

IDAHO ADMINISTRATIVE BULLETIN

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Preface

The Idaho Administrative Bulletin is published once each month by the Department of Administration, Office of the Administrative Rules Coordinator, pursuant to Section 67-5203, Idaho Code. The Bulletin is a monthly compilation of all administrative rulemaking documents in Idaho. The Bulletin publishes the official rulemaking notices and administrative rule text of state agency rulemakings and other official documents as necessary.

State agencies are required to provide public notice of rulemaking activity and invite public input. The public receives notice of rulemaking activity through the Idaho Administrative Bulletin and the Legal Notice published monthly in local newspapers. The Legal Notice provides reasonable opportunity for public input, either oral or written, which may be presented to the agency within the time and manner specified in the Notice of Rulemaking published in the Bulletin. After the comment period closes, the agency considers fully all information submitted in regard to the rule. Comment periods are not provided in temporary or final rule-making activities.

CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

The Bulletin is cited by year and issue number. For example, Bulletin 07-1 refers to the first Bulletin issued in calendar year 2007; Bulletin 08-1 refers to the first Bulletin issued in calendar year 2008. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. 08-1 refers to January 2008; Volume No. 08-2 refers to February 2008; and so forth. Example: The Bulletin published in January 2008 is cited as Volume 08-1. The December 2007 Bulletin is cited as Volume 07-12.

RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE

*The Idaho Administrative Code is published once a year and is a compilation or supplemental compilation of all final and enforceable administrative rules in effect in Idaho. In an effort to provide the reader with current, enforceable rules, temporary rules are also published in the Administrative Code. Temporary rules and final rules approved by the legislature during the legislative session, and published in the monthly Idaho Administrative Bulletin, supplement the Administrative Code. Negotiated, proposed, and pending rules are only published in the Bulletin and **not** printed in the Administrative Code.*

*To determine if a particular rule remains in effect, or to determine if a change has occurred, the reader should refer to the **Cumulative Rulemaking Index of Idaho Administrative Rules**, printed in each Bulletin.*

TYPES OF RULEMAKINGS PUBLISHED IN THE ADMINISTRATIVE BULLETIN

The state of Idaho administrative rulemaking process, governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, comprises five distinct activities: negotiated, proposed, temporary, pending and final rulemaking. Not all rulemakings involve all five. At a minimum, a rulemaking includes proposed, pending and final rulemaking. Many rules are adopted as temporary rules when they meet the required statutory criteria and agencies often engage in negotiated rulemaking at the beginning of the process to facilitate consensus building in controversial or complex rulemakings. In the majority of cases, the process begins with proposed rulemaking and ends with the final rulemaking. The following is a brief explanation of each type of administrative rule.

NEGOTIATED RULEMAKING

Negotiated rulemaking is a process in which all interested parties and the agency seek consensus on the content of a rule. Agencies are encouraged, and in some cases required, to engage in this rulemaking activity whenever it is feasible to do so. Publication of a "Notice of Intent to Promulgate" a rule in the Administrative Bulletin by the agency is optional. This process should result in the formulation of a proposed and/or temporary rule.

PROPOSED RULEMAKING

A proposed rulemaking is an action by an agency wherein the agency is proposing to amend or repeal an existing rule or to adopt a new rule. Prior to the adoption, amendment, or repeal of a rule, the agency must publish a "Notice of Proposed Rulemaking" in the Bulletin. This notice must include:

- a) the specific statutory authority (from Idaho Code) for the rulemaking including a citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking;*
- b) a statement in nontechnical language of the substance of the proposed rule, including a specific description of any fee or charge imposed or increased;*
- c) the text of the proposed rule prepared in legislative format;*
- d) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;*
- e) the manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;*
- f) the manner in which persons may request an opportunity for an oral presentation as provided in Section 67-5222, Idaho Code; and*
- g) the deadline for public (written) comments on the proposed rule.*

As stated, the text of the proposed rule must be published in the Bulletin. After meeting the statutory rulemaking criteria for a proposed rule, the agency may proceed to the pending rule stage. A proposed rule does not have an assigned effective date, even when published in conjunction with a temporary rule, and therefore, is not enforceable. An agency may vacate a proposed rulemaking if it decides not to proceed beyond the proposed rulemaking step, and stops the formal rulemaking process.

TEMPORARY RULEMAKING

Temporary rules may be adopted only when the governor finds that it is necessary for:

- a) protection of the public health, safety, or welfare; or*
- b) compliance with deadlines in amendments to governing law or federal programs; or*
- c) conferring a benefit;*

If a rulemaking meets any one or all of the above requirements, a rule may become effective before it has been submitted to the legislature for review and the agency may proceed and adopt a temporary rule. However, a temporary rule that imposes a fee or charge may be adopted only if the Governor finds that the fee or charge is necessary to avoid an immediate danger which justifies the imposition of the fee or charge.

A temporary rule expires at the conclusion of the next succeeding regular legislative session unless the rule is approved, amended, or modified by concurrent resolution or when the rule has been replaced by a final rule.

State law requires that the text of both a proposed rule and a temporary rule be published in the Administrative Bulletin. In cases where the text of the temporary rule is the same as the proposed rule, the rulemaking can be done concurrently as a proposed/temporary rule. Combining the rulemaking allows for a single publication of the text.

An agency may, at any time, rescind a temporary rule that has been adopted and is in effect. If the temporary rule is being replaced by a new temporary rule or if it has been published concurrently with a proposed rule that is being vacated, the agency, in most instances, should rescind the temporary rule.

PENDING RULEMAKING

A pending rule is a rule that has been adopted by an agency under regular rulemaking procedures and remains subject to legislative review before it becomes a final, enforceable rule.

When a pending rule is published in the Bulletin, the agency is required to include certain information in the "Notice of Pending Rulemaking". This includes:

- a) a statement giving the reasons for adopting the rule;*
- b) a statement of any change between the text of the proposed rule and the pending rule with an explanation of the reasons for any changes;*
- c) the date the pending rule will become final and effective;*
- d) an identification of any portion of the rule imposing or increasing a fee or charge.*

Agencies are required to republish the text of the rule when substantive changes have been made to the proposed rule. An agency may adopt a pending rule that varies in content from that which was originally proposed if the subject matter of the rule remains the same, the pending rule change is a logical outgrowth of the proposed rule, and the original notice was written so as to assure that members of the public were reasonably notified of the subject. It is not always necessary to republish all the text of the pending rule. With the permission of the Rules Coordinator, only the Section(s) that have changed from the proposed text are republished. If no changes have been made to the previously published text, it is not required to republish the text again and only the "Notice of Pending Rulemaking" is published.

FINAL RULEMAKING

A final rule is a rule that has been adopted by an agency under the regular rulemaking procedures and is in effect and enforceable.

No pending rule adopted by an agency will become final and effective until it has been submitted to the legislature for review. Where the legislature finds that an agency has violated the legislative intent of the statute under which the rule was made, a concurrent resolution may be adopted to reject the rulemaking or any part thereof. A "Notice of Final Rule" must be published in the Bulletin for any rule that is rejected, amended, or modified by the legislature showing the changes made. A rule reviewed by the legislature and not rejected, amended or modified becomes final with no further legislative action. No rule shall become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review. However, a rule that is final and effective may be applied retroactively, as provided in the rule.

AVAILABILITY OF THE ADMINISTRATIVE CODE AND BULLETIN

The Idaho Administrative Code and all monthly Bulletins are available for viewing and use by the public in all 44 county law libraries, state university and college and community college libraries, the state law library, the state library, the Public Libraries in Boise, Pocatello, Idaho Falls, Twin Falls, Lewiston and East Bonner County Library.

SUBSCRIPTIONS AND DISTRIBUTION

For subscription information and costs of publications, please contact the Department of Administration, Office of the Administrative Rules Coordinator, 650 W. State Street, Room 100, Boise, Idaho 83720-0306, telephone (208) 332-1820.

The Idaho Administrative Bulletin is an official monthly publication of the State of Idaho. Yearly subscriptions or individual copies are available for purchase.

The Idaho Administrative Code, is an annual compilation or supplemental compilation of all final and enforceable temporary administrative rules and includes a table of contents, reference guides, and a subject index.

Individual Rule Chapters and Individual RuleMaking Dockets, are specific portions of the Bulletin and Administrative Code produced on demand.

Internet Access - The Administrative Code and Administrative Bulletin are available on the Internet at the following address: <http://adm.idaho.gov/adminrules/>

HOW TO USE THE IDAHO ADMINISTRATIVE BULLETIN

Rulemaking documents produced by state agencies and published in the Idaho Administrative Bulletin are organized by a numbering system. Each state agency has a two-digit identification code number known as the "IDAPA" number. (The "IDAPA" Codes are listed in the alphabetical/numerical index at the end of this Preface.) Within each agency there are divisions or departments to which a two-digit "TITLE" number is assigned. There are "CHAPTER" numbers assigned within the Title and the rule text is divided among major sections with a number of subsections. An example IDAPA number is as follows:

IDAPA 38.05.01.200.02.c.ii.

"IDAPA" refers to Administrative Rules in general that are subject to the Administrative Procedures Act and are required by this act to be published in the Idaho Administrative Code and the Idaho Administrative Bulletin.

"38." refers to the Idaho Department of Administration

"05." refers to Title 05, which is the Department of Administrations's Division of Purchasing

"01." refers to Chapter 01 of Title 05, "Rules of the Division of Purchasing"

"200." refers to Major Section 200, "Content of the Invitation to Bid"

"02." refers to Subsection 200.02.

"c." refers to Subsection 200.02.c.

"ii." refers to Subsection 200.02.c.ii.

DOCKET NUMBERING SYSTEM

Internally, the Bulletin is organized sequentially using a rule docketing system. All rulemaking actions (documents) are assigned a "DOCKET NUMBER." The "Docket Number" is a series of numbers separated by a hyphen "-", (38-0501-0801). The docket numbers are published sequentially by IDAPA designation (e.g. the two-digit agency code). The following example is a breakdown of a typical rule docket number:

"DOCKET NO. 38-0501-0801"

"38-" denotes the agency's IDAPA number; in this case the Department of Administration.

"0501-" refers to the TITLE AND CHAPTER numbers of the agency rule being promulgated; in this case the Division of Purchasing (TITLE 05), Rules of the Division of Purchasing (Chapter 01).

"0801" denotes the year and sequential order of the docket being published; in this case the numbers refer to the first rule-making action published in calendar year 2008. A subsequent rulemaking on this same rule chapter in calendar year 2008 would be designated as "0802". The docket number in this scenario would be 38-0501-0802.

Within each Docket, only the affected sections of chapters are printed. (See Sections Affected Index in each Bulletin for a listing of these.) The individual sections affected are printed in the Bulletin sequentially (e.g. Section "200" appears before Section "345" and so on). Whenever the sequence of the numbering is broken the following statement will appear:

(BREAK IN CONTINUITY OF SECTIONS)

INTERNAL AND EXTERNAL CITATIONS TO ADMINISTRATIVE RULES IN THE CODE AND BULLETIN

When making a citation to another Section or Subsection of a rule that is part of the same rule, a typical internal citation may appear as follows:

"...as found in Section 201 of this rule." OR "...in accordance with Subsection 201.06.c. of this rule."

The citation may also include the IDAPA, Title, or Chapter number, as follows"

"...in accordance with IDAPA 38.05.01.201..."

"38" denotes the IDAPA number of the agency.

"05" denotes the TITLE number of the rule.

"01" denotes the Chapter number of the rule.

"201" denotes the main Section number of the rule to which the citation refers.

Citations made within a rule to a different rule chapter (external citation) should also include the name of the Department and the name of the rule chapter being referenced, as well as the IDAPA, Title, and Chapter numbers. The following is a typical example of an external citation to another rule chapter:

"...as outlined in the Rules of the Department of Administration, IDAPA 38.04.04, "Rules Governing Capitol Mall Parking."

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2009

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
09-1	January 2009	*November 14, 2008	January 7, 2009	January 28, 2009
09-2	February 2009	January 9, 2009	February 4, 2009	February 25, 2009
09-3	March 2009	February 6, 2009	March 4, 2009	March 25, 2009
09-4	April 2009	March 6, 2009	April 1, 2009	April 22, 2009
09-5	May 2009	April 3, 2009	May 6, 2009	May 27, 2009
09-6	June 2009	May 1, 2009	June 3, 2009	June 24, 2009
09-7	July 2009	May 29, 2009	July 1, 2009	July 22, 2009
09-8	August 2009	July 3, 2009	August 5, 2009	August 26, 2009
09-9	September 2009	July 31, 2009	September 2, 2009	September 23, 2009
09-10	October 2009	**August 28, 2009	October 7, 2009	October 28, 2009
09-11	November 2009	October 2, 2009	November 4, 2009	November 25, 2009
09-12	December 2009	November 6, 2009	December 2, 2009	December 23, 2009

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2010

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
10-1	January 2010	*November 13, 2009	January 6, 2010	January 27, 2010
10-2	February 2010	January 8, 2010	February 3, 2010	February 24, 2010
10-3	March 2010	February 5, 2010	March 3, 2010	March 25, 2010
10-4	April 2010	March 5, 2010	April 7, 2010	April 28, 2010
10-5	May 2010	April 2, 2010	May 5, 2010	May 26, 2010
10-6	June 2010	April 30, 2010	June 2, 2010	June 23, 2010
10-7	July 2010	June 4, 2010	July 7, 2010	July 28, 2010
10-8	August 2010	July 2, 2010	August 4, 2010	August 25, 2010
10-9	September 2010	July 30, 2010	September 1, 2010	September 22, 2010
10-10	October 2010	**August 27, 2010	October 6, 2010	October 27, 2010
10-11	November 2010	October 1, 2010	November 3, 2010	November 24, 2010
10-12	December 2010	November 5, 2010	December 1, 2010	December 22, 2010

****Last day to submit proposed rulemaking before moratorium begins and last day to submit pending rules to be reviewed by the legislature.***

*****Last day to submit proposed rules in order to complete rulemaking for review by legislature.***

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THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2009-08

**REQUIRING THE IDAHO TRANSPORTATION DEPARTMENT
TO PUBLISH AN ANNUAL ACCOUNTABILITY REPORT**

WHEREAS, the Office of Performance Evaluations (OPE) conducted an audit of the Idaho Transportation Department (ITD) and concluded that additional efficiencies and cost savings can be achieved; and

WHEREAS, the ITD requested and conducted peer reviews of its operations and substantiated the majority of findings in the OPE audit; and

WHEREAS, efficiency, accountability and saving taxpayer money should be the hallmarks of good state government;

NOW, THEREFORE, I, C.L. "BUTCH" OTTER, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of this state do hereby order:

1. ITD shall provide quarterly status updates for the Governor and chairs of the Senate Transportation and House Transportation and Defense Committee on the progress of implementing the findings of the audit and peer review starting July 1, 2009.
2. ITD shall publish an annual report no later than January 1 each year. The report shall be called the "ITD Annual Accountability Report" (Report).
3. ITD shall provide copies of the Report to:
 - a. The Office of the Governor;
 - b. The President Pro Tempore of the Idaho Senate;
 - c. The Speaker of the Idaho House of Representatives;
 - d. The Chair of the Senate Transportation Committee; and
 - e. The Chair of the House Transportation and Defense Committee.
4. The Report shall include the following information:
 - a. Criteria, as approved by the ITD Board, for prioritizing transportation infrastructure projects and expending state and federal funds in Idaho;
 - b. A statewide list of priority projects as established by the ITD Board based on the criteria developed under 4(a);
 - c. The annual amount of increased revenue generated under any legislation dealing with the motor fuel tax or vehicle registration fees as passed by the Idaho Legislature in 2009 or thereafter;
 - d. Which priority projects will receive funding from the revenue identified in 4(c);
 - e. An accounting for funds spent from the revenue identified in 4(c) during the previous year; and
 - f. A strategic action plan outlining quarterly benchmarks for achieving the recommendations in the audit, the responsibility of managers within ITD and progress made in completing the requirements for that year as outlined in paragraphs 6, 7 and 8 of this executive order.
5. The director of ITD shall provide monthly updates to the ITD Board on the development and implementation of quarterly benchmarks in 4(f).
6. By January 1, 2010 ITD shall:

- a. Begin developing a **statewide plan** for Idaho's transportation system that links ITD's strategic plan with the state transportation improvement program and corridor plan;
 - b. Identify participants for developing the statewide plan;
 - c. Incorporate the priorities established in 4(a) into the statewide plan;
 - d. Establish internal tracking and monitoring systems for funding and projects;
 - e. Develop **strategic performance measures**;
 - f. Identify stakeholders and gather their input on the performance measures;
 - g. Establish an office to oversee and evaluate the development and implementation of strategic performance measures;
 - h. Identify existing data and gaps for strategic performance measures;
 - i. Identify the requirements for a departmental **financial planning system** and estimated cost of implementation;
 - j. Develop the requirements for a statewide **pavement management system (PMS)**, **maintenance management system (MMS)** and **project scheduling system (PSS)**;
 - k. Issue requests for proposals (RFPs) for the PMS and MMS;
 - l. Develop and implement a pilot project for the PSS in one operational district.
7. By January 1, 2011 ITD shall:
- a. Complete the **statewide plan** and present it to the Governor and Legislature;
 - b. Report on the data related to all **strategic performance measures**;
 - c. Issue a RFP for a **financial planning system**;
 - d. Design and implement PMS and MMS.
8. By January 1, 2012 ITD shall:
- a. Set goals for **strategic performance measures** using the data from 2011;
 - b. Integrate the **statewide plan**, **strategic performance measures**, **MMS**, **PMS** and **PSS** into the **financial planning system**;
 - c. Fully integrate the **MMS**, **PMS** and **PSS** and complete the necessary training for staff.
9. Neither ITD nor the ITD Board can request spending authority from the Legislature for the revenue identified under 4(c) unless the necessary tasks for that year, as identified in paragraphs 6, 7 or 8, are completed.
10. To facilitate the successful implementation of this executive order the director of ITD shall form a project management team of department managers as described in the OPE audit. The team shall be formed by April 17, 2009.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho in Boise on this 18th day of March in the year of our Lord two thousand and nine and of the Independence of the United States of America the two hundred thirty-third and of the Statehood of Idaho the one hundred nineteenth.

C.L. "BUTCH" OTTER
GOVERNOR

BEN YSURSA
SECRETARY OF STATE

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.14 - RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING DAIRY WASTE

DOCKET NO. 02-0414-0901

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is May 1, 2009.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 37-405, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than May 20, 2009.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

ISDA received a letter from EPA on March 3, 2009 notifying ISDA that EPA is not going to renew the Memorandum of Understanding (MOU) between EPA, IDEQ, ISDA and Idaho Dairymen's Association that was the basis for this rule. This proposed rule eliminates the requirement that the MOU between EPA, IDEQ, ISDA and Idaho Dairymen's Association be in place in order for the rule to be effective. This rulemaking is necessary to ensure that the rule remains in effect as promulgated prior to the expiration of the MOU. There are no substantive changes to the rule, rather, additional language is being added that clarifies the existing requirements associated with dairy waste containment and nutrient management that were previously incorporated by reference. These rules also set forth soil sampling and testing requirements of dairy owned and operated land exceeding phosphorus thresholds. The incorporation by reference section has been updated to remove obsolete documents and adds documents that were previously included in the "definitions" section of the rule.

TEMPORARY AND PROPOSED RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

As stated above, the MOU between EPA, IDEQ, ISDA and Idaho Dairymen's Association that was the basis for this rule is set to expire on May 1, 2009. The expiration of the MOU renders this rule ineffective and creates a public health and safety issue. As a result, ISDA has adopted a temporary rule to provide the necessary protection of the public's health and safety. The Idaho Dairymen's Association endorses the need for the temporary and proposed rule.

FEE SUMMARY: Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

No fee is being imposed or charged through the adoption of this temporary rule.

FISCAL IMPACT: 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:

There is no fiscal impact to the general fund as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Marv Patten, Chief Dairy and CAFO Programs, 208-332-8550 or marv.patten@agri.idaho.gov.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before May 27, 2009.

Signed this 20th Day of April, 2009.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road, Boise, ID 83712
P.O. Box 790, Boise, ID 83701-0790
Phone: (208) 322-8500 / Fax: (208) 332-4062

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0414-0901

IDAPA 02
TITLE 04
CHAPTER 14

02.04.14 - RULES ~~OF THE DEPARTMENT OF AGRICULTURE~~ GOVERNING DAIRY WASTE

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 37, Chapter 4, Idaho Code. (3-20-97)

001. TITLE AND SCOPE.

01. Title. The title of this chapter of the Idaho State Department of Agriculture is IDAPA 02.04.14, “Rules ~~of the Department of Agriculture~~ Governing Dairy Waste.” ~~(3-20-97)~~(5-1-09)T

02. Scope. This chapter has the following scope: These rules shall govern the design, function and management practices of dairy waste systems. The official citation of this chapter is IDAPA 02.04.14.000 et seq. For example, this section’s citation is IDAPA 02.04.14.001. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference, and copies of the documents may be obtained from the Idaho State Department of Agriculture central office at 2270 Old Penitentiary Road, Boise, Idaho, 83712. (5-1-09)T

01. Natural Resources Conservation Service Agricultural Waste Management Field Handbook Appendix 10D (Appendix 10D) (1997 Edition) (USDA, NRCS). (5-1-09)T

02. Nutrient Management Standard (NMS). The 1999 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. (5-1-09)T

03. Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard

Waste Storage Facility Code 313 December 2004. (5-1-09)T

04. American Society of Agricultural and Biological Engineers Specification ASAE EP393.3 Manure Storages February 2004. (5-1-09)T

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

01. Office. The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712. (5-1-09)T

02. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Standard Time, Monday through Friday, except holidays designated by the state of Idaho. (5-1-09)T

03. Mailing Address. The mailing address for the central office is Idaho State Department of Agriculture, PO Box 790, Boise, Idaho 83701. (5-1-09)T

04. Telephone Number. The telephone number of the central office is (208) 332-8500. (5-1-09)T

05. Fax Number. The fax number of the central office is (208) 334-2170. (5-1-09)T

006. PUBLIC RECORDS ACT COMPLIANCE.

These rules are public records and are available for inspection and copying at the Idaho State Department of Agriculture. (5-1-09)T

0057. FINDINGS.

The Department finds that pursuant to Section 67-5226(1), Idaho Code, these rules are necessary to protect the public health, safety, and welfare of Idaho, enhance Idaho water quality and preserve the integrity of the Idaho dairy industry. These rules establish design, construction, operation, location, and inspection criteria for dairy waste systems on Idaho dairy farms and enable the department to implement the 1999 NRCS nutrient management standards on dairy farms to appropriately manage livestock waste. These rules also provide penalty provisions. (4-5-00)

008. -- 009. (RESERVED).

00410. DEFINITIONS.

The following definitions shall apply in the interpretation and enforcement of this chapter: (3-20-97)

01. Certified Planner. A person who has completed nutrient management certification in accordance with the Nutrient Management Standard and is approved by the ~~#~~Department. (~~4-5-00~~)(5-1-09)T

02. Certified Soil Sampler. An individual qualified and approved by the Department to collect soil samples according to the 1997 University of Idaho Soil Sampling protocols or other method as approved by the Department. (5-1-09)T

023. Dairy Farm. A place or premise where one (1) or more milking cows, sheep, or goats are kept, and from which all or a portion of the milk produced thereon is delivered, sold or offered for sale for human consumption. (~~3-20-97~~)(5-1-09)T

034. Department. The Idaho State Department of Agriculture. (~~3-20-97~~)(5-1-09)T

045. Director. The Director of the Idaho State Department of Agriculture or his designee. (~~3-20-97~~)(5-1-09)T

056. Discharge Violation. A practice or facility condition which has caused an unauthorized release of ~~#~~Livestock ~~**~~Waste into surface, ground water, or beyond the ~~#~~Dairy ~~#~~Farm's property boundaries or beyond the property boundary of any facility operated by the ~~#~~Producer. Contract manure haulers, producers and other persons who haul ~~#~~Livestock ~~**~~Waste beyond the ~~#~~Producer's property boundaries are responsible for releases of ~~#~~Livestock

~~W~~aste between the property boundaries of the ~~P~~roducer and the property boundaries at the point of application. (3-19-99)(5-1-09)T

067. Farm Certification. A permit issued by the Department allowing the sale of manufacture grade milk. (3-20-97)

078. Fieldman. An individual qualified and approved by the Department to perform dairy farm inspections. (3-20-97)

~~08. Idaho Waste Management Guidelines for Confined Feeding Operations.~~ A 1993 publication as amended in 1997 by the Idaho Department of Health and Welfare, Division of Environmental Quality which is hereby incorporated by reference. Copies of the guidelines are available at the Idaho Department of Agriculture, 2270 Old Penitentiary Road, Boise, Idaho 83712. (4-5-00)

09. Inspector. A qualified, trained person employed by the Department to perform dairy farm inspections. (3-20-97)

10. Livestock. For the purposes of these rules the term livestock shall include bovidae, suidae, equidae and other animals that are kept on or contiguous to a dairy farm and are owned or controlled by a dairy farm. (3-19-99)

11. Livestock Waste. Manure that may also contain bedding, spilled feed, compost, water or soil. It also includes wastes not particularly associated with manure, such as milking center or washing wastes, ~~or~~ milk, feed leachate, or livestock carcasses or parts thereof. (4-5-00)(5-1-09)T

12. Manufacture Grade Milk. Milk produced for processing into dairy products for human consumption but not subject to Grade A requirements. (3-20-97)

~~13. Memorandum of Understanding.~~ The October 1995 Idaho Dairy Pollution Prevention Initiative Memorandum of Understanding between the Environmental Protection Agency, Division of Environmental Quality, Idaho Department of Agriculture and the Idaho Dairymen's Association. The memorandum is hereby incorporated by reference and copies of the memorandum are available at the Idaho Department of Agriculture, 2270 Old Penitentiary Road, Boise, Idaho 83712 and through the Department of Administration, Office of Administrative Rules, located at 650 West State Street, Room 100, Boise, Idaho 83720. (4-5-00)

143. Non-Compliance. A practice or facility condition which will cause a ~~D~~ischarge ~~V~~iolation if left uncorrected or a condition on a ~~D~~airy ~~F~~arm that does not meet the requirements of the ~~Idaho Waste Management Guidelines for Confined Feeding Operations~~, the Nutrient Management Plan, Nutrient Management Standard, and Appendix 10D. (4-5-00)(5-1-09)T

~~15. Natural Resource Conservation Service Agricultural Waste Management Field Handbook Appendix 10D (Appendix 10D).~~ A 1997 publication by USDA, NRCS which is hereby incorporated by reference. Copies of this publication are available at the Idaho Department of Agriculture, 2270 Old Penitentiary Road, Boise, Idaho 83712 and through the Idaho State Law Library, Supreme Court Building, 451 West State Street, Boise, Idaho 83720. (4-5-00)

164. Nutrient Management Plan (NMP). A plan prepared in conformance with the ~~N~~utrient ~~m~~anagement ~~s~~tandard or other equally protective standard approved by the ~~d~~epartment for managing the amount, source, placement, form, and timing of the land application of nutrients and soil amendments for plant production, and for minimizing the potential for environmental degradation, particularly impairment of water quality. (4-5-00)(5-1-09)T

~~17. Nutrient Management Standard (NMS).~~ The 1999 publication by the United States Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS) Conservation Practice Standard, Nutrient Management Code 590, or the 1999 Idaho Agricultural Pollution Abatement Plan - Nutrient Management Standard Component Practice, which are hereby incorporated by reference. Copies of these publications are available at the Idaho Department of Agriculture, 2270 Old Penitentiary Road, Boise, Idaho 83712 and through the Idaho State Law

~~Library, Supreme Court Building, 451 West State Street, Boise, Idaho 83720.~~

~~(4-5-00)~~

185. Permit. A permit issued by the Department allowing the sale of Grade A milk. (3-20-97)

196. Person. Any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not. (3-20-97)

2017. Producer. The person who exercises control over the production of milk delivered to a plant, and who receives payment for this product. (3-20-97)

Section 005 has been renumbered to Section 007

011. ABBREVIATIONS.

There are no abbreviations in this chapter.

(5-1-09)T

~~00612. -- 0019.~~ (RESERVED).

020. PERMITS AND CERTIFICATION.

No producer shall offer for sale or sell milk unless the producing dairy farm has been issued a Grade A permit or a Farm Certification from the Department. (3-20-97)

01. Grade A Permit. A permit issued by the Department if the ~~d~~Dairy ~~f~~Farm complies with the requirements of the "Grade 'A' Pasteurized Milk Ordinance", as incorporated by reference in IDAPA 02.04.08, "Rules Governing Grade A Milk and Milk Products", and has in place and operates a dairy waste system consistent with the Idaho Waste Management Guidelines for Confined Feeding Operations, NMP, NMS and Appendix 10D. ~~(4-5-00)~~(5-1-09)T

02. Farm Certification. A certification issued by the Department if the ~~d~~Dairy ~~f~~Farm complies with the requirements of IDAPA 02.04.05, "Rules Governing Manufacture Grade Milk," and has in place and operates a dairy waste system consistent with the Idaho Waste Management Guidelines for Confined Feeding Operations, NMP, NMS, and Appendix 10D. ~~(4-5-00)~~(5-1-09)T

~~021. -- 029.~~ (RESERVED).

030. WASTE SYSTEM APPROVAL.

The Department is authorized to approve the design, construction, operation, and location of dairy waste systems. These systems must conform to the Idaho Waste Management Guidelines for Confined Feeding Operations, NMP, NMS, and Appendix 10D. ~~(4-5-00)~~(5-1-09)T

01. Waste Containment and Storage.

(5-1-09)T

a. Waste containment structures shall be constructed to meet a minimum of one hundred eighty (180) days of holding capacity. Wastewater containment structures that are utilized as the secondary or final storage for effluent shall have a minimum two (2) vertical feet of freeboard. (5-1-09)T

b. Earthen waste containment structures less than ten (10) vertical feet high with a maximum high water line of eight (8) vertical feet shall be required to have a top embankment width of at least eight (8) feet and a minimum of one (1) vertical foot of freeboard shall be maintained. The combined inside and outside embankment slopes must be at least five (5) horizontal to one (1) vertical, and neither slope shall be steeper than two (2) horizontal to one (1) vertical. Earthen waste containment structures with outside embankments higher than ten (10) vertical feet from the naturally occurring ground level shall meet the NRCS Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004 embankment requirements as incorporated by reference in Subsection 004.03 of these rules. (5-1-09)T

c. The inside bottom of the waste containment structure shall be a minimum of two (2) feet above the high water table, bed rock, gravel, or permeable soils. For an earthen waste containment structure, a soil liner shall be installed such that the specific discharge rate of the containment structure meet $1 \times 10^{-5} \text{ cm}^2/\text{cm}^2/\text{sec}$ or less as

described in Appendix 10D. Concrete or synthetic liners must be constructed to the American Society of Agricultural and Biological Engineers Specification ASAE EP393.3 Manure Storages February 2004 and Appendix 10D as incorporated by reference in Section 004 of these rules. (5-1-09)T

d. Storage areas for Livestock Waste including compost and solid manure storage areas shall be located on approved soils and appropriately protected to prevent run on and run off. (5-1-09)T

e. Waste storage systems shall be maintained in a condition that allows the Producer to regularly inspect the integrity of the systems. (5-1-09)T

02. Nutrient Management. All Dairy Farms shall implement an approved Nutrient Management Plan (NMP) that accurately reflects the operation of the facility. The NMP shall include an accurate description of the one hundred eighty (180) days of holding capacity of the waste containment system. It shall be the Dairy Farm's responsibility to update the NMP. (5-1-09)T

a. Producer annual soil tests shall be conducted as set forth in the NMS. (5-1-09)T

b. Regulatory soil tests will be conducted at frequencies sufficient to provide assurance of compliance with the NMS. (5-1-09)T

i. If the regulatory or Producer soil tests reveal that phosphorus thresholds have exceeded the levels established in the NMS, the Producer shall only apply nutrients at the appropriate phosphorus crop uptake rate. (5-1-09)T

ii. Subsequent regulatory soil test(s) on fields that were identified as exceeding the phosphorus threshold will be conducted. If two (2) out of three (3) tests reveal the phosphorus index continues to trend upward, the Producer will be penalized as provided in these rules. These tests shall be taken in the top one (1) foot of soil. (5-1-09)T

c. Accurate NMP records shall be maintained. These records shall include at a minimum: (5-1-09)T

i. Regulatory soil samples shall be taken by a Certified Soil Sampler and tested by a laboratory that meets the requirements and performance standards of the North American Proficiency Testing Program under the auspices of the Soil Science Society of America outlined in the NMS, as incorporated by reference in Subsection 004.02, as part of NMS 590 or other methods as approved by the Department; (5-1-09)T

ii. Annual soil analysis; (5-1-09)T

iii. Date and amount of Livestock Waste and commercial fertilizer applied to individual dairy owned or operated fields; (5-1-09)T

iv. Date(s) of exported Livestock Waste, number of acres applied, amount of Livestock Waste exported and to whom Livestock Waste was exported; and (5-1-09)T

v. Actual crop yields on dairy owned or operated fields. (5-1-09)T

031. -- 039. (RESERVED).

~~01240.~~ INSPECTIONS.

~~Each Dairy Farm shall be inspected by an Inspector or Fieldman at least annually or at intervals sufficient to determine that dairy Livestock Waste has been managed to prevent an unauthorized discharge or contamination of surface and ground water. An official inspection report form as described in Section ~~01341~~ will be completed at the time of inspection.~~ (4-5-00)(5-1-09)T

~~01341.~~ INSPECTION REPORT FORMS.

~~An inspection report form shall be established by the Department based on parameters established in the Idaho Waste Management Guidelines for Confined Feeding Operations, NMP, NMS, and Appendix 10D. Each inspection item on~~

the form shall indicate compliance and ~~Non-Compliance~~.

~~(4-5-00)~~(5-1-09)T

042. -- 049. (RESERVED).

0450. COMPLIANCE SCHEDULES.

01. Non-Compliance or Discharge Violations Identified. When the Director identifies items of ~~Non-Compliance~~ or ~~Discharge Violations~~, the deficiencies will be noted and discussed with the ~~Producer~~. Appropriate corrective actions will be identified and scheduled informally. The Director may develop a formal compliance schedule in the following cases: ~~(4-5-00)~~(5-1-09)T

- a. When corrective actions cannot be completed within thirty (30) days; (4-5-00)
- b. When corrective actions require significant capital investment; (4-5-00)
- c. When informal schedules have not been complied with. (4-5-00)

02. Re-Inspection. Re-inspection of the dairy farm will be conducted as appropriate, to ensure compliance. A discharge violation shall be corrected immediately, when at all possible. (4-5-00)

051. -- 059. (RESERVED).

04560. PENALTIES.

01. Suspend Producer's Permit. The Director may suspend the ~~Producer's Permit~~ or ~~Farm Certification~~ authorizing the ~~Producer~~ to sell milk until such time that the ~~Dairy Farm~~ is in compliance. Repeat non-compliance violations on significant items, ~~Discharge Violations~~, or violation of formal compliance schedule also may cause a ~~Dairy Farm~~ to lose authorization to sell milk. ~~(3-20-97)~~(5-1-09)T

02. Suspend Planners or Soil Samplers Certification. The Director may suspend certification of Certified Planners or Certified Soil Samplers in the event such Certified Planners or Soil Samplers fail to develop NMPs or collect soil samples as required by these rules. (5-1-09)T

0461. REINSTATEMENT.

Whenever a ~~Producer~~ has lost authorization to sell milk for human consumption under the provisions of Section 04560, the ~~Producer~~ may ~~apply~~ request for reinspection. Subsequent to the request, A Departmental reinspection, may be conducted, by an inspector or fieldman, will be made; ~~if~~ corrections have been made, the producer will be reinstated. ~~(3-20-97)~~(5-1-09)T

017. DURATION.

These rules will no longer be in effect if or when the Memorandum of Understanding defined in Subsection 004.13 is ~~revoked or expires.~~ (4-5-00)

04862. -- 999. (RESERVED).

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.19 - RULES GOVERNING DOMESTIC CERVIDAE

DOCKET NO. 02-0419-0901

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking is authorized pursuant to Section 25-3704, Idaho Code.

MEETING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

TUESDAY, MAY 26, 2009, 7:00 p.m. MDT

IDAHO DEPARTMENT OF AGRICULTURE

**Conference Room
2270 Old Penitentiary Road
Boise, ID 83712**

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

METHOD OF PARTICIPATION: Persons wishing to participate in the informal negotiated rulemaking can do so by the following:

Attendance at the initial negotiated rulemaking meeting, or notification to the Idaho State Department of Agriculture, Division of Animal Industries, in writing, of the desire to participate in the negotiated rulemaking. Written notification should include all contact information and an electronic mail or mailing address. Those providing written notification will be contacted regarding any additional scheduled negotiated rulemaking meetings.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the intended negotiated rulemaking, and the principle issues involved:

The purpose of the negotiated rulemaking is to address a Petition for Negotiated Rulemaking which requested that ISDA consider amending IDAPA 02.04.19.102, pertaining to perimeter fencing requirements for domestic cervidae facilities. The purpose will also be to propose changes in ambiguous, unclear, or redundant provisions in IDAPA 02.04.19.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this negotiated rulemaking or to obtain a preliminary draft of the text of the proposed rule (when it becomes available), contact Dr. Bill Barton, Dr. David Hayes, or Dr. Debra Lawrence at (208) 332-8540.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before May 27, 2009.

DATED this 3rd day of April, 2009.

Brian Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790, Boise, ID 83701-0709
Telephone: (208) 332-8500
Facsimile: (208) 334-4062

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.02.03 - RULES GOVERNING EMERGENCY MEDICAL SERVICES

DOCKET NO. 16-0203-0901

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Section 56-1017, Idaho Code, and Senate Bill No. 1108, as amended (Session Law Chapter 189, effective July 1, 2009).

MEETING SCHEDULE: Public meetings on the negotiated rulemaking will be held as follows:

**THURSDAY, MAY 21, 2009;
THURSDAY, JUNE 4, 2009;
9:00 a.m. - 5:00 p.m.**

**CAMBRIA SUITES - SAWTOOTH ROOM
2970 W. Elder, Boise, ID**

There will be ongoing monthly meetings held throughout 2009 and 2010 that are yet to be determined. Future meeting locations will be posted at www.idahoems.org.

METHOD OF PARTICIPATION: Persons wishing to participate in the negotiated rulemaking must do the following:

The Idaho Emergency Medical Services (EMS) Bureau will convene a task force consisting of stakeholders from throughout the Idaho EMS System to participate in the negotiated rulemaking process specific to the licensure of EMS agencies and personnel. Persons wishing to participate in the negotiated rulemaking process can do so by any one or all of the following:

1. Attending negotiated rule meetings;
2. Providing comments at negotiated rule meetings;
3. Submitting written comments; or
4. Providing comments to task force members.

DESCRIPTIVE SUMMARY: The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principle issues involved:

Senate Bill 1108, as amended, makes changes and additions to Title 56, Chapter 10, Idaho Code that compels the Idaho Emergency Medical Services Bureau to update the associated Administrative Rules, IDAPA 16.02.03, "Rules Governing Emergency Medical Services." The rulemaking process will address a broad range of issues concerning the regulation of the individuals and organizations who provide emergency medical services in Idaho.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING COPIES: For assistance on technical questions concerning this negotiated rulemaking or to obtain a copy of the preliminary draft of the text of the proposed rule (if available), contact Diana Hone at (208) 334-4000, and by e-mail at HoneD@dhw.idaho.gov. Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered within two (2) weeks of the negotiated rule meeting to which they pertain.

DATED this 17th day of April, 2009.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720

Boise, ID 83720-0036
(208) 334-5564 phone
(208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

IDAPA 18 - DEPARTMENT OF INSURANCE

18.01.30 - INDIVIDUAL DISABILITY AND GROUP SUPPLEMENTAL DISABILITY INSURANCE MINIMUM STANDARDS RULE

DOCKET NO. 18-0130-0901

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. The action is negotiated rulemaking and is authorized pursuant to Sections 41-211 and 41-4203, Idaho Code.

METHOD OF PARTICIPATION: Persons wishing to participate in the informal negotiated rulemaking must do the following:

1. Notify the Department of Insurance of their interest in participating in the negotiation process by providing a written notice of intent to participate to the Department of Insurance. The notice must be given in writing addressed to the attention of Shad Priest at the address set forth below, or by e-mail to shad.priest@doi.idaho.gov. The notice of intent to participate must include full contact information (name, phone number, mailing address and e-mail address, if available) for the interested party.
2. Persons who provide a notice of intent to participate will be informed of the date for any negotiated rulemaking meetings and may participate in the meetings by providing oral or written comments and recommendations. They will also be informed of any drafts of the proposed rulemaking.
3. Interested persons may also participate in the negotiated rulemaking process by providing written recommendations and comments to the contact identified below.

DESCRIPTIVE SUMMARY: The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principle issues involved:

The purpose of the negotiated rulemaking is to revise, clarify and update IDAPA 18.01.30 (Rule 30). This rule sets forth minimum standards for individual health plans and for limited benefit plans. It is promulgated pursuant to Chapter 42 of Title 41, Idaho Code, which has as its purpose the reasonable standardization and simplification of terms and coverages of certain types of health plans. This rulemaking will affect persons offering individual health benefit plans, limited benefit plans and group supplemental plans in Idaho and persons insured under these types of plans.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSIONS OF WRITTEN COMMENTS, OBTAINING COPIES: For assistance on technical questions concerning this negotiated rule contact Shad Priest at 208-334-4214 or by e-mail to shad.priest@doi.idaho.gov.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 30, 2009.

Dated this 1st day of April, 2009.

Shad Priest
Deputy Director
Idaho Department of Insurance
700 W. State St. 3rd Floor
Boise ID 83720-0043
Phone: (208) 334-4214

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 - WATER QUALITY STANDARDS

DOCKET NO. 58-0102-0801

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., 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 May 22, 2009. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to protect human health from adverse effects of elevated arsenic (As) and protect sensitive aquatic life from cadmium (Cd) toxicity in low hardness waters. The Department of Environmental Quality (DEQ) proposes to lower Idaho's arsenic (As) human health criteria from 50 ug/L to 10 ug/L and lower the low-end hardness cap used in calculation of cadmium (Cd) aquatic life criteria from 25 mg/L to 10mg/L (Section 210). In addition, DEQ proposes to make nonsubstantive revisions to portions of Section 210 identified as needing correction or clarification.

DEQ is also initiating this rulemaking in an effort to forestall pending legal action against the U.S. Environmental Protection Agency (EPA) that would force EPA to disapprove Idaho's As standard and require EPA to promulgate a federal rule to lower the As human health criteria applicable to Idaho waters. EPA is also prepared to disapprove Idaho's Cd standard to remove the low end hardness cap for calculating criteria. DEQ proposes to reduce the low end hardness cap for Cd from 25 mg/L to 10 mg/L. Idaho's current As human health criteria are also several times higher than EPA's recommendation for protecting human health.

Anyone with an interest in the quality of surface water in Idaho may be interested in commenting on this proposed rule. For arsenic (As), those affected include Idahoans that eat fish caught from Idaho surface waters and dischargers of As to surface water. For cadmium (Cd), those affected include those who enjoy or profit from healthy communities of aquatic life in, and dischargers of Cd to, Idaho's surface waters with hardness below 25 mg/L. 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 of Environmental Quality at the July 2009 Board meeting for adoption as a pending rule. The rule is expected to be final and effective upon the adjournment of the 2010 legislative session if adopted by the Board and approved by the Legislature.

NEGOTIATED RULEMAKING: The text of the rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code Section 67-5220 and IDAPA 04.11.01.812-815. On December 3, 2008, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 08-12, pages 106 and 107, and a preliminary draft rule was made available for public review. One meeting was held on December 17, 2008. Members of the public participated in this negotiated rulemaking process by attending the meeting and submitting written comments.

IDAHO CODE SECTION 39-107D STATEMENT: The standards included in this proposed rule are not broader in scope, nor more stringent, than federal regulations and do regulate an activity regulated by the federal government. Furthermore, the proposed standards are less stringent than those recommended by EPA. If this proposed rule is not successfully adopted by the Board of Environmental Quality and approved by the Idaho Legislature, EPA may be compelled to take action by promulgating water quality standards for Idaho that would be more stringent than the standards included in this proposed rule.

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: not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Don Essig at don.essig@deq.idaho.gov, (208)373-0119.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before June 5, 2009.

DATED this 3rd day of April, 2009.

Paula J. Wilson
 Hearing Coordinator
 Department of Environmental Quality
 1410 N. Hilton
 Boise, Idaho 83706-1255
 (208)373-0418/Fax No. (208)373-0481
 paula.wilson@deq.idaho.gov

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0102-0801

210. NUMERIC CRITERIA FOR TOXIC SUBSTANCES FOR WATERS DESIGNATED FOR AQUATIC LIFE, RECREATION, OR DOMESTIC WATER SUPPLY USE.

- 01. Criteria for Toxic Substances.** The criteria of Section 210 apply to surface waters of the state as follows. (5-3-03)
- a.** Columns B1, B2, and C2 of the following table apply to waters designated for aquatic life use. (5-3-03)
 - b.** Column C2 of the following table applies to waters designated for recreation use. (5-3-03)
 - c.** Column C1 of the following table applies to waters designated for domestic water supply use.

A		B Aquatic life		Human health for consumption of:			
(Number) Compound	^a CAS Number	^b CMC (µg/L)	^b CCC (µg/L)	Water & organisms (µg/L)	Organisms only (µg/L)		
		B1	B2	C1	C2		
1	Antimony	7440360		5.6	c	640	c
2	Arsenic	7440382	340 e	150 e	5 10 d	5 10 d	d
3	Beryllium	7440417			h		h
4	Cadmium	7440439	1.3 i	0.6 i	h		h
5a	Chromium III	16065831	570 i	74 i	h		h

A		B Aquatic life		Human health for consumption of:	
(Number) Compound	^a CAS Number	^b CMC (µg/L)	^b CCC (µg/L)	Water & organisms (µg/L)	Organisms only (µg/L)
		B1	B2	C1	C2
5b Chromium VI	18540299	16 e	11 e	h	h
6 Copper	7440508	17 i	11 i		
7 Lead	7439921	65 i	2.5 i	h	h
8a Mercury	7439976	g	g		
8b Methylmercury	22967926				0.3 mg/kg p
9 Nickel	7440020	470 i	52 i	610 c	4600 c
10 Selenium	7782492	20 f	5 f	170	4200
11 Silver	7440224	3.4 i			
12 Thallium	7440280			0.24 c	0.47 c
13 Zinc	7440666	120 i	120 i	7400	26000
14 Cyanide	57125	22 j	5.2 j	140 c	140 c
15 Asbestos	1332214			7,000,000 fibers/L k	
16 2, 3, 7, 8-TCDD Dioxin	1746016			0.000000005 l	0.0000000051 l
17 Acrolein	107028			190	290
18 Acrylonitrile	107131			0.051 cl	0.25 cl
19 Benzene	71432			2.2 cl	51 cl
20 Bromoform	75252			4.3 cl	140 cl
21 Carbon Tetrachloride	56235			0.23 cl	1.6 cl
22 Chlorobenzene	108907			130 c	1600 c
23 Chlorodibromomethane	124481			0.40 cl	13 cl
24 Chloroethane	75003				
25 2-Chloroethylvinyl Ether	110758				
26 Chloroform	67663			5.7 l	470 l
27 Dichlorobromomethane	75274			0.55 cl	17 cl
28 1,1-Dichloroethane	75343				
29 1,2-Dichloroethane	107062			0.38 cl	37 cl
30 1,1-Dichloroethylene	75354			330 l	7100 l
31 1,2-Dichloropropane	78875			0.50 cl	15 cl
32 1,3-Dichloropropene	542756			0.34	21
33 Ethylbenzene	100414			530 c	2100 c

A		B Aquatic life		Human health for consumption of:	
(Number) Compound	^a CAS Number	^b CMC (µg/L)	^b CCC (µg/L)	Water & organisms (µg/L)	Organisms only (µg/L)
		B1	B2	C1	C2
34 Methyl Bromide	74839			47 c	1500 c
35 Methyl Chloride	74873			h	h
36 Methylene Chloride	75092			4.6 cl	590 cl
37 1,1,2,2-Tetrachloroethane	79345			0.17 cl	4.0 cl
38 Tetrachloroethylene	127184			0.69 l	3.3 l
39 Toluene	108883			1300 c	15000 c
40 1,2-Trans-Dichloroethylene	156605			140 c	10000 c
41 1,1,1-Trichloroethane	71556			h	h
42 1,1,2-Trichloroethane	79005			0.59 cl	16 cl
43 Trichloroethylene	79016			2.5 l	30 l
44 Vinyl Chloride	75014			0.025 l	2.4 l
45 2-Chlorophenol	95578			81 c	150 c
46 2,4-Dichlorophenol	120832			77 c	290 c
47 2,4-Dimethylphenol	105679			380 c	850 c
48 2-Methyl-4,6-Dinitrophenol	534521			13	280
49 2,4-Dinitrophenol	51285			69 c	5300 c
50 2-Nitrophenol	88755				
51 4-Nitrophenol	100027				
52 3-Methyl-4-Chlorophenol	59507				
53 Pentachlorophenol	87865	20 m	13 m	0.27 cl	3.0 cl
54 Phenol	108952			21000 c	1700000 c
55 2,4,6-Trichlorophenol	88062			1.4 cl	2.4 cl
56 Acenaphthene	83329			670 c	990 c
57 Acenaphthylene	208968				
58 Anthracene	120127			8300 c	40000 c
59 Benzidine	92875			0.000086 cl	0.00020 cl
60 Benzo(a)Anthracene	56553			0.0038 cl	0.018 cl
61 Benzo(a)Pyrene	50328			0.0038 cl	0.018 cl
62 Benzo(b)Fluoranthene	205992			0.0038 cl	0.018 cl

A		B Aquatic life		Human health for consumption of:	
(Number) Compound	^a CAS Number	^b CMC (µg/L)	^b CCC (µg/L)	Water & organisms (µg/L)	
		B1	B2	C1	C2
63	Benzo(ghi)Perylene	191242			
64	Benzo(k)Fluoranthene	207089		0.0038	cl 0.018
65	Bis(2-Chloroethoxy) Methane	111911			
66	Bis(2-Chloroethyl)Ether	111444		0.030	cl 0.53
67	Bis(2-Chloroisopropyl) Ether	108601		1400	c 65000
68	Bis(2-Ethylhexyl) Phthalate	117817		1.2	cl 2.2
69	4-Bromophenyl Phenyl Ether	101553			
70	Butylbenzyl Phthalate	85687		1500	c 1900
71	2-Chloronaphthalene	91587		1000	c 1600
72	4-Chlorophenyl Phenyl Ether	7005723			
73	Chrysene	218019		0.0038	cl 0.018
74	Dibenzo (a,h) Anthracene	53703		0.0038	cl 0.018
75	1,2-Dichlorobenzene	95501		420	c 1300
76	1,3-Dichlorobenzene	541731		320	960
77	1,4-Dichlorobenzene	106467		63	190
78	3,3'-Dichlorobenzidine	91941		0.021	cl 0.028
79	Diethyl Phthalate	84662		17000	c 44000
80	Dimethyl Phthalate	131113		270000	1100000
81	Di-n-Butyl Phthalate	84742		2000	c 4500
82	2,4-Dinitrotoluene	121142		0.11	l 3.4
83	2,6-Dinitrotoluene	606202			
84	Di-n-Octyl Phthalate	117840			
85	1,2-Diphenylhydrazine	122667		0.036	cl 0.20
86	Fluoranthene	206440		130	c 140
87	Fluorene	86737		1100	c 5300
88	Hexachlorobenzene	118741		0.00028	cl 0.00029
89	Hexachlorobutadiene	87683		0.44	cl 18

A		B Aquatic life		Human health for consumption of:	
(Number) Compound	^a CAS Number	^b CMC (µg/L)	^b CCC (µg/L)	Water & organisms (µg/L)	
		B1	B2	C1	C2
90	Hexachloro-cyclopentadiene	77474		40	1100
91	Hexachloroethane	67721		1.4	cl
92	Ideno (1,2,3-cd) Pyrene	193395		0.0038	cl
93	Isophorone	78591		35	cl
94	Naphthalene	91203			
95	Nitrobenzene	98953		17	c
96	N-Nitrosodimethylamine	62759		0.00069	cl
97	N-Nitrosodi-n-Propylamine	621647		0.0050	cl
98	N-Nitrosodiphenylamine	86306		3.3	cl
99	Phenanthrene	85018			
100	Pyrene	129000		830	c
101	1,2,4-Trichlorobenzene	120821		35	
102	Aldrin	309002	3	0.000049	cl
103	alpha-BHC	319846		0.0026	cl
104	beta-BHC	319857		0.0091	cl
105	gamma-BHC (Lindane)	58899	2	0.08	l
106	delta-BHC	319868			
107	Chlordane	57749	2.4	0.0043	cl
108	4,4'-DDT	50293	1.1	0.001	cl
109	4,4'-DDE	72559		0.00022	cl
110	4,4'-DDD	72548		0.00031	cl
111	Dieldrin	60571	2.5	0.0019	cl
112	alpha-Endosulfan	959988	0.22	0.056	c
113	beta-Endosulfan	33213659	0.22	0.056	c
114	Endosulfan Sulfate	1031078		62	c
115	Endrin	72208	0.18	0.0023	c
116	Endrin Aldehyde	7421934		0.29	c
117	Heptachlor	76448	0.52	0.0038	cl
118	Heptachlor Epoxide	1024573	0.52	0.0038	cl

A		B Aquatic life		Human health for consumption of:	
(Number) Compound	^a CAS Number	^b CMC (µg/L)	^b CCC (µg/L)	Water & organisms (µg/L)	
		B1	B2	C1	C2
119	Polychlorinated Biphenyls PCBs:	n	0.014 n	0.000064 clo	0.000064 clo
120	Toxaphene	8001352	0.73	0.00028 cl	0.00028 cl
121	Chlorine	19 k	11 k		
Table Footnotes					
a. Chemical Abstracts Service (CAS) registry numbers which provide a unique identification for each chemical.					
b. See definitions of Acute Criteria (CMC) and Chronic Criteria (CCC), Section 010 of these rules.					
c. This criterion has been revised to reflect The Environmental Protection Agency's q1* or RfD, as contained in the Integrated Risk Information System (IRIS) as of May 17, 2002. The fish tissue bioconcentration factor (BCF) from the 1980 Ambient Water Quality Criteria document was retained in each case.					
d. Inorganic form only.					
e. Criteria for these metals are expressed as a function of the water effect ratio, WER, as defined in Subsection 210.03.c.iii. CMC = column B1 value X WER. CCC = column B2 value X WER.					
f. Criterion expressed as total recoverable (unfiltered) concentrations.					
g. No aquatic life criterion is adopted for inorganic mercury. However, the narrative criteria for toxics in Section 200 of these rules applies. The Department believes application of the human health criterion for methylmercury will be protective of aquatic life in most situations.					
h. No numeric human health criteria has been established for this contaminant. However, permit authorities should address this contaminant in NPDES permit actions using the narrative criteria for toxics from Section 200 of these rules.					
i. Aquatic life criteria for these metals are expressed as expressed as a function of total hardness (mg/L as calcium carbonate), the pollutant's water effect ratio (WER) as defined in Subsection 210.03.c.iii. and multiplied by an appropriate dissolved conversion factor as defined in Subsection 210.02. For comparative purposes only, the <u>example</u> values displayed in this table are shown as dissolved metal and correspond to a total hardness of one hundred (100) mg/L and a water effect ratio of one (1.0).					
j. Criteria are expressed as weak acid dissociable (WAD) cyanide.					
k. Total chlorine residual concentrations.					
l. EPA guidance allows states to choose a risk factor of 10 ⁻⁴ to 10 ⁻⁶ . Idaho has chosen to base this criterion on carcinogenicity of 10 ⁻⁶ risk.					
m. Aquatic life criteria for pentachlorophenol are expressed as a function of pH, and are calculated as follows. Values displayed above in the table correspond to a pH of seven and eight tenths (7.8). CMC = exp(1.005(pH)-4.830) CCC = exp(1.005(pH)-5.290)					

A		B Aquatic life		Human health for consumption of:	
(Number) Compound	^a CAS Number	^b CMC (µg/L)	^b CCC (µg/L)	Water & organisms (µg/L)	Organisms only (µg/L)
		B1	B2	C1	C2
<p>n. PCBs are a class of chemicals which include Aroclors, 1242, 1254, 1221, 1232, 1248, 1260, and 1016, CAS numbers 53469219, 11097691, 11104282, 11141165, 12672296, 11096825 and 12674112 respectively. The aquatic life criteria apply to this set of PCBs.</p>					
<p>o. This criterion applies to total PCBs, (e.g. the sum of all congener, isomer, or Aroclor analyses).</p>					
<p>p. This fish tissue residue criterion (TRC) for methylmercury is based on a human health reference dose (RfD) of 0.0001 mg/kg body weight-day; a relative source contribution (RSC) estimated to be 27% of the RfD; a human body weight (BW) of 70 kg (for adults); and a total fish consumption rate of 0.0175 kg/day for the general population, summed from trophic level (TL) breakdown of TL2 = 0.0038 kg fish/day + TL3 = 0.0080 kg fish/day + TL4 = 0.0057 kg fish/day. This is a criterion that is protective of the general population. A site-specific criterion or a criterion for a particular subpopulation may be calculated by using local or regional data, rather than the above default values, in the formula: $TRC = [BW \times \{RfD - (RSC \times RfD)\}] / \sum TL$. In waters inhabited by species listed as threatened or endangered under the Endangered Species Act or designated as their critical habitat, the Department will apply the human health fish tissue residue criterion for methylmercury to the highest trophic level available for sampling and analysis.</p>					

(4-11-06)()

02. Factors for Calculating Hardness Dependent Metals Criteria. Hardness dependent metals criteria are calculated using values from the following table in the equations: (5-3-03)

a. $CMC = WER \exp\{mA[\ln(\text{hardness})] + bA\}$ X Acute Conversion Factor. (5-3-03)

b. $CCC = WER \exp\{mc[\ln(\text{hardness})] + bc\}$ X Chronic Conversion Factor.

Metal	mA	bA	mc	bc	aAcute Conversion Factor	aChronic Conversion Factor
Arsenic	b	b	b	b	1.0	1.0
Cadmium	0.8367	-3.560	0.6247	-3.344	0.944 see footnote a	0.909
Chromium (III)	0.819	3.7256	0.8190	0.6848	0.316	0.860
Chromium (VI)	b	b	b	b	0.982	0.962
Copper	0.9422	-1.464	0.8545	-1.465	0.960	0.960
Lead	1.273	-1.460	1.273	-4.705	0.791	0.791
Mercury	b	b	b	b	0.85	0.85
Nickel	0.846	2.255	0.8460	0.0584	0.998	0.997
Silver	1.72	-6.52	c	c	0.85	c
Zinc	0.8473	0.884	0.8473	0.884	0.978	0.986

Note to table: The term "exp" represents the base e exponential function.

Footnotes to table:

a. Conversion factors (CF) are from "Stephan, C. E. 1995. Derivation of conversion factors for the calculation of dissolved freshwater aquatic life criteria for metals. U.S. Environmental Protection Agency, Environmental Research Laboratory – Duluth." The conversion factors for cadmium and lead are hardness-dependent and can be calculated for any hardness (see limitations in Subsection 210.03.b.i.) using the following equations. For comparative purposes, the conversion factors for a total hardness of one hundred (100) mg/L are shown in the table. The conversion factor shall not exceed one (1).

Cadmium

Acute: $CF = 1.136672 - [(\ln \text{hardness})(0.041838)]$ NOTE: The cadmium acute criterion equation was derived from dissolved metals toxicity data and thus requires no conversion; this conversion factor may be used to back calculate an equivalent total recoverable concentration.

Chronic: $CF = 1.101672 - [(\ln \text{hardness})(0.041838)]$

Lead (Acute and Chronic): $CF = 1.46203 - [(\ln \text{hardness})(0.145712)]$

b. Not applicable

c. No chronic criteria are available for silver.

(4-11-06)()

03. Applicability. The criteria established in Section 210 are subject to the general rules of applicability in the same way and to the same extent as are the other numeric chemical criteria when applied to the same use classifications including mixing zones, and low flow design discharge conditions below which numeric standards can be exceeded in flowing waters. (5-3-03)

a. For all waters for which the Department has determined mixing zones to be applicable, the criteria apply at the appropriate locations specified within or at the boundary of the mixing zone(s); otherwise the criteria apply through the waterbody including at the end of any discharge pipe, canal or other discharge point. (4-11-06)

b. Low flow design discharge conditions. Numeric chemical standards can only be exceeded in perennial streams permitted discharges outside any applicable mixing zone when flows are less than the following values:

Aquatic Life		Human Health	
CMC ("acute" criteria)	1Q10 or 1B3	Non-carcinogens	30Q5
CCC ("chronic" criteria)	7Q10 or 4B3	Carcinogens	Harmonic mean flow

(4-11-06)

i. Where "1Q10" is the lowest one-day flow with an average recurrence frequency of once in ten (10) years determined hydrologically; (5-3-03)

ii. Where "1B3" is biologically based and indicates an allowable exceedence of once every three (3) years. It may be determined by EPA's computerized method (DFLOW model); (5-3-03)

iii. Where "7Q10" is the lowest average seven (7) consecutive day low flow with an average recurrence frequency of once in ten (10) years determined hydrologically; (5-3-03)

iv. Where "4B3" is biologically based and indicates an allowable exceedence for four (4) consecutive days once every three (3) years. It may be determined by EPA's computerized method (DFLOW model); (5-3-03)

v. Where "30Q5" is the lowest average thirty (30) consecutive day low flow with an average recurrence frequency of once in five (5) years determined hydrologically; and (5-3-03)

vi. Where the harmonic mean flow is a long term mean flow value calculated by dividing the number of daily flows analyzed by the sum of the reciprocals of those daily flows. (5-3-03)

c. Application of metals criteria. (5-3-03)

i. For metals other than cadmium, for purposes of calculating hardness dependent aquatic life criteria ~~for metals~~ from the equations in Subsection 210.02, the minimum hardness allowed for use in those equations shall not be less than twenty-five (25) mg/l, as calcium carbonate, even if the actual ambient hardness is less than twenty-five (25) mg/l as calcium carbonate. For cadmium, the minimum hardness for use in those equations shall not be less than ten (10) mg/l, as calcium carbonate. The maximum hardness allowed for use in those equations shall not be greater than four hundred (400) mg/l, as calcium carbonate, except as specified in Subsections 210.03.c.ii. and 210.03.c.iii., even if the actual ambient hardness is greater than four hundred (400) mg/l as calcium carbonate. (4-6-05)(____)

ii. The hardness values used for calculating aquatic life criteria for metals at design discharge conditions shall be representative of the ambient hardnesses for a receiving water that occur at the design discharge conditions given in Subsection 210.03.b. (5-3-03)

iii. Except as otherwise noted, the aquatic life criteria for metals (compounds #1 through #13 in the criteria table of Subsection 210.02) are expressed as dissolved metal concentrations. Unless otherwise specified by the Department, dissolved concentrations are considered to be concentrations recovered from a sample which has passed through a forty-five hundredths (0.45) micron filter. For the purposes of calculating aquatic life criteria for metals from the equations in footnotes e. and i. in the criteria table in Subsection 210.01, the water effect ratio is computed as a specific pollutant's acute or chronic toxicity values measured in water from the site covered by the standard, divided by the respective acute or chronic toxicity value in laboratory dilution water. The water-effect ratio shall be assigned a value of one (1.0), except where the Department assigns a different value that protects the designated uses of the water body from the toxic effects of the pollutant, and is derived from suitable tests on sampled water representative of conditions in the affected water body, consistent with the design discharge conditions established in Subsection 210.03.b. For purposes of calculating water effects ratios, the term acute toxicity value is the toxicity test results, such as the concentration lethal one-half (1/2) of the test organisms (i.e., LC50) after ninety-six (96) hours of exposure (e.g., fish toxicity tests) or the effect concentration to one-half of the test organisms, (i.e., EC50) after forty-eight (48) hours of exposure (e.g., daphnia toxicity tests). For purposes of calculating water effects ratios, the term chronic value is the result from appropriate hypothesis testing or regression analysis of measurements of growth, reproduction, or survival from life cycle, partial life cycle, or early life stage tests. The determination of acute and chronic values shall be according to current standard protocols (e.g., those published by the American Society for Testing and Materials (ASTM)) or other comparable methods. For calculation of criteria using site-specific values for both the hardness and the water effect ratio, the hardness used in the equations in Subsection 210.02 shall be as required in Subsection 210.03.c.ii. Water hardness shall be calculated from the measured calcium and magnesium ions present, and the ratio of calcium to magnesium shall be approximately the same in laboratory toxicity testing water as in the site water, or be similar to average ratios of laboratory waters used to derive the criteria. (4-6-05)

iv. Implementation Guidance for the Idaho Mercury Water Quality Criteria. (4-6-05)

(1) The "Implementation Guidance for the Idaho Mercury Water Quality Criteria" describes in detail suggested methods for discharge related monitoring requirements, calculation of reasonable potential to exceed (RPTE) water quality criteria in determining need for mercury effluent limits, and use of fish tissue mercury data in calculating mercury load reductions. This guidance, or its updates, will provide assistance to the Department and the public when implementing the methylmercury criterion. The "Implementation Guidance for the Idaho Mercury Water Quality Criteria" also provides basic background information on mercury in the environment, the novelty of a fish tissue criterion for water quality, the connection between human health and aquatic life protection, and the relation of environmental programs outside of Clean Water Act programs to reducing mercury contamination of the environment. The "Implementation Guidance for the Idaho Mercury Water Quality Criteria" is available at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706, and www.deq.idaho.gov. (4-6-05)

(2) The implementation of a fish tissue criterion in NPDES permits and TMDLs requires a non-traditional approach, as the basic criterion is not a concentration in water. In applying the methylmercury fish tissue

criterion in the context of NPDES effluent limits and TMDL load reductions, the Department will assume change in fish tissue concentrations of methylmercury are proportional to change in water body loading of total mercury. Reasonable potential to exceed (RPTE) the fish tissue criterion for existing NPDES sources will be based on measured fish tissue concentrations potentially affected by the discharge exceeding a specified threshold value, based on uncertainty due to measurement variability. This threshold value is also used for TMDL decisions. Because measured fish tissue concentrations do not reflect the effect of proposed new or increased discharge of mercury, RPTE in these cases will be based upon an estimated fish tissue methylmercury concentration, using projected changes in waterbody loading of total mercury and a proportional response in fish tissue mercury. For the above purposes, mercury will be measured in the skinless filets of sport fish using techniques capable of detecting tissue concentrations down to point zero five (0.05) mg/kg. Total mercury analysis may be used, but will be assumed to be all methylmercury for purposes of implementing the criterion. (4-6-05)

v. Frequency and duration for toxics criteria. Column B1 criteria are concentrations not to be exceeded for a one-hour average more than once in three (3) years. Column B2 criteria are concentrations not to be exceeded for a four-day average more than once in three (3) years. (4-11-06)

04. National Pollutant Discharge Elimination System Permitting. For the purposes of NPDES permitting, interpretation and implementation of metals criteria listed in Subsection 210.02 should be governed by the following standards, that are hereby incorporated by reference, in addition to other scientifically defensible methods deemed appropriate by the Department; provided, however, any identified conversion factors within these documents are not incorporated by reference. Metals criteria conversion factors are identified in Subsection 210.02 of this rule. (5-3-03)

- a. "Guidance Document on Dissolved Criteria -- Expression of Aquatic Life Criteria," EPA, October 1993. (4-5-00)
- b. "Guidance Document on Dynamic Modeling and Translators," EPA, August 1993. (4-5-00)
- c. "Guidance Document on Clean Analytical Techniques and Monitoring," EPA, October 1993. (4-5-00)
- d. "Interim Guidance on Determination and Use of Water-Effect Ratios for Metals," EPA, February 1994. (4-5-00)

05. Development of Toxic Substance Criteria. (4-5-00)

a. Aquatic Life Communities Criteria. Numeric criteria for the protection of aquatic life uses not identified in these rules for toxic substances, may be derived by the Department from the following information: (4-5-00)

- i. Site-specific criteria developed pursuant to Section 275; (4-5-00)
- ii. Effluent biomonitoring, toxicity testing and whole-effluent toxicity determinations; (4-5-00)
- iii. The most recent recommended criteria defined in EPA's Aquatic Toxicity Information Retrieval (ACQUIRE) database. When using EPA recommended criteria to derive water quality criteria to protect aquatic life uses, the lowest observed effect concentrations (LOECs) shall be considered; or (4-5-00)

iv. Scientific studies including, but not limited to, instream benthic assessment or rapid bioassessment. (4-5-00)

b. Human Health Criteria. (4-5-00)

i. When numeric criteria for the protection of human health are not identified in these rules for toxic substances, quantifiable criteria may be derived by the Department from the most recent recommended criteria defined in EPA's Integrated Risk Information System (IRIS). When using EPA recommended criteria to derive water quality criteria to protect human health, a fish consumption rate of seventeen point five (17.5) grams/day, a water ingestion rate of two (2) liters/day and a cancer risk level of 10⁻⁶ shall be utilized. (4-11-06)

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02.04.14 - Rules of the Department of Agriculture Governing Dairy Waste

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58.01.02 - Water Quality Standards

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LEGAL NOTICE

Summary of Proposed Rulemakings

PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the new issue of the state Administrative Bulletin.

IDAPA 02 - DEPARTMENT OF AGRICULTURE PO Box 790, Boise, ID 83701-0790

02-0414-0901, Rules of the Department of Agriculture Governing Dairy Waste. (Temporary also) Updates the incorporation by reference and definitions sections; adds required sections; clarifies requirements for waste containment and storage; amends penalty section. Comment by 5/27/09.

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY 1410 N. Hilton, Boise, ID 83706-1255

58-0102-0801, Water Quality Standards. Change lowers Idaho's arsenic human health criteria from 50 ug/L to 10 ug/L and lower the low-end hardness cap used in calculation of cadmium aquatic life criteria from 25 mg/L to 10mg/L. Comment by 6/10/09.

NEGOTIATED RULEMAKING MEETINGS ARE BEING HELD ON THE FOLLOWING:

02-0419-0901, Rules Governing Domestic Cervidae (Agriculture)

16-0203-0901, Rules Governing Emergency Medical Services (Health & Welfare)

18-0130-0901, Individual Disability and Group Supplemental Disability Insurance Minimum Standards Rule (Insurance)

Please refer to the Idaho Administrative Bulletin, **May 6, 2009, Volume 09-5** for notices and text of all rulemakings, public hearings and negotiated meeting schedules, Governor's executive orders, and agency contact information.

Issues of the Idaho Administrative Bulletin can be viewed at the county law libraries or online.

To view the Bulletin or Code or for information on purchasing the Bulletin and other rules publications, visit our website at adm.idaho.gov/adminrules/ or call (208) 332-1820 or write the Dept. of Administration, Office of Administrative Rules, 650 W. State St., Room 100, Boise, ID 83720-0306.

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

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**This index tracks the history of all agency rulemakings from 1993 to the present.
It includes all rulemaking activities on each chapter of rules
and includes negotiated, temporary, proposed, pending
and final rules, public hearing notices
and vacated rulemaking notices.**

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