

<p><b>Docket Number:</b> <u>58-0125-1801</u>  <b>Effective Date:</b> <u>May 18, 2018 (temporary rule)</u>  <b>Rules Title:</b> <u>Rules Regulating the Idaho Pollutant Discharge Elimination System Program</u>  <b>Agency Contact and Phone:</b> <u>Barry Burnell/373-0194 and Mary Anne Nelson/373-0291</u></p>	<p style="text-align: right;"><b>Public Notice</b></p> <p><b>Hearings:</b> N/A     <input type="checkbox"/> Yes <input type="checkbox"/> No  <b>Locations and Dates:</b> N/A  <b>Written Comment Deadline:</b> N/A</p>
<p><b>Descriptive Summary of Rule:</b> This rulemaking has been initiated to correct inconsistencies relating to administrative provisions and incorporation by reference of federal regulations.</p> <p><b>Revise Section 003, Incorporation by Reference of Federal Regulations, for consistency with Subsection 370.05, Pretreatment Standards, Exceptions to Incorporation by Reference:</b>  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.</p> <p>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.</p> <p><b>Revise Section 004, Administrative Provisions, for consistency with Section 204, Appeals Process:</b>  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.</p> <p>DEQ recommends that the Board adopt the temporary rule, as presented under Docket No. 58-0125-1801, with an effective date of May 18, 2018. If the Board adopts the temporary rule, DEQ will publish the temporary rule and initiate proposed rulemaking in the June 2018 Idaho Administrative Bulletin.</p>	<p><b>Negotiated Rule Making:</b>     <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>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.</p> <hr/> <p><b>Costs To the Agency:</b> No additional costs to the agency.</p> <p><b>Costs To the Regulated Community:</b> No additional costs to the regulated community.</p> <hr/> <p><b>Relevant Statutes:</b> Chapters 44 and 58, Title 39, Idaho Code</p> <hr/> <p><b>Idaho Code § 39-107D Statement:</b> This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.</p> <hr/> <p><b>Temporary Rule Justification:</b> 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.</p>

Temporary Rule       Necessary to protect public health, safety or welfare  
                                  Compliance with deadlines in amendments to governing law or federal programs  
                                  Conferring a benefit

Docket Number: 58-0125-1801

Section	Section Title	Summary of Rule Changes Based on Public Comment
003	Incorporation by Reference of Federal Regulations	N/A
004	Administrative Provisions	N/A

**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 6<sup>th</sup> day of June, 2018

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
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**Temporary/Proposed Rule for Board Consideration, Docket No. 58-0125-1801  
(dated April 9, 2018)**

**Rules Regulating the Idaho Pollutant Discharge Elimination System Program  
IDAPA 58.01.25**

**003. INCORPORATION BY REFERENCE OF FEDERAL REGULATIONS.**

**(Break)**

**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)

**(Break)**

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

**(Break in Continuity of Sections)**

**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