</p>	<p>Water</p>
<p>15.1¹</p>	<p>8.5²</p>	<p>11.3²</p>	<p>1.5 (30 day average)³</p>	<p>3.1 (30 day average)³</p>	<p><i>Intermittent Exposure Equation</i>^{3,4}</p>
<p>mg/kg dw – milligrams per kilogram dry weight, µg/L – micrograms per liter</p>					

1. Egg-ovary supersedes any whole-body, muscle, or water column element when fish egg-ovary concentrations are measured. Single measurement of an average or composite sample of at least five (5) individuals of the same species. Not to be exceeded; DEQ will evaluate all representative egg-ovary data to determine compliance with this criterion element.

2. Fish whole-body or muscle tissue supersedes water column element when both fish tissue and water concentrations are measured. Single measurement of an average or composite sample of at least five (5) individuals of the same species where the smallest individual is no less than seventy-five percent (75%) of the total length (size) of the largest individual. Not to be exceeded; DEQ will evaluate all representative whole body or muscle data to determine compliance with this criterion element.

3. Water column values are based on dissolved total selenium in water and are derived from fish tissue values via bioaccumulation modeling. Water column values are the applicable criterion element in the absence of steady-state condition fish tissue data. In fishless waters, selenium concentrations in fish from the nearest downstream waters may be used to assess compliance using methods provided in Aquatic Life Ambient Water Quality Criterion for Selenium – Freshwater, EPA-822-R-16-006, Appendix K: Translation of a Selenium Fish Tissue Criterion Element to a Site-Specific Water Column Value (June 2016).

4. Intermittent Exposure Equation=
where WQC is the applicable water column element, for either lentic or lotic waters; $C_{bkg\text{r}nd}$ is the average background selenium concentration, and f_{int} is the fraction of any 30-day period during which elevated selenium concentrations occur, with f_{int} assigned a value ≥ 0.033 (corresponding to one day).

(Footnote l. is not effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1701 have been approved.)

m. There is no specific acute criterion for aquatic life; however, the aquatic life criterion is based on chronic effects of selenium on aquatic life and is expected to adequately protect against acute effects.

(Footnote m. is not effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1701 have been approved.)

(3-28-18)

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. (3-28-18)

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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. (3-28-18)

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[Table 2. Criteria for Protection of Human Health – not included]

(Break)

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. 58-0102-1802 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: (4-11-06)

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. (4-11-06)

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.: (4-11-06)

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 (4-11-06)

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 (4-11-06)

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. (4-11-06)

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. (4-11-06)

(Break)

251. SURFACE WATER QUALITY CRITERIA FOR RECREATION USE DESIGNATIONS.

Not effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-1802 have been approved.

01. Toxics Criteria. Waters designated for recreation must meet the Fish Only water quality criteria set forth in Subsection 210.01.b.

02. Fecal Indicators. Waters designated for recreation must meet criteria for indicator organisms of fecal contamination. Either of the following indicator criterion would be considered sufficient for determining compliance with the fecal indicator criteria:

01a. E. Coli Bacteria. Waters designated for recreation are not to contain *E. coli* bacteria, used as indicators of human pathogens, in concentrations exceeding: (4-11-06)

ai. 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~~ colony forming units (CFU) 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; ~~or~~ (4-11-06)

~~**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.: (4-11-06)~~

~~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 (4-11-06)~~

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~~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. (4-11-06)~~

~~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. (4-11-06)~~

~~ii. Statistical Threshold Value (STV). No greater than ten percent (10%) of valid samples collected over a thirty (30) day period are to contain *E. coli* bacteria in concentrations exceeding an STV of four hundred and ten (410) *E. coli* CFU per one hundred (100) ml; or~~

~~b. Enterococci. Waters designated for recreation are not to contain enterococci bacteria, used as indicators of human pathogens, in concentrations exceeding:~~

~~i. Geometric Mean Criterion. Not to contain enterococci bacteria in concentrations exceeding a geometric mean of thirty-five (35) enterococci CFU 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;or~~

~~ii. Statistical Threshold Value (STV). No greater than ten percent (10%) of valid samples collected over a thirty (30) day period are to contain enterococci bacteria in concentrations exceeding an STV of one hundred and thirty (130) enterococci CFU per one hundred (100) ml.~~