

and spawning, accompanied by specific time and place designations for waters of the United States in Oregon; and

(d) A water quality criterion for intergravel dissolved oxygen for Oregon's waters for the protection of salmonid spawning in waters of the United States in Oregon.

EPA's usual practice when promulgating a water quality standard is to provide an opportunity for a public hearing, provide the public with 45 days notice of the hearing, and establish a public comment period that extends at least until the date of the hearing. 40 CFR 25.5(b). However, the regulations also allow for a shorter comment period and a shorter period of public notice prior to the hearing when necessary to accommodate the specific provisions of court orders. EPA is providing a 30-day comment period from the date of publication. EPA believes a 30-day comment period is reasonable in this case for several reasons. First, EPA is compelled by court order to take final action on this proposal by March 2, 2004. That schedule precludes a longer comment period. Second, a significant portion of the water quality standards being proposed today has already been the subject of considerable public input in connection with the Temperature Guidance. In the course of developing that guidance, which EPA Region 10 issued in April 2003, EPA published and considered public comment on two drafts and engaged in considerable stakeholder communication. With the exception of the use designations and antidegradation implementation procedures proposed today, all aspects of today's proposed rule were the subject of extensive public input in that context. Therefore, the public has already had several months to consider the substance of these proposed decisions.

In this document, EPA is not proposing any time and place designations for the Columbia River. Oregon had not submitted and EPA had not disapproved water quality criteria for temperature or use designations for salmonid migration and rearing for the Columbia River. Therefore, the court did not require EPA to propose and promulgate such water quality standards for the Columbia River. Accordingly, EPA is not proposing time and place designations for salmonid spawning for the Columbia River. The court did hold that EPA's approval of the State's IGDO criterion to protect salmonid spawning was arbitrary and capricious based on record information showing that 6.0 mg/L would not adequately protect salmonid spawning and because Oregon had not made time

and place use designations where the criterion would apply. Thus, the court order requires EPA to propose IGDO criteria wherever salmonid spawning is the designated use in Oregon. Therefore, the proposed IGDO criterion would apply to all waters identified in section 131.39(b) for salmonid spawning. In addition, for the Columbia River, the State of Oregon has identified the times and places where salmonid spawning occurs and, therefore, the IGDO criterion would apply to those places in the Columbia River (Letter to Randall Smith, EPA, from Michael Llewelyn, ODEQ, September 5, 2003).

EPA is proposing these regulations under authority of CWA section 303(c)(4)(A), which requires EPA to promptly prepare and publish proposed Federal water quality standards when EPA disapproves new or revised water quality standards submitted by a State. On September 29, 2003, EPA disapproved the following new or revised water quality standards submitted by Oregon in 1996:

- The water quality criteria for temperature for the protection of salmonid rearing;
- The water quality criteria for temperature for the protection of bull trout spawning, rearing, and migration;
- The water quality criteria for temperature for the protection of salmonid spawning; and
- The water quality criterion for intergravel dissolved oxygen for the protection of salmonid spawning.

A copy of the disapproval decision may be found in the docket for this proposed rule.

In making its disapproval decision, EPA relied on the reasoning of the U.S. District Court for the District of Oregon when it ordered EPA to rescind its 1999 approval of certain Oregon temperature and IGDO standards. In its March 2003 order, the court stated that without accurate time and place use designations, Oregon's 1996 criteria for temperature and IGDO were inconsistent with the CWA and should not have been approved.

Accordingly, EPA has disapproved these criteria to the extent that Oregon had failed to determine when and where these criteria apply (Letter from Randall F. Smith, Director of EPA Region 10's Office of Water, to Mike Llewelyn, Director of Oregon Department of Environmental Quality, September 29, 2003). Where Oregon has made time and place use determinations under its regulations (e.g., the Columbia River for salmonid spawning), EPA's 1999 approval decision remains in effect. Under those circumstances, the State's time and place use determinations

apply for CWA purposes, and EPA is not proposing Federal time and place designations for those waters in this rulemaking.

In developing this proposed rule, EPA sought advice from other Federal agencies, including those that administer the ESA and those that operate dams in Oregon. Their comments improved the clarity of the proposal, resulted in EPA deciding to solicit comment in some additional areas, aided EPA in developing standards that would be protective of endangered salmon and trout, and, prompted EPA to better articulate for owners and operators of Federal dams the information needs and process associated with petitioning for changes in use designations. EPA appreciates the input of these agencies.

III. What Federal Water Quality Standards Is EPA Proposing Today?

A. Background

In this document, EPA is proposing (1) designated uses to protect migration, rearing, and spawning through fry emergence for salmonids; (2) specific water bodies where those designated uses would apply, and the times of year when the uses occur; (3) temperature criteria that protect each of those designated uses; (4) an IGDO criterion that protects salmonid spawning; and (5) an implementation plan for Oregon's existing antidegradation policy.

The basis for EPA's proposed salmonid uses and associated temperature criteria is the Temperature Guidance, contained in the record for this rule. The Temperature Guidance is intended to assist States and authorized Tribes in adopting scientifically-defensible temperature water quality standards. The Temperature Guidance recommends an approach for adopting temperature water quality standards to protect cold-water salmonids and specifically addresses the following cold-water salmonid species in the Pacific Northwest: chinook, coho, sockeye, chum, and pink salmon; steelhead and coastal cutthroat trout; and bull trout. The Temperature Guidance provides recommendations to States and authorized Tribes on how they can designate uses and establish numeric temperature criteria for waterbodies that help meet the interim goal of the CWA to, where attainable, provide for water quality that "provides for the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water." See CWA section 101(a)(2). In addition, temperature water quality standards are viewed by EPA and the Services as an