

<p>Docket Number: <u>58-0102-1703</u> Effective Date: <u>2019 Sine die</u> Rules Title: <u>Water Quality Standards</u> Agency Contact and Phone: <u>Barry Burnell, 373-0194/Jason Pappani, 373-0515</u></p>	<p style="text-align: center;"><u>Public Notice</u></p> <p>Hearings: [] Yes [X] No Locations and Dates: N/A Written Comment Deadline: 8/31/18</p>
<p>Descriptive Summary of Rule as Initially Proposed: This rule making has been initiated to designate domestic water supply as a beneficial use in 27 water bodies where the Safe Drinking Water Information System indicates an active surface water intake or ground water under direct influence of surface water and where domestic water supply is not currently designated.</p> <p>In Sections 110 through 160, Domestic Water Supply (DWS) designations will be added to the “Other” column for 27 water body units where DWS is an existing use. Subsection 100.03.a. will be revised to clarify that the domestic water supply use is appropriate for use as untreated raw water for public drinking water supplies. In addition, Subsection 252.01 will be revised by deleting Subsection 252.01.a., which is unnecessary as it is redundant with the Idaho Rules for Public Drinking Water Systems, IDAPA 58.01.08. Protection of surface waters from radioactivity is achieved with the narrative criteria in the Water Quality Standards, IDAPA 58.01.02.200.04. Subsection 252.01.b. will be revised for clarification purposes.</p> <p>DEQ recommends that the Board adopt the rule, as presented in the final proposal, as a pending rule.</p>	<p>Negotiated Rule Making: [X] Yes [] No The Negotiated Rulemaking Summary is attached.</p> <hr/> <p><u>Costs To the Agency:</u> No additional costs to the agency.</p> <p><u>Costs To the Regulated Community:</u> No additional costs to the regulated community.</p> <hr/> <p>Relevant Statutes: Sections 39-105, 39-107, and 39-3601 <i>et seq.</i>, Idaho Code</p> <hr/> <p>Idaho Code § 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.</p>

Temporary Rule Necessary to protect public health, safety or welfare
 Compliance with deadlines in amendments to governing law or federal programs
 Conferring a benefit

Docket Number: 58-0102-1703

Section	Section Title	Summary of Rule Changes Based on Public Comment
100	Surface Water Use Designations.	This section has not been changed. DEQ's Response to Comments is attached.
110	Panhandle Basin.	This section has not been changed. DEQ's Response to Comments is attached.
120	Clearwater Basin.	This section has not been changed. DEQ's Response to Comments is attached.
140	Southwest Idaho Basin.	This section has not been changed. DEQ's Response to Comments is attached.
160	Bear River Basin.	This section has not been changed. DEQ's Response to Comments is attached.
252	Surface Water Quality Criteria for Water Supply Use Designation.	Subsection 252.01.b has been changed. DEQ's Response to Comments is attached.

**DEQ's Response to Comments
Proposed Rule Docket No. 58-0102-1703**

1. U.S. EPA Region 10	
2. Riley Stegner/Stimson, Hancock, and Molpus	

C o m m e n t #	Rule Section/ Subject Matter	Commenter	Comment	DEQ's Response
1.	General	1.	<p>The EPA appreciates the opportunity to provide comments to the Idaho Department of Environmental Quality (DEQ) on the proposed rule designating domestic water supply use for those additional surface waters in Idaho that are currently known sources of water supply for public drinking water systems. In addition, the proposed rule includes clarification to the description of Idaho's domestic water supply (DWS) designated use and revision of certain provisions directly and indirectly related to domestic public water supply.</p> <p>The EPA commends the DEQ for its comprehensive review of its DWS use designations. The proposed revisions are an important component in providing source water protection where surface waters are used for public drinking water. Furthermore, protecting source water is critical to the Safe Drinking Water Act multi-barrier approach to reduce risks to public health from exposure to contaminated water. Protecting source water from contamination is recognized as the first barrier of protection, and can reduce expensive treatment costs. The EPA appreciates the DEQ's commitment to update the list of waters designated as DWS as a part of its continuing efforts to protect public drinking water.</p>	Thank you for your comment.

C o m m e n t #	Rule Section/ Subject Matter	Commenter	Comment	DEQ's Response
2.	Section 100	1.	<p>The EPA has reviewed the DEQ's proposed rule and offers the following comments for the DEQ's consideration.</p> <p><u>Domestic Water Supply Use Description</u></p> <p>The DEQ proposes clarifying language to the description of DWS at IDAPA 58.01.02.100.03.a. The DEQ's proposed revisions, in underline text and strikeout, are as follows:</p> <p><i>58.01.02.100.03.a – Water Supply</i> <i>Domestic (DWS): water quality appropriate for use as untreated raw water (as defined under IDAPA 58.01.08 "Idaho Rules for Public Drinking Water Systems") for public drinking watersupplies.</i></p> <p>The EPA appreciates the DEQ's efforts to revise the description of DWS so that the language in rule is consistent with Idaho's interpretation that surface waters designated for DWS are not necessarily safe to drink until appropriate treatment is applied. The EPA believes the proposed revisions to the description provide the necessary clarity.</p>	Thank you for your comment.
3.	Sections 110 - 140	1.	<p><u>Waters Designated for DWS Protection</u></p> <p>The EPA supports the revisions to IDAPA 58.01.02.110 through IDAPA 58.01.02.140 where the DEQ has proposed designating DWS to an additional 27 waterbodies. Idaho's drinking water rules (IDAPA 58.01.08.003.18) define surface water systems as "a public water system which is supplied by one (1) or more surface water sources or ground water sources under the direct influence of surface water" (GWUDI). The EPA supports the DEQ designating the DWS use for both surface water sources and GWUDI. GWUDI, by their definition, are vulnerable to the same types of contaminants as surface water supplies, and therefore their inclusion is warranted. The EPA understands the DEQ obtained the most recent information from the DEQ Safe Drinking Water Information System database to determine what additional waterbody segments to propose designation of DWS.</p>	Thank you for your comment.

C o m m e n t #	Rule Section/ Subject Matter	Commenter	Comment	DEQ's Response
4.	Subsection 252.01.a	1.	<p><u>Identification of Criteria Protective of DWS Use</u></p> <p>The EPA supports the DEQ's revisions to IDAPA 58.01.02.252 deleting the current provision at IDAPA 58.01.02.252.01.a related to radioactive materials and replacing it with language specifying all general criteria in IDAPA 58.01.02.200, including criteria related to radioactive materials at IDAPA 58.01.02.200.04, are applicable to waters with the DWS use.</p> <p><i>IDAPA 58.01.02.252.01.a - Domestic</i> <u>a. Must meet general water quality criteria set forth in Section 200 and the Water & Fish criteria set forth in Subsection 210.01.b.</u></p>	Thank you for your comment.
5.	Subsection 252.01.b	1.	<p><u>Small Public Water Supply and Turbidity Criteria</u></p> <p>The EPA supports the DEQ's revisions to IDAPA 58.01.02.252.01.b, which include removing the table of designated small public water supplies. The EPA understands that this list of designated small public water supplies will be addressed by the DEQ in IDAPA 58.01.02.110 through 58.01.02.140 where DWS designations are listed in the "Other" column for the water body providing source water for these public water systems. The EPA also supports the DEQ's revision specifying that turbidity criteria apply to all waters designated with the DWS use or any public water intake as an existing use.</p>	Thank you for your comment.

C o m m e n t #	Rule Section/ Subject Matter	Commenter	Comment	DEQ's Response								
6.	Subsections 252.01.b.i - iii	1.	<p>The proposed revisions to IDAPA 58.01.02.252.b.i and ii specify turbidity criteria that apply to the DWS use, and that turbidity is to be measured at any public water intake.</p> <p><i>b. For those surface waters identified in Subsection 252.01.b.i. Turbidity as measured at the any public water intake shall not be:</i></p> <p><i>i. Increased by more than five (5) NTU above natural background, measured at a location upstream from or not influenced by any human induced nonpoint source activity, when background turbidity is fifty (50) NTU or less.;</i></p> <p><i>ii. Increased by more than ten percent (10%) above natural background, measured at a location upstream from or not influenced by any human induced nonpoint source activity, not to exceed twenty five (25) NTU, when background turbidity is greater than fifty (50) NTU. and less than two hundred and fifty (250) NTU; or</i></p> <p><i>iii. Increased by more than twenty-five (25) NTU above background when background turbidity is two hundred and fifty (250) NTU or greater.</i></p> <p>The existing rule in IDAPA 58.01.02.252.b.ii states that turbidity cannot be increased by more than 10% above background or exceed a maximum of 25 NTUs when background is greater than 50 NTUs. In practice, the background value of 250 NTUs is the maximum amount where there is no more than a 10% increase in turbidity above background or maximum exceedance of 25 NTUs. The EPA supports the proposed revisions which effectively do not change the turbidity criteria, but simply rephrase the criteria to provide additional clarity. The EPA provides the below table illustrating our understanding of the application of the proposed clarifications to IDAPA. 58.01.02.252.b. i. - iii. The EPA suggests the DEQ consider addition of such a table into the rule to provide additional clarity.</p> <table border="1" data-bbox="579 1127 1629 1331"> <thead> <tr> <th data-bbox="585 1131 926 1175">Turbidity Background</th> <th data-bbox="932 1131 1623 1175">Turbidity Criteria – Cannot increase by more than:</th> </tr> </thead> <tbody> <tr> <td data-bbox="585 1180 926 1224">≤ 50 NTUs</td> <td data-bbox="932 1180 1623 1224">5 NTUs above background</td> </tr> <tr> <td data-bbox="585 1229 926 1273">>50 – 250 NTUs</td> <td data-bbox="932 1229 1623 1273">10% above background</td> </tr> <tr> <td data-bbox="585 1278 926 1321">> 250 NTUs</td> <td data-bbox="932 1278 1623 1321">25 NTUs</td> </tr> </tbody> </table>	Turbidity Background	Turbidity Criteria – Cannot increase by more than:	≤ 50 NTUs	5 NTUs above background	>50 – 250 NTUs	10% above background	> 250 NTUs	25 NTUs	DEQ added the Turbidity Background/Turbidity Criteria table.
Turbidity Background	Turbidity Criteria – Cannot increase by more than:											
≤ 50 NTUs	5 NTUs above background											
>50 – 250 NTUs	10% above background											
> 250 NTUs	25 NTUs											

C o m m e n t #	Rule Section/ Subject Matter	Commenter	Comment	DEQ's Response
7.	DEQ's interpretation of "background"	1.	<p>Additionally, the DEQ proposes removing the word "natural" at IDAPA 58.01.02.252.b.i and ii and removing the following wording: "measured at a location upstream from or not influenced by any human induced nonpoint source activity," as shown below:</p> <p style="padding-left: 40px;">b. For those surface waters identified in Subsection 252.01.b.i. Turbidity as measured at the any public water intake shall not be:</p> <p style="padding-left: 80px;"><i>i. Increased by more than five (5) NTU above natural background, measured at a location upstream from or not influenced by any human induced nonpoint source activity, when background turbidity is fifty (50) NTU or less.;</i></p> <p style="padding-left: 80px;"><i>ii. Increased by more than ten percent (10%) above natural background, measured at a location upstream from or not influenced by any human induced nonpoint source activity, not to exceed twenty five (25) NTU</i></p> <p>It is the EPA's understanding that the DEQ interprets "background" according to the definition at IDAPA 58.01.02.010.06. Please clarify if the DEQ has different intentions with this language, which states:</p> <p style="padding-left: 40px;"><i>"The biological, chemical or physical condition of waters measured at a point immediately upstream (up-gradient) of the influence of an individual point or nonpoint source discharge. If several discharges to the water exist or if an adequate upstream point of measurement is absent, the Department will determine where background conditions should be measured."</i></p> <p>The rule language in IDAPA 58.01.02.100.06 [IDAPA 58.01.02.010.06] regarding measuring upstream of point and nonpoint source discharge influences is substantially the same as the existing language in IDAPA 58.01.02.252.b.i and ii. Regarding the "Background" definition which states in part, "If several discharges to the water exist or if an adequate upstream point of measurement is absent, the Department will determine where background conditions should be measured," the EPA understands it is DEQ's intent to seek locations which are minimally impacted by upstream point and nonpoint source discharges when providing this flexibility in measuring background turbidity concentrations. Please clarify if the DEQ has different intentions.</p>	DEQ interprets "background" according to the definition in IDAPA 58.01.02.010.06.

C o m m e n t #	Rule Section/ Subject Matter	Commenter	Comment	DEQ's Response
8.	General	1.	<p>The EPA appreciates DEQ's commitment to update Idaho's water quality standards and supports DEQ's ongoing efforts to use all available and appropriate information in updating Idaho's water quality standards and providing important protection for Idaho's waters. The EPA appreciates the DEQ's steps to protect surface waters that are source waters for public water systems as part of a multi-barrier approach to protect public health. The EPA understands that the DEQ intends to regularly update its table of use designations to appropriately designate DWS use for those waterbodies that are source waters for public drinking water systems. The EPA supports DEQ in these efforts to ensure continued source water protection for these drinking water systems.</p>	Thank you for your comment.
9.	Section 100	2.	<p>Thank you for the opportunity to comment on the proposed rule concerning Domestic Water Supply, Docket 58-0102-1703. I write on behalf of large timberland owners Stimson Lumber Company, Hancock Forest Management, and Molpus Woodlands Group, each of which is actively engaged in the planting, management, and harvesting of timber throughout northern Idaho.</p> <p>We support IDEQ's efforts to update domestic water supply use designation in a manner that both protects surface waters used for public drinking water and supports the forest industry's efforts to conduct work safely and efficiently. Unofficial water diversions like a pipe placed in a stream by an individual without authorization should not qualify as domestic water supply. In our comment dated May 10, 2018, we expressed concern that the proposed draft language was ambiguous, and suggested that IDEQ use the term "public drinking water systems" to clarify that the rule does not apply to a single diversion for drinking water supply for private use as an existing DWS use, consistent with the SDWA and IDEQ's April 2018 Discussion Paper.</p> <p>Despite IDEQ's decision not to incorporate our recommended language as a solution, and though we believe clearer and more consistent language within DEQ's rules would have provided needed guidance and predictability for forest owners, we support this proposed rule to the extent that it will not impose DWS designations on unauthorized single diversion water supplies for private use.</p>	Thank you for your comment.

**Department of Environmental Quality
Water Quality Standards, IDAPA 58.01.02
Docket No. 58-0102-1703**

**Negotiated Rulemaking Summary
Idaho Code § 67-5220(3)(f)**

This rulemaking has been initiated to designate domestic water supply as a beneficial use in water bodies where the Safe Drinking Water Information System indicates an active surface water intake and where domestic water supply is not currently designated.

The Notice of Negotiated Rulemaking was published in the December 2017 issue of the Idaho Administrative Bulletin, and a preliminary draft rule was made available for public review. Meetings were held on December 19, 2017, and April 24, 2018. Key information was posted on the DEQ rulemaking web page and distributed to the public. Members of the public participated in the negotiated rulemaking process by attending the meetings and by submitting written comments.

All comments received during the negotiated rulemaking process were considered by DEQ when making decisions regarding development of the rule. For comments that were not incorporated into the draft rule, DEQ's response to those comments is attached. At the conclusion of the negotiated rulemaking process, DEQ formatted the final draft for publication as a proposed rule in the Idaho Administrative Bulletin. The negotiated rulemaking record, which includes the negotiated rule drafts, written public comments, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at www.deq.idaho.gov/58-0102-1703.

**DEQ's Response to Comments/Negotiated Rulemaking Summary
Docket No. 58-0102-1703**

1. PotlatchDeltic	4. Idaho Conservation League
2. Riley Stegner/ Stimson, Hancock, and Molpus	5. John Sherman, Fernwood DWS Operator
3. City of Meridian	

C o m m e n t #	Rule Section/ Subject Matter	C o m m e n t e r	Comment	Response
1.		1. 2.	Suggest adding language clarifying that use applies to waters used as supplies for <i>public water systems</i> , not just supplies; make explicit that the use applies to waters that are supplies for systems regulated under the SDWA and Idaho Drinking Water Rules.	<p>The intent of the revisions in the proposed rule was to clarify that meeting criteria for the DWS use does not mean that raw water could be safely consumed untreated directly from the surface water, but rather that some form of disinfection and treatment would be necessary for the water to be safe for human consumption.</p> <p>DEQ does not intend for DWS designations to only protect public water systems and to limit those protections to only the direct supply for water systems regulated under the Safe Drinking Water Act. Use designations are not limited to only the location where a use currently exists, but also serve as a water quality goal.</p> <p>The purpose of the definition at 100.03.a is to define the water quality expectation for the DWS use, not where that use applies. Use designations, in Sections 110 – 160, identify where the DWS use applies.</p> <p>Criteria set forth in Sections 200 (general surface water criteria), 210.b (numeric toxics criteria for the protection of human health), and 252 (criteria for water supply use designation) identify the water quality requirements for the use to be supported.</p>
2.		1.	Suggest following language: <i>a. Domestic (DWS): water quality appropriate for <u>use as untreated raw water (as defined under IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems") for public drinking water systems' supplies</u> after appropriate treatment.</i>	See Response to Comment #1 above.

C o m m e n t #	Rule Section/ Subject Matter	C o m m e n t e r	Comment	Response
3.		2.	<p>Suggest following language: <i>a. Domestic (DWS): water quality appropriate for use as untreated raw water (as defined under IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems") for public drinking water systems supplies after appropriate treatment.</i></p>	See Response to Comment #1 above.
4.		3.	<p>Suggest revising from <i>Domestic Water Supply</i> to <i>Drinking Water Supply</i> to make clear that does not apply to irrigation and stock watering; IDWR applies Domestic Water Rights to irrigation and stock watering- this is different than how DEQ defines Domestic Water Supply under 58.01.02.100.03.a.</p> <p>Suggest following modification to 100.03.a:</p> <p><i>Domestic (DWS): Raw water appropriate for that can be readily treated to meet drinking water supplies quality standards. This definition applies for the purposes of the rules contained in IDAPA 58.01.02, "Water Quality Standards".</i></p>	<p>It is not necessary for DEQ and IDWR to use the same exact terminology.</p> <p>While IDWR and DEQ both use the term "Domestic" to describe waters, IDWR is concerned with the quantity of water, while DEQ is concerned with the quality of water. The definition of Domestic Purposes identified in Idaho Code § 42-111 is limited to those sections that pertain to water rights and reclamation as administered by the Idaho Department of Water Resources. DEQ's authority for administering water quality standards is found in Chapter 36, Title 39, Idaho Code.</p> <p>DEQ explicitly defines how DWS are defined in WQS under IDAPA 58.01.02 in Section 100.03. Further, DEQ defines separate uses for Agricultural Water Supply and Industrial Water Supply.</p> <p>See Response #1 above.</p>
5.		4.	<p>Suggest incorporation of EPA's Drinking Water Health Advisory guidelines for cyanotoxins as numeric water quality criteria.</p>	<p>The incorporation of draft health advisory guidelines as numeric cyanotoxin criteria is:</p> <ol style="list-style-type: none"> 1. Outside the scope of this rulemaking 2. Not scientifically defensible <p>DEQ will consider numeric cyanotoxin criteria when EPA provides final 304(a) guidance/recommendations. Until that time, it is not prudent for DEQ to adopt numeric criteria that are not supported by EPA as Water Quality Standards.</p>

C o m m e n t #	Rule Section/ Subject Matter	C o m m e n t e r	Comment	Response
6.		5.	Support draft 2 revisions; question purpose as no agencies appear willing to enforce turbidity limits.	Please contact the Coeur d'Alene Regional Office when turbidity appears to be affected by logging practices in the watershed. DEQ will coordinate with Idaho Department of Lands to conduct the necessary assessment of practices and monitoring to assure compliance with Idaho Water Quality Standards and the Forest Practices Act. If water quality exceeds numeric turbidity standards, the water body may be listed as impaired for DWS by turbidity following data procedures outlined in IDAPA 58.01.02.054.03. BMP applications and other practices may need to be modified beyond what is required in order to comply with the WQS and any resulting TMDL that may be developed.