

mechanisms are described in sections B through E below.

The State should be aware, however, that EPA considers designated use changes and site-specific criteria to be modifications to the State's water quality standards. Federal regulations at 40 CFR 122.44(d)(1) require that NPDES permits include limitations necessary to achieve water quality standards adopted under section 303 of the CWA. Therefore, a designated use change or a site-specific criterion cannot be the basis for NPDES permit limitations until the State has adopted it as part of its water quality standards, has submitted it to EPA, and EPA has approved it. See 40 CFR 131.21(c) and (d). EPA would also need to withdraw any corresponding Federal use designation or criteria. As with any other revision to the State's water quality standards, EPA will review these revisions to determine whether they are scientifically-defensible in accordance with 40 CFR 131.11(b)(1)(iii), or meet the requirements of 40 CFR 131.10(g), as applicable. EPA will also consider whether the appropriate procedural requirements have been met, such as public participation and certification by the appropriate legal authority within the State.

While 40 CFR 131.13 allows States to adopt variances for State-adopted water quality standards, States do not have authority to change Federal regulations. Thus, State procedures may not be used to modify Federally-promulgated water quality standards. Consequently, EPA has included in today's proposed rule a Federal variance provision allowing the Region 10 Administrator to grant water quality standards variances where a person submits data indicating that an EPA-designated use is not attainable for any of the reasons in 40 CFR 131.10(g). This process is discussed in greater detail in section V.C.

B. Process for Federal Agencies Responsible for Federally Owned or Operated Dams To Request EPA Modify Water Quality Standards

The process EPA used to propose designations for the salmonid uses and setting the numeric criteria described above utilized the best scientifically credible data available to date on the water quality requirements of various life stages of salmonids. However, this data did not include the type of data that is generally considered in a waterbody-specific use attainability analysis. EPA recognizes that new and/or more accurate data may become available that would support changes to the standards on a particular water body, including data and information

regarding the attainability of EPA's proposed use designations for specific waters. In the course of developing this proposal, EPA was approached by several Federal agencies that own or operate Federal dams with questions about the information requirements and the process for incorporating data on use attainability into the process for determining designated uses proposed by EPA in this rule. Specifically, these agencies indicated that they may submit information involving Federal dams during the public comment period for this rule or after promulgation. Also, they sought to better understand the information needs and process EPA would follow in considering a change in a designated use for water bodies in Oregon where Federal dams are operating.

During the public comment period, EPA will review and consider the information and the need for changes in the standards prior to promulgation. EPA recognizes that the existence of Federally-owned or operated dams in a watershed may alter the thermal regime of the associated stream system, and that even after all feasible and practicable measures to reduce thermal impacts are implemented, in some cases, attainment of certain water quality standards for temperature may not be feasible. Water quality standards should be feasibly attainable given the existence and operation of these Federally owned or operated dams. Feasibility should include consideration of whether there are reasonable alternative operations, structural modifications, or maintenance approaches a Federally-owned or operated dam could implement and still fulfill its authorized purpose. In order to be responsive to the questions raised about how EPA would handle such information after the close of the comment period and after promulgation, EPA is proposing in this rule EPA's preferred process for Federal agencies that own or operate dams to petition EPA to revise standards for water bodies covered by this rule.

EPA is mindful that the time constraints under which EPA must take final action on WQS by March 2, 2004, will, no doubt, limit the opportunities for Federal agencies which own or operate dams to develop and provide information to EPA and for EPA to fully consider any such information prior to the deadline for taking final action. Ideally, such information would be considered up-front in designating uses and establishing water quality criteria. In reality, precise information may not be available in advance because of lack of data on natural variability, varying

weather and flow conditions and the difficulty in predicting the impacts on water quality of feasible management measures. Therefore, EPA is proposing to establish within the rule a process by which Federal agencies that own or operate dams may present information regarding the effect of the presence and operation of specific dams on the attainability of uses that EPA promulgates for specific waters, and petition EPA to amend standards if EPA, in coordination with the regulated agency, determines the uses are not attainable.

EPA is including this provision for those Federally-owned or operated dams because EPA believes it is important to ensure that designated uses properly account for the presence of dams, whose purposes include, but are not limited to, flood control, irrigation, navigation, and power generation that Congress has specifically authorized. EPA wants to ensure that the use designations that it adopts under the CWA for waters in Oregon fully consider any available information regarding the effects of dams that have been specifically authorized by Congress to be constructed and operated on those same waters. A clear process in the rule for these Congressionally-authorized dams will allow EPA to address expeditiously a request from another Federal agency regarding modification of a promulgated use designation based on the effects of the presence and operation of a particular dam.

EPA's current WQS regulations at 40 CFR 131.10(g) list six factors that may be used as a basis for removing a designated use that is not an existing use if it can be demonstrated that attaining the designated use is not feasible because of one of those six factors. One of those factors specifically relates to dams. 40 CFR 131.10(g)(4) provides that a designated use may be removed if "dams * * * preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate [the dam] in a way that would result in attainment of the use." EPA believes that it is important to establish a process in this regulation to clarify how a Federal agency that owns or operates a Federal dam may present information to EPA if the Federal agency believes that a standard promulgated as a result of this rulemaking is not attainable due to the presence and operation of a Congressionally-authorized dam and it is not feasible to operate the dam in a way that would result in attainment of the use.