

Dear Senators BAIR, Siddoway, Stennett, and
Representatives RAYBOULD, Thompson, Smith:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
Department of Environmental Quality:

IDAPA 58.01.25 - Rules Regulating the Idaho Pollutant Discharge Elimination System Program -
Temporary and Proposed (Docket No. 58-0125-1801).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 06/29/2018. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 07/30/2018.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Environment, Energy & Technology Committee

FROM: Deputy Division Manager - Katharine Gerrity

DATE: June 12, 2018

SUBJECT: Department of Environmental Quality

IDAPA 58.01.25 - Rules Regulating the Idaho Pollutant Discharge Elimination System Program - Temporary and Proposed (Docket No. 58-0125-1801)

The Department of Environmental Quality submits notice of temporary and proposed rulemaking at IDAPA 58.01.25 - Rules Regulating the Idaho Pollutant Discharge Elimination System Program. According to the department, the purpose of the rulemaking is to correct inconsistencies relating to administrative provisions and incorporation by reference of federal regulations. The department states that in terms of incorporation by reference of federal regulations, 40 CFR 403.10 was intended to be added in Subsection 003.02.y. of the rule but was unintentionally omitted due to a transcription error in the August 2017 Administrative Bulletin proposed rule publication. This proposed rulemaking will correct that error. In addition, although other department rule chapters include an administrative provision section similar to Section 004 of the rule, with the Rules of Administrative Procedure Before the Board of Environmental Quality, IDAPA 58.01.23 being cited as the rules governing the appeals process, in the case of these rules the rules governing the appeals process are provided within the IPDES Rules at Section 204. This rulemaking also corrects those provisions.

The department states that the temporary rule became effective May 18, 2018 and was necessary because it confers a benefit to the public and regulated community by eliminating any confusion the inconsistencies may have caused. The department indicates that negotiated rulemaking was not conducted due to the simple nature of the rulemaking. The department adds that the rule does not regulate an activity not regulated by the federal government and it is not broader in scope or more stringent than federal regulations.

The rulemaking appears to be authorized pursuant to Sections 39-105, 39-107 and 39-175C, Idaho Code.

cc: Department of Environmental Quality
Paula J. Wilson

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY
58.01.25 – RULES REGULATING THE IDAHO POLLUTANT DISCHARGE
ELIMINATION SYSTEM PROGRAM

DOCKET NO. 58-0125-1801

NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The temporary rule is effective May 18, 2018.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226(1), Idaho Code, notice is hereby given that the Idaho Board of Environmental Quality has adopted a temporary rule and the Department of Environmental Quality has initiated proposed rulemaking. This action is authorized by Sections 39-105, 39-107, and 39-175C, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before June 22, 2018. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: This rulemaking has been initiated to correct inconsistencies relating to administrative provisions and incorporation by reference of federal regulations.

Revise Section 003, Incorporation by Reference of Federal Regulations, for consistency with Subsection 370.05, Pretreatment Standards, Exceptions to Incorporation by Reference:

In 2017, DEQ initiated negotiated rulemaking to make revisions to ensure that the IPDES Rules remain consistent with federal regulations (Docket No. 58-0125-1701). Negotiated rulemaking meetings were held and negotiated rule drafts were made available for public review. During the negotiated rulemaking process, 40 CFR 403.10 (Development and Submission of NPDES State Pretreatment Programs) was added to the list of federal regulations incorporated by reference in Subsection 003.02.y. and deleted from the list of exceptions to incorporation by reference in Subsection 370.05.

Upon conclusion of negotiated rulemaking, DEQ formatted the final negotiated rule draft for publication as a proposed rule in the August 2017 Idaho Administrative Bulletin. In November 2017, the proposed rule was adopted by the Idaho Board of Environmental Quality as a pending rule. In January 2018, the pending rule was submitted to the Idaho Legislature for review and approval as a final rule. During review of the pending rule, DEQ discovered that the addition of 40 CFR 403.10 in Subsection 003.02.y. was unintentionally omitted due to a transcription error in the August 2017 Idaho Administrative Bulletin proposed rule publication. The error resulted in a discrepancy between Subsection 003.02.y. and Subsection 370.05. This temporary/proposed rule corrects the discrepancy.

Revise Section 004, Administrative Provisions, for consistency with Section 204, Appeals Process:

When the IPDES Rules were promulgated as a new rule chapter in 2016 (Docket No. 58-0125-1401), Section 004, Administrative Provisions, and Section 204, Appeals Process, were both included. As in all DEQ rule chapters, Section 004 was included to meet the uniform format requirements of the Rules of the Administrative Rules Coordinator, IDAPA 44.01.01. The other DEQ rule chapters include an administrative provision section similar to Section 004, with the Rules of Administrative Procedure Before the Board of Environmental Quality, IDAPA 58.01.23, being cited as the rules governing the appeals process. In the case of the IPDES Rules, the rules governing the appeals process are provided within the IPDES Rules at Section 204. This temporary/proposed rule revises Section 004 to clarify that Section 204 governs the IPDES permit appeals process.

Major and minor municipal dischargers; industrial dischargers; facilities, organizations and individuals seeking coverage under a general permit; facilities that currently have or will have a pretreatment permit to a wastewater facility; and other groups interested in point source discharges to Idaho's surface waters may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board in November 2018 for adoption as a pending rule. The pending rule is expected to become final and effective upon adjournment of the 2019 legislative session if adopted by the Board and approved by the Idaho Legislature.

TEMPORARY RULE JUSTIFICATION: This rule docket corrects inconsistencies within the IPDES Rules. The inconsistencies relate to administrative provisions and incorporation by reference of federal regulations. Adoption of this temporary rule is necessary to ensure that the inconsistencies in the rules regulating the IPDES program are resolved before the state of Idaho receives authority for NPDES permitting on July 1, 2018. Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption is appropriate in that the rulemaking confers a benefit. Temporary adoption of this rule confers a benefit to the public and regulated community by eliminating any confusion the inconsistencies may cause.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: Not applicable.

NEGOTIATED RULEMAKING: Negotiated rulemaking will not be conducted. DEQ determined that negotiated rulemaking is not feasible due to the simple nature of this rulemaking. The proposed revisions correct inconsistencies and provide clarity.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Paula Wilson at paula.wilson@deq.idaho.gov, (208)373-0418.

Anyone may submit written comments by mail, fax or email at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before July 6, 2018.

DATED this 6th day of June, 2018.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton Street.
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Phone: (208)373-0418
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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 58-0125-1801
(Only Those Sections With Amendments Are Shown.)**

003. INCORPORATION BY REFERENCE OF FEDERAL REGULATIONS.

01. Availability of Reference Material. Codes, standards and regulations may be incorporated by reference in this rule pursuant to Section 67-5229, Idaho Code. Codes, standards or regulations adopted by reference throughout this rule are available in the following locations: (3-24-16)

a. Department of Environmental Quality. Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255. (3-24-16)

b. Law Library. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, ID 83720-0051. (3-24-16)

c. Electronic Code of Federal Regulations (eCFR) <http://www.ecfr.gov/cgi-bin/ECFR>. (3-24-16)

02. Incorporation by Reference. The following documents are incorporated by reference into these rules. Any reference in these rules to requirements, procedures, or specific forms contained in any section or subsection shall constitute the full adoption by reference of that section or subsection, including any notes and appendices therein, unless expressly provided otherwise in these rules: (3-24-16)

a. 40 CFR 122.21(r), revised as of July 1, 2017 (Application Requirements for Facilities with Cooling Water Intake Structures); (3-28-18)

b. 40 CFR 122.23, revised as of July 1, 2017 (Concentrated Animal Feeding Operations); (3-28-18)

c. 40 CFR 122.24, revised as of July 1, 2017 (Concentrated Aquatic Animal Production Facilities); (3-28-18)

d. 40 CFR 122.25, revised as of July 1, 2017 (Aquaculture Projects); (3-28-18)

e. 40 CFR 122.26(a) through (b) and 40 CFR 122.26(e) through (g), revised as of July 1, 2017 (Storm Water Discharges); (3-28-18)

f. 40 CFR 122.27, revised as of July 1, 2017 (Silvicultural Activities); (3-28-18)

g. 40 CFR 122.29(d), revised as of July 1, 2017 (Effect of Compliance with New Source Performance Standards); (3-28-18)

h. 40 CFR 122.30 and 40 CFR 122.32 through 40 CFR 122.37, revised as of July 1, 2017 (Requirements and Guidance for Small Municipal Separate Storm Sewer Systems); (3-28-18)

i. 40 CFR 122.42(e), revised as of July 1, 2017 (Additional Conditions Applicable to NPDES Permits for Concentrated Animal Feeding Operations); (3-28-18)

j. Appendix A to 40 CFR 122, revised as of July 1, 2017 (NPDES Primary Industry Categories); (3-28-18)

k. Appendix C to 40 CFR 122, revised as of July 1, 2017 (Criteria for Determining a Concentrated Aquatic Animal Production Facility); (3-28-18)

- l.** [Appendix D to 40 CFR 122](#), revised as of July 1, 2017 (NPDES Permit Application Testing Requirements); (3-28-18)
- m.** [Appendix J to 40 CFR 122](#), revised as of July 1, 2017 (NPDES Permit Testing Requirements for Publicly Owned Treatment Works); (3-28-18)
- n.** [40 CFR 125.1](#) through [40 CFR 125.3](#) (Subpart A), revised as of July 1, 2017 (Criteria and Standards for Imposing Technology-Based Treatment Requirements Under Sections 301(b) and 402 of the Clean Water Act); (3-28-18)
- o.** [40 CFR 125.10](#) through [40 CFR 125.11](#) (Subpart B), revised as of July 1, 2017 (Criteria for Issuance of Permits to Aquaculture Projects); (3-28-18)
- p.** [40 CFR 125.30](#) through [40 CFR 125.32](#) (Subpart D), revised as of July 1, 2017 (Criteria and Standards for Determining Fundamentally Different Factors Under Sections 301(b)(1)(A) and 301(b)(2)(A) and (E) of the Clean Water Act); (3-28-18)
- q.** [40 CFR 125.70](#) through [40 CFR 125.73](#) (Subpart H), revised as of July 1, 2017 (Criteria for Determining Alternative Effluent Limitations Under Section 316(a) of the Clean Water Act); (3-28-18)
- r.** [40 CFR 125.80](#) through [40 CFR 125.89](#) (Subpart I), revised as of July 1, 2017 (Requirements Applicable to Cooling Water Intake Structures for New Facilities Under Section 316(b) of the Clean Water Act); (3-28-18)
- s.** [40 CFR 125.90](#) through [40 CFR 125.99](#) (Subpart J), revised as of July 1, 2017 (Requirements Applicable to Cooling Water Intake Structures for Phase II Existing Facilities Under Section 316(b) of the Clean Water Act); (3-28-18)
- t.** [40 CFR 127.11](#) through [40 CFR 127.16](#) (Subpart B), revised as of July 1, 2017 (Electronic reporting of NPDES Information from NPDES-Regulated Facilities); (3-28-18)
- u.** [40 CFR 129.1](#) through [40 CFR 129.105](#) (Subpart A), revised as of July 1, 2017 (Toxic Pollutant Effluent Standards and Prohibitions); (3-28-18)
- v.** [40 CFR 133.100](#) through [40 CFR 133.105](#), revised as of July 1, 2017 (Secondary Treatment Regulation); (3-28-18)
- w.** [40 CFR Part 136](#), revised as of July 1, 2017 (Guidelines Establishing Test Procedures for the Analysis of Pollutants, including Appendices A, B, C, and D); (3-28-18)
- x.** [40 CFR Part 401](#), revised as of July 1, 2017 (General Provisions); (3-28-18)
- y.** [40 CFR 403.1](#) through [40 CFR 403.3](#); [40 CFR 403.5](#) ~~through 40 CFR 403.9~~; and [40 CFR 403.11](#) through [40 CFR 403.18](#), revised as of July 1, 2017 (General Pretreatment Regulations for Existing and New Sources of Pollution, including Appendices D, E, and G); ~~(3-28-18)~~ [\(5-18-18\)T](#)
- z.** [40 CFR Part 405](#) through [40 CFR Part 471](#), revised as of July 1, 2017 (Effluent Limitations and Guidelines); and (3-28-18)
- aa.** [40 CFR 503.2](#) through [40 CFR 503.48](#), revised as of July 1, 2017 (Sewage Sludge, including Appendices A and B). (3-28-18)
- bb.** The term “Waters of the United States or waters of the U.S.,” as defined in [40 CFR 122.2](#), revised as of August 28, 2015 by 80 Federal Register 37054-37127 (June 29, 2015), unless said revision is stayed, overturned or invalidated by a court of law or withdrawn by EPA, in which case the Department incorporates by reference the term “Waters of the United States or waters of the U.S.” as defined in [40 CFR 122.2](#), revised as of July 1, 2015. (3-24-16)

03. Term Interpretation. For the federal regulations incorporated by reference into these rules, unless the context in which a term is used clearly requires a different meaning, terms in this section have the following meanings: (3-24-16)

a. The term Administrator or Regional Administrator means the EPA Region 10 Administrator; (3-24-16)

b. The term Control Authority means the POTW for a facility with a Department-approved pretreatment program and the Department for a POTW without a Department-approved pretreatment program; (3-24-16)

c. The term Director or State Director means the Director of the Department of Environmental Quality with an NPDES permit program approved pursuant to section 402(b) of the Clean Water Act; (3-24-16)

d. The term National Pollutant Discharge Elimination System (NPDES) means the Idaho Pollutant Discharge Elimination System (IPDES); (3-24-16)

e. The term Permitting Authority (also preceded by the terms NPDES or State) means the Idaho Department of Environmental Quality with an NPDES permit program approved pursuant to section 402(b) of the Clean Water Act. (3-24-16)

004. ADMINISTRATIVE PROVISIONS.

Persons may be entitled to appeal ~~agency actions authorized under these rules~~ final IPDES permit decisions pursuant to ~~IDAPA 58.01.23, "Rules of Administrative Procedure before the Board of Environmental Quality."~~ Section 204 (Appeals Process) of these rules. (3-24-16)(5-18-18)T