

(2) A description of such documents, including the CUSIP numbers; and

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Issued in Washington D.C. on March 17, 1997, by the Commission.

Jean A. Webb,

Secretary of the Commission.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL-5711-9]

Water Quality Standards for Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of rulemaking.

SUMMARY: EPA is preparing to promulgate water quality standards applicable to surface waters in the State of Idaho. These federally promulgated standards will supersede those aspects of Idaho's water quality standards that EPA disapproved on June 25, 1996. EPA is taking this action to comply with a court order directing EPA to promulgate standards by April 21, 1997. Due to the brevity of the court-ordered deadline for promulgation, EPA plans to promulgate an "interim-final" rule without a prior proposal or comment period. EPA will request comment on the interim-final standards after their promulgation. EPA will revise the interim-final standards through a subsequent rulemaking if justified by analysis of the comments. The rulemaking that EPA is preparing will establish revised use designations on currently unclassified waters in the state and on 53 specified water body segments whose use designations do not meet the goals of the Clean Water Act and for which the state has not provided information to justify its lower use designations. The interim-final rule will also establish revised temperature criteria necessary to protect certain threatened, endangered, and candidate species. Finally, EPA's interim-final rule will amend Idaho's mixing zone and antidegradation policies as well as its "private waters exclusion."

Today's notice is intended to alert the public to the process EPA is following and the reasons for doing so, to reassure the public that EPA intends to seek public comment, and to give the public advance notice of the need to identify information that may be relevant to the attainability of fishable/swimmable uses in the waters identified in EPA's June 1996 letter.

DATES: EPA plans to promulgate replacement water quality standards for Idaho in a separate action by April 21, 1997. At that time, EPA will solicit public comment. Comments are not being considered at this time, due to the brevity of the court schedule.

FOR FURTHER INFORMATION CONTACT: Lisa Macchio at U.S. EPA Region 10, Office of Water, 1200 Sixth Avenue, Seattle, Washington, 98101, (telephone: 260-553-1834) or William Morrow in U.S. EPA Headquarters at 202-260-3657.

SUPPLEMENTARY INFORMATION:

A. Potentially Affected Entities

Citizens concerned with water quality in Idaho may be interested in this rulemaking. Entities discharging pollutants to waters of the United States in Idaho could be affected by this rulemaking since water quality standards are used in determining NPDES permit limits.

B. Background

1. Statutory/Regulatory History.

Section 303(c) of the Clean Water Act (CWA) directs States, with oversight by EPA, to adopt water quality standards to protect public health and welfare, enhance the quality of water and serve the purposes of the CWA. Under Section 303, States have the primary responsibility to establish water quality standards, which consists of designated uses, the water quality criteria necessary to support those uses, and antidegradation.

Section 303 requires States and Tribes to review their standards at least once every three years and to submit any new or revised standards to EPA for its review. Under Section 303(c), EPA is required to either approve or disapprove such new or revised State/Tribal standards, depending on whether they meet the requirements of the Act. Where EPA disapproves a new or revised State/Tribal standard, and the State or Tribe does not revise the standard to meet EPA's objection, sections 303(c)(3) and 303(c)(4)(A) of the Act require the Agency to promptly propose substitute Federal standards and promulgate final Federal standards within 90 days thereafter. In addition, section 303(c)(4)(B) authorizes the Administrator to promulgate a Federal standard whenever she determines that a new or revised standard is necessary to meet the requirements of the CWA. The implementing regulations for the water quality standards program are found at 40 CFR part 131.

2. History of Idaho/EPA Actions

In 1994, Idaho submitted water quality standards to EPA for review and

approval under § 303 of the Act. On October 25, 1995, EPA gave Idaho advance notice of deficiencies in the state's 1994 standards submission. On June 25, 1996, EPA approved some portions and disapproved other portions of those standards. Both before and after the October 25, 1995, letter and the June 25, 1996, approval/disapproval letter, EPA worked to encourage the state of Idaho to revise its standards to address the deficiencies identified by EPA. While the state has taken some preliminary steps to address some of EPA's concerns, it has not yet submitted revised standards to EPA for approval. On February 20, 1997, as a result of a lawsuit filed by three environmental groups (*Idaho Conservation League v. Browner*; No. C96-807WD), Judge Dwyer of the United States District Court for the Western District of Washington ruled that EPA had failed to carry out a mandatory duty to promptly prepare and publish Federal standards to address the items disapproved in the June 25, 1996, letter. Judge Dwyer ordered EPA to promulgate such standards within 60 days, that is, by April 21, 1997.

Because of the court order, EPA has found it necessary to condense its normal rulemaking process, and will be issuing an interim-final rule with subsequent opportunity for public comment. The national goal for water quality as articulated in section 101(a)(2) of the Act "provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water." These goal uses of the Act are commonly referred to as "fishable/swimmable". Since Idaho has not provided information concerning the attainability or non-attainability of "fishable/swimmable" uses for the waters addressed in the June 1996 letter, EPA will likely be promulgating designated uses based on the goal uses of the Act for those waters. During the comment period which will follow the April 21st promulgation, EPA will seek information from the public on the appropriateness of those designated uses and will revise them as needed.

The State of Idaho is currently working to resolve many of the deficiencies identified in EPA's June 25, 1996, letter. EPA is coordinating this rulemaking effort with that of the state.

Dated: March 14, 1997.

Tudor Davies,

Director, Office of Science and Technology.

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