

drugs: Marijuana, cocaine, opiates, phencyclidine, and amphetamines. This testing is performed in conformance with the Department of Health and Human Services' *Mandatory Guidelines for Federal Workplace Drug Testing Programs*. Should the Department's contractor programs consider expanding randomized drug testing to include anabolic steroids, synthetic opiates, newer amphetamines, and other new prescription drugs, among others, to this list of drugs it routinely test for? If so, please specify what drugs should be added and why and provide evidence to support this addition.

2. Are there prescription and/or legal over-the-counter medications or supplements that provide false positives for anabolic steroids? If so, should use of these medications or supplements by employees of DOE contractors or subcontractors performing work at DOE sites be prohibited and tested for? If so, please identify these medications or supplements, explain the reasons for your answer, and provide evidence to support them.

3. Are there products available for sale in the United States or by import to the United States that mask prohibited drug use or anabolic steroid use? If so, what are these products and should their use by DOE contractor or subcontractor employees performing work at DOE sites be prohibited? Are there reliable and economically feasible means by which to test for these products? Please explain each of your answers and provide evidence to support your answers.

4. When conducting reasonable suspicion or occurrence testing, DOE contractors may test for any drug listed in Schedules I or II of the Controlled Substance Act. Should DOE consider expanding this requirement to include any drug listed in Schedules I through V of the Controlled Substance Act? If so, please explain why these drugs should be added and provide evidence to support these additions.

5. Are there reliable (*i.e.*, adequately sensitive and specific) analytical testing methods and/or procedures currently available for anabolic steroids? If so, please describe those methods, their reliability, and provide evidence to support your answer.

6. Compared to the types of drugs and classes of drugs currently being tested for, is it economically feasible (*i.e.*, cost effective) at this time to test for anabolic steroids? Please provide evidence to support your answer.

7. What is the cost per test for anabolic steroids? What other costs are associated with testing for anabolic steroids? Please describe the testing

method(s) for which you provide cost information and provide evidence to support your answers.

8. Currently, DOE contractors' substance abuse programs do not include policies, procedures, and/or protocols for controlling the use of alcohol while performing work at a DOE site. The use of alcohol, even in small amounts, can impair judgment and affect the ability to perform critical duties. Should the Department consider adding the use of alcohol to its contractors' workplace substance abuse program for its contractors? If so, why, what means of measurement of consumed alcohol should be used, and what measure of consumed alcohol should be prohibited at DOE sites? Please provide evidence to support your answers.

9. Are there any Federal Agencies with policies and procedures for controlling the use of alcohol affecting the workplace? If so, which Agency, and should DOE consider adopting its protocols and procedures for the use of alcohol in the workplace? Please provide evidence to support your answers.

10. The use of alcohol, even in small amounts, can impair judgment and affect the ability to perform critical duties. If an individual in a critical or sensitive position at a DOE site consumes alcohol while off duty, how long should that individual be required to abstain from alcohol use prior to reporting for duty? Please explain the reasons for your answer and provide evidence to support your answer.

11. Should the Department consider requiring its medical review officers to obtain and maintain medical review officer certification? If so, how often should certification occur? Please provide evidence to support your answers.

Issued in Washington, DC, on July 21, 2010.

Glenn S. Podonsky,

Chief Health, Safety and Security Officer,  
Office of Health, Safety and Security.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 131

[EPA-HQ-OW-2010-0606; FRL-9182-1]

### Stakeholder Input; Revisions to Water Quality Standards Regulation

AGENCY: Environmental Protection Agency.

**ACTION:** Listening sessions.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing its plans to initiate national rulemaking to make a limited set of targeted changes to EPA's water quality standards regulation. EPA expects to publish such proposed rule changes in the **Federal Register** in Summer 2011. EPA's intent is to improve the regulation's effectiveness in helping to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. The purpose of this notice is to announce EPA's intent to hold two informal public "listening sessions" in August 2010. The sessions will allow EPA to inform the public about the rulemaking, and will offer an opportunity for the public to express views on the general direction of the rulemaking, including the six specific elements of the rulemaking.

**DATES:** The two public listening sessions will be held as audio teleconferences on August 24 and 26, 2010, from 1 to 2:30 p.m. EDT.

**FOR FURTHER INFORMATION CONTACT:**

Thomas J. Gardner, EPA Headquarters, Office of Water, Office of Science and Technology, at 202-566-0386 or *e-mail*: [gardner.thomas@epa.gov](mailto:gardner.thomas@epa.gov).

In order to provide an adequate number of telephone lines for those wishing to attend EPA's sessions, interested individuals should register in advance following instructions on the Internet at <http://www.epa.gov/waterscience/standards/rules/wqs>. Although you may register at any time prior to the session of your choice, EPA prefers that you register at least three days in advance.

The agenda and resource materials will be identical for the two sessions. You do not need to attend both sessions.

If you do not have Internet access, please contact the person named in the **FOR FURTHER INFORMATION CONTACT** section above.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

#### A. Public Listening Sessions

EPA will hold two informal public listening sessions via audio teleconference in August 2010 to inform the public about the rulemaking, and to hear views from the public regarding possible changes to EPA's water quality standards regulation at 40 CFR part 131 that are under consideration. The sessions will provide a review of EPA's current water quality standards regulation and a summary of the clarifications that EPA is considering. Clarifying questions and brief oral

comments (three minutes or less) will be accepted at the sessions, as time permits.

*B. How can I get copies of this document and other related information?*

1. Docket. EPA has established an official public docket for this action under Docket ID No. EPA-HQ-OW-2010-0606. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Although all documents in the docket are listed in an index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at the EPA Docket Center Public Reading Room, open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Water Docket is (202) 566-2426. The docket can also be accessed electronically at EPA Dockets at <http://www.epa.gov/edocket/>. Once in the system, select "search", then key in the appropriate docket identification number.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

Electronic versions of this notice and other water quality standards documents are available at EPA's water quality standards Web site <http://www.epa.gov/waterscience/standards>.

## II. Background

### *Statutory and Regulatory Overview*

Water quality standards serve as the foundation for the water quality-based approach to pollution control and are a fundamental component of watershed management. Water quality standards are provisions of state, tribal, or federal law that define the water quality goals of a water body, or segment thereof, by designating the use or uses to be made of the water body; establishing criteria based on sound science that are protective of applicable uses; and protecting water quality through antidegradation requirements. *See* 40 CFR part 131. States and tribes adopt water quality standards to protect public health or welfare, enhance the quality of water, and serve the purposes of the Act. *See* Clean Water Act (CWA or Act) 303(c). "Serve the purposes of the Act" (as defined in sections 101(a)(2), and

303(c) of the CWA) means that water quality standards should: (1) Include provisions for restoring and maintaining chemical, physical, and biological integrity of state and tribal waters; (2) provide, wherever attainable, water quality for the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water; and (3) consider the use and value of state and tribal waters for public water supplies, propagation of fish and wildlife, recreation, agricultural and industrial purposes, and navigation. *See* 40 CFR 131.2.

The statutory basis for water quality standards and EPA's regulation is section 303(c) of the CWA. Section 303(c)(2) of the CWA directs states to consider the use and value of waters for specific purposes, including public water supply, propagation of fish and wildlife, recreational purposes, agricultural and industrial water supplies and other purposes including navigation. Section 303(c)(2) also requires that standards protect public health or welfare, enhance the quality of water and serve the purposes of the Act. CWA section 303(c)(1) requires that states review their standards at least once every three years. CWA section 303(c)(3) establishes timelines for EPA review and approval or disapproval of new or revised standards, and CWA section 303(c)(4) specifies requirements regarding promulgation of federal water quality standards in cases where a new or revised standard is found by EPA not to be consistent with the CWA or in any case where the Administrator determines that a new or revised standard is necessary to meet the requirements of the CWA.

EPA's Water Quality Standards regulation is at 40 CFR part 131. The regulation implements the requirements of section 303(c) of the CWA. Fundamentally, the regulation: (1) Defines when and how designated uses may be revised; (2) requires criteria to protect those uses and be based on sound science; (3) requires EPA and states to prevent the degradation of water quality, except under certain circumstances; (4) requires states/tribes to review their water quality standards at least every three years and engage the public in any revisions to water quality standards; and (5) specifies roles of states and EPA and provides administrative procedures for EPA's review and approval or disapproval of any new or revised state water quality standards.

## III. Changes to EPA's Water Quality Standards Regulation Under Consideration

EPA is planning to propose a limited set of targeted changes to its water quality standards regulation to improve its effectiveness in helping restore and maintain the chemical, physical, and biological integrity of the Nation's waters. EPA expects to publish a proposed rule in the **Federal Register** in Summer 2011.

The core requirements of the current regulation have been in place since 1983. These requirements have provided a solid foundation for water quality-based controls, including CWA section 303(d) assessments, listings, and Total Maximum Daily Loads (TMDLs), as well as discharge permits issued under the National Pollutant Discharge Elimination System (NPDES). The intent of the changes EPA is considering is to add or modify a limited number of provisions to address the specific areas described below.

The following is a brief summary of the clarifications to the water quality standards regulation that EPA is considering.

### *A. Antidegradation Implementation Methods*

The current regulation specifies that states and authorized tribes must identify the methods to implement the antidegradation policies that they are required to adopt in their water quality standards. 40 CFR 131.12(a). The regulation does not specify what the implementation methods must include, but only states that such methods must be, as the policies must be, "consistent with" 40 CFR 131.12(a). EPA is considering modifying the regulation to specify that antidegradation implementation methods must meet specific minimum requirements. Specifically, EPA is considering adding a subparagraph (b) to 40 CFR 131.12 (which currently has a subparagraph (a) but not (b)) that would specify minimum elements to be included in state or authorized tribe antidegradation implementation methods. EPA is also considering requiring that antidegradation implementation methods be adopted into state and tribal water quality standards, and thus be subject to EPA review and approval under CWA section 303(c), rather than having them simply be identified. In the listening sessions, EPA will invite views from the public on these potential changes, including what the minimum requirements should include.

### B. Administrator's "Determination"

The CWA provides that the Administrator may determine that a revised or new standard is necessary to meet the requirements of the CWA. Section 303(c)(4)(B). If such a determination is made, EPA must promptly propose a revised or new federal standard to augment or replace the state's or authorized tribe's water quality standards, and promulgate the proposed standard within 90 days of proposal. *See* CWA 303(c)(4). Since this provision was enacted by Congress in 1972, there have been recurring instances of confusion or misunderstanding about what constitutes such a determination. EPA is considering clarifying in the water quality standards regulation that an Administrator's determination must be signed by the Administrator or his/her duly authorized designee, and must include a statement that the document constitutes a determination under section 303(c)(4)(B) of the CWA. In the listening sessions, EPA will invite views from the public on these changes.

### C. Designated Uses

Section 101(a)(2) of the Act establishes a goal, wherever attainable, of water quality that provides for the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water. The water quality standards regulation requires that the state or authorized tribe perform a use attainability analysis (that is, a structured scientific assessment of factors affecting attainment of designated uses) and submit this assessment to EPA in order to remove certain designated uses, including any designated use that is specified as a national goal in section 101(a)(2) of the CWA. *See* 40 CFR 131.10. The regulation does not, however, specify which uses, if any, must be adopted to replace the use that is being removed. EPA is considering clarifying that designated uses reflecting the CWA 101(a)(2) goals of the CWA are presumed attainable unless otherwise demonstrated and that states and authorized tribes must designate such uses unless they have conducted a use attainability analysis to support a lesser designated use and EPA has approved that action. EPA is also considering clarifying that the highest attainable use(s) closest to the section 101(a)(2) goal must be adopted if a CWA 101(a)(2) goal use is unattainable. In the listening sessions, EPA will invite views from the public on these changes.

### D. Variances

The current regulation allows states and authorized tribes to adopt variances as general policies for applying and implementing their water quality standards. *See* 40 CFR 131.13. The regulation does not provide a definition of, a description of, or any requirements for the use of variances. EPA is considering establishing regulatory requirements for variances to ensure proper use of variances and reduce the possibility of inappropriate use. In the listening sessions, EPA will invite views from the public on these clarifications, and what the regulatory requirements should include.

### E. Triennial Reviews

The CWA and the current water quality standards regulation require states and authorized tribes to review their water quality standards at least once every three years, and modify standards or adopt new standards as appropriate. CWA 303(c); 40 CFR 131.20. EPA is considering revising the regulatory requirements to clarify that states and authorized tribes must solicit and consider public comments in determining the scope of each such triennial review. EPA is also considering establishing a new triennial review requirement that states and authorized tribes must evaluate whether their existing water quality criteria continue to be protective of designated uses, taking into consideration any new information, including EPA's most recent national recommended CWA 304(a) water quality criteria, that has become available since the state or tribal criteria were adopted or last revised. In the listening sessions, EPA will invite views from the public on these changes.

### F. Updates To Reflect Court Decisions

EPA is considering making three clarifications to the water quality standards regulation to codify the results of court decisions over the years.

First, EPA is considering revising the definition of "water quality standards" in 40 CFR 131.3 to reflect the results of and EPA's actions on remand from *Florida Public Interest Research Group Citizen Lobby, Inc., et al. v. EPA, et al.*, 386 F.3d 1070 (11th Cir. 2004) concerning Florida's Impaired Water Rule (IWR). That court decision and EPA's response to it more clearly define which of state or tribal provisions constitute water quality standards that need to be submitted to EPA for review and approval. EPA is considering revising 40 CFR part 131 to reflect these developments.

Second, EPA is considering specifying that authorizing provisions for

compliance schedules for implementing water quality-based effluent limits in NPDES permits must be adopted as part of a state's or tribe's water quality standards, and therefore be submitted to EPA for review and approval. *See In the Matter of Star-Kist Caribe, Inc.*, 1990 WL 324290 (EPA), 3 EAD 172 (April 16, 1990).

Third, EPA is considering clarifying that states and authorized tribes must submit to EPA records of public participation that has occurred in reviewing and revising state or tribal water quality standards. These records would include public comments, and the state's or tribe's responses to the comments. This change would reflect the results of *City of Albuquerque v. Browner*, 97 F.3d 415 (10th Cir. 1996).

In the listening sessions, EPA will invite views from the public on these changes.

### IV. Other EPA Outreach

EPA expects to conduct outreach with additional stakeholders as well as local, state, and tribal governments before proposing any revisions to the water quality standards regulation. This outreach includes discussions and consultation with federally-recognized Indian tribes, consistent with Executive Order 13175 (Tribal Consultation); consultation with representatives of elected officials of state and local government, consistent with Executive Order 13132 (Federalism); and consultation with state water quality program officials as co-regulators. EPA will continue outreach efforts prior to finalizing any revisions.

Dated: July 22, 2010.

**Ephraim S. King,**

*Director, Office of Science and Technology.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[EPA-HQ-SFUND-1986-0005; FRL-9183-1]

### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Intent To Delete the SMS Instruments, Inc. Superfund Site

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA), Region 2, is issuing a Notice of Intent to Delete the SMS Instruments, Inc. Superfund Site (Site),