

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 167

BY AGRICULTURAL AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE DEPARTMENT OF AGRICULTURE; AMENDING SECTION 22-101A, IDAHO
2 CODE, TO REVISE PROVISIONS REGARDING RULEMAKING AND TO MAKE TECHNICAL
3 CORRECTIONS.
4

5 Be It Enacted by the Legislature of the State of Idaho:

6 SECTION 1. That Section 22-101A, Idaho Code, be, and the same is hereby
7 amended to read as follows:

8 22-101A. RULES OF THE DIRECTOR. (1) The legislature directs that any
9 rule proposed by the director ~~which that~~ is broader in scope or more strin-
10 gent than federal law or regulations, or proposes to regulate an activity not
11 regulated by the federal government, is subject to the following additional
12 requirements: the notice of proposed rulemaking and rulemaking record re-
13 quirements under chapter 52, title 67, Idaho Code, must clearly specify that
14 the proposed rule, or portions of the proposed rule, are broader in scope or
15 more stringent than federal law or regulations, or regulate an activity not
16 regulated by the federal government, and must delineate which portions of
17 the proposed rule are broader in scope or more stringent than federal law or
18 regulations, or regulate an activity not regulated by the federal govern-
19 ment.

20 (2) (a) In proposing any rule or portions of any rule pursuant to chapter
21 49, title 22, Idaho Code, chapter 38, title 25, Idaho Code, or chapters 4
22 and 6, title 37, Idaho Code, the director shall utilize:

23 ~~(a) The~~ (i) Utilize the best available peer reviewed science and
24 supporting studies conducted in accordance with sound and objec-
25 tive scientific practices, if available; and

26 ~~(b) Data~~ (ii) Utilize data collected by accepted methods, or best
27 available methods, if the reliability of the method and the nature
28 of the decision justify use of the data, provided that special
29 consideration shall be given to site-specific, local, statewide,
30 and regional data, including economic information;

31 (iii) Explain how the rules are consistent with applicable leg-
32 islative findings, policy, and intent; and

33 (iv) Make available for public review and comment, before making
34 a rulemaking decision, all scientific studies, including underly-
35 ing methodology, intended to be relied upon by the director.

36 Where not prohibited by federal or state law, the requirements imposed
37 on agricultural operations shall be economically feasible, based on
38 data, studies, and other information that may be presented to the direc-
39 tor by interested parties to the rulemaking process.

40 (b) For purposes of this subsection, "economically feasible" means
41 that the requirements, when viewed singularly and cumulatively with
42 other requirements, and the costs and burden of implementation of the

1 same, on agricultural operations are reasonably achievable and attain-
2 able within the physical, operational, economic, and other constraints
3 that affect such agricultural operations and their local communities.
4 The highest cost or most modern management practices should not be the
5 sole basis for rulemaking.

6 (3) Any proposed rule subject to this section ~~which that~~ proposes a
7 standard necessary to protect human health and the environment shall also
8 include in the rulemaking record requirements under chapter 52, title 67,
9 Idaho Code, the following additional information:

10 (a) Identification of each population or receptor addressed by an esti-
11 mate of public health effects or environmental effects; ~~and~~

12 (b) Identification of the expected risk or central estimate of risk for
13 the specific population or receptor; ~~and~~

14 (c) Identification of each appropriate upper bound or lower bound esti-
15 mate of risk; ~~and~~

16 (d) Identification of each significant uncertainty identified in the
17 process of the assessment of public health effects or environmental ef-
18 fects and any studies that would assist in resolving the uncertainty;
19 and

20 (e) Identification of studies known to the director that support, are
21 directly relevant to, or fail to support any estimate of public health
22 effects or environmental effects and the methodology used to reconcile
23 inconsistencies in the data.

24 (4) The director shall also include a summary of the information re-
25 quired by subsection (3) of this section in the notice of rulemaking required
26 by chapter 52, title 67, Idaho Code.

27 (5) Any rule promulgated or adopted by the director ~~which that~~ is
28 broader in scope or more stringent than federal law or regulations, or ~~which~~
29 ~~that~~ regulates an activity not regulated by the federal government, sub-
30 mitted to the standing committee of the legislature pursuant to section
31 67-5291, Idaho Code, shall include a notice by the director identifying the
32 portions of the adopted rule that are broader in scope or more stringent than
33 federal law or rules, or ~~which that~~ regulate an activity not regulated by the
34 federal government.

35 (6) Nothing provided herein is intended to alter the scope or effect of
36 any other provision of state law ~~which that~~ limits or prohibits agency action
37 or rulemaking that is broader in scope or more stringent than federal law or
38 regulations.

39 (7) The provisions of this section place conditions on the director's
40 rulemaking authority, which authority is authorized pursuant to provisions
41 other than those set forth in chapter 1, title 22, Idaho Code. Nothing pro-
42 vided in this section is intended to grant the director additional rulemak-
43 ing authority.

44 (8) The requirements of this section shall apply to the director's pro-
45 mulgation of new rules as well as the amendment, extension, or renewal of
46 rules in effect on the effective date of this act.