

IDAHO ADMINISTRATIVE BULLETIN

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March 7, 2000 -- Volume 01-3

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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 compilation of all administrative rulemaking documents in Idaho. The Bulletin publishes the official text notice and full text of such actions.

State agencies are required to provide public notice of rulemaking activity and invite public input. The public receives notice of a 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 Legal Notice. 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 rulemaking activities.

CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

The Bulletin is cited by year and issue number. For example, Bulletin 00-1 refers to the first Bulletin issued in calendar year 2000, Bulletin 01-1 refers to the first Bulletin issued in calendar year 2001, etc. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. 1 refers to January; Volume No. 2 refers to February; and so forth. Example: The Bulletin published in January of 2001 is cited as Volume 01-1, the December 1999 Bulletin is cited as Volume 99-12. The March 2000 Bulletin is cited as Volume 00-3.

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 that have been adopted and 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 not printed in the Administrative Code and are published only in the Bulletin.

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

TYPES OF RULES PUBLISHED IN THE ADMINISTRATIVE BULLETIN

The state of Idaho administrative rulemaking process comprises five distinct activities; Proposed, Negotiated, Temporary, Pending, and Final rulemaking. In the majority of cases, the process begins with proposed rulemaking and ends with final rulemaking. The following is a brief explanation of each type of administrative rule.

NEGOTIATED RULE

Negotiated rulemaking is a process in which all interested parties and the agency seek a consensus on the content of the rule. Agencies are encouraged to proceed through this informal rulemaking whenever it is feasible to do so. Publication of the text in the Administrative Bulletin by the agency is optional. This process should lead the

rulemaking to the temporary and/or proposed rule stage.

PROPOSED RULE

A proposed rulemaking is an action by an agency in which 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. The notice of proposed rulemaking must include:

- a) the specific statutory authority 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; 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 unless published in conjunction with a temporary rule docket. An agency may vacate a proposed rulemaking if it decides not to proceed further with the promulgation process.

TEMPORARY RULE

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

- a) the 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.

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

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

An agency may rescind a temporary rule that has been adopted and is in effect if the rule is being replaced by a new temporary rule or has been published concurrently with a proposed rulemaking that is being vacated.

PENDING RULE

A pending rule is a rule that has been adopted by an agency under the regular rulemaking process 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 Rule. This includes:

- a) 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; and*
- 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 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 Rule is published.

FINAL RULE

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

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 the agency has violated the legislative intent of the statute under which the rule was made, a concurrent resolution will be adopted rejecting, amending, or modifying the rule or any part thereof. A Notice of Final Rule must be published in the Idaho Administrative Bulletin for any rule that is rejected, amended, or modified by the legislature showing the changes made. A rule that has been reviewed by the legislature and has not been rejected, amended, or modified will become 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 which 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 and Twin Falls, the Lewiston City Library, East Bonner County Library, Eastern Idaho Technical College Library, Ricks College Library, and Northwest Nazarene College 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 Administrative Bulletin is an official monthly publication of the State of Idaho. Yearly subscriptions or individual copies are available for purchase.

The Administrative Code, is an annual compilation or supplemental compilation of all final and enforceable temporary administrative rules and includes tables 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, as well as individual chapters and dockets, are available on the Internet at the following address:

<http://www.state.id.us/> - from Idaho Home Page select "Legal" then "Administrative Rules" link.

EDITOR'S NOTE: All rules are subject to frequent change. Users should reference all current issues of the Administrative Bulletin for negotiated, temporary, proposed, pending, and final changes to all rules, or call the Office of the Administrative Rules at (208) 332-1820.

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 38.05.01.060.02.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.

"IDAPA 38." refers to the Idaho Department of Administration.

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

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

"060." refers to Major Section 060, "Content of the Invitation to Bid".

"02." refers to Subsection 060.02.

"c." refers to Paragraph 060.02.c.

"ii." refers to Subparagraph 060.02.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 "-", (38-0501-0101). 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:

"DOCKET NO. 38-0501-0101"

"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).

"0101" denotes the year and sequential order of the docket submitted and published during the year; in this case the first rulemaking action of the chapter published in calendar year 2001.

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 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."

It may also be cited to include the IDAPA, Title, and Chapter number also, 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 agency rule.

"01" denotes the Chapter number of the agency rule.

"201" references the main Section number of the rule that is being cited.

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 2001

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
01-1	January, 2001	*November 15, 2000	January 3, 2001	January 24, 2001
01-2	February, 2001	December 20, 2000	February 7, 2001	February 28, 2001
01-3	March, 2001	January 24, 2001	March 7, 2001	March 28, 2001
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01-8	August, 2001	June 20, 2001	August 1, 2001	August 22, 2001
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01-10	October, 2001	**August 22, 2001	October 3, 2001	October 24, 2001
01-11	November, 2001	September 19, 2001	November 7, 2001	November 28, 2001
01-12	December, 2001	October 24, 2001	December 5, 2001	December 26, 2001

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2002

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
02-1	January, 2002	*November 14, 2001	January 2, 2002	January 23, 2002
02-2	February, 2002	December 19, 2001	February 6, 2002	February 27, 2002
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02-4	April, 2002	February 20, 2002	April 3, 2002	April 24, 2002
02-5	May, 2002	March 20, 2002	May 1, 2002	May 22, 2002
02-6	June, 2002	April 17, 2002	June 5, 2002	June 26, 2002
02-7	July, 2002	May 22, 2002	July 3, 2002	July 24, 2002
02-8	August, 2002	June 19, 2002	August 7, 2002	August 28, 2002
02-9	September, 2002	July 24, 2002	September 4, 2002	September 25, 2002
02-10	October, 2002	**August 21, 2002	October 2, 2002	October 23, 2002
02-11	November, 2002	September 18, 2002	November 6, 2002	November 27, 2002
02-12	December, 2002	October 23, 2002	December 4, 2002	December 25, 2002

**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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IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.09 - RULES GOVERNING MEDICAL ASSISTANCE PROGRAM IN IDAHO

DOCKET NO. 16-0309-0011

NOTICE OF PENDING RULE AND AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is October 1, 2000. This pending rule has been adopted by the agency and is now pending review by the 2002 Idaho State Legislature for final adoption. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Section(s) 56-202(b) and 56-203(g), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the existing temporary rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for change.

In Section 152.02.b. a change to the "hardship exception" no longer confines the exception to agencies limited to the five (5) passenger rule. The change in Section 152.02.b. also allows the Department to except a commercial provider from being defined as a "non-commercial" provider if the provider is serving an area through a grant from the Federal Transit Administration; the services to which a client is being transported are medical in nature; and the rate to be charged represents the costs of the transportation. The proposed rules have been amended in response to public comment, and are being amended pursuant to Section 67-5227, Idaho Code.

Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the proposed rule.

Only the sections that have changes are printed in this bulletin. The original text of the proposed rules was published in the October 4, 2000 Administrative Bulletin, Volume 00-10, page(s) 355 through 363.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Kathleen Allyn at (208) 334-5747 or Jean Christensen at (208) 364-1828.

DATED this 23rd day of January, 2001.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Legal Services Division
450 West State Street - 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone
(208) 332-7347 fax

IDAPA 16, TITLE 03, Chapter 09

RULES GOVERNING MEDICAL ASSISTANCE PROGRAM IN IDAHO

There are substantive changes from the proposed rule text.
Text added to the pending rule is in italic.

Only those sections that have changed from the original proposed
text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative
Bulletin, Volume 00-10, October 4, 2000, pages 365 through 363.

This rule has been adopted as a pending rule by the Agency and is now pending
review and adoption by the 2002 Idaho State Legislature as a final rule.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 16-0309-0011

SECTION 152

152. REQUIREMENTS OF NON-EMERGENCY TRANSPORTATION PROVIDERS.

Subsection 152.02

02. Non-Commercial Transportation Provider. Any transportation provider that does not meet the definition of a commercial transportation provider is a non-commercial transportation provider. Non-commercial transportation services may be performed by an agency or by an individual provider. Agency transporters are entities that provide transportation as well as at least one other service to one or more Medicaid clients. Individual transporters are non-commercial providers who transport a family member, acquaintance or other person in a personal vehicle. If the Medicaid clients being transported are also clients of the transportation provider for services such as residential care, mental health, developmental therapy or other services, the provider will be considered a non-commercial provider with respect to those clients, even if the provider otherwise qualifies as a commercial transporter. A provider will be considered non-commercial with respect to any Medicaid clients transported if those clients are being transported to or from another service in which the provider has any ownership or control or if the arrangement to provide transportation is not an arm's length transaction. (10-1-00)T

Amended Subsection 152.02.b.

b. Hardship exception. The Department may grant an exception on the basis of hardship, ~~in order for a provider to be reimbursed for more than five (5) passengers at a time.~~ The provider must submit information to show at minimum that its reasonable costs of vehicle operation exceed the ~~five (5) passenger~~ applicable reimbursement rate. In evaluating requests for exception, the Department will consider factors such as alternative forms of services and transportation available in the area, the cost of alternatives, the appropriateness of the vehicles utilized and the benefit to clients. Special consideration may be given to any provider servicing the area through a grant from the Federal Transit Administration. The Department may limit the exception including the amount of additional reimbursement, the type of services to which transportation is being provided, and the time duration of the exception. (~~10-1-00)T~~(10-1-00)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.05.03 - RULES GOVERNING CONTESTED CASE PROCEEDINGS AND DECLARATORY RULINGS

DOCKET NO. 16-0503-0002

NOTICE OF CORRECTION TO PENDING RULE

CORRECTION: This notice corrects a typographical error in the pending rule made during the publication of the pending rule. This correction is being done in conjunction with the Office of the Administrative Rules Coordinator.

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2001 Idaho State Legislature for final adoption. The pending rule becomes final and effective upon adjournment of the legislature, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224(5)(a) and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5228, Idaho Code, notice is hereby given that this agency is correcting a typographical error with the consent of the Administrative Rules Coordinator. The action is authorized pursuant to Sections 65-5228, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the nature of the correction being made to the pending rule. In IDAPA 16.05.03.131, Authority of Hearing Officer, the next to the last sentence should read: "*The hearing officer shall defer to the Department's interpretation of statutes, rules, regulations or policy unless the hearing officer finds the interpretation to be contrary to statute or an abuse of discretion.*"

The pending rule was published in the January 3, 2001, Idaho Administrative Bulletin, Volume No. 01-01 on pages 131 through 133. The original text of the proposed rule was published in the October 4, 2000 Administrative Bulletin, Volume 00-10, page(s) 388 through 396.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Jeanne Goodenough at (208) 334-5537.

DATED this 24th day of January, 2001.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Legal Services Division
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone / (208) 332-7347 fax

THE FOLLOWING IS THE CORRECTED TEXT OF DOCKET NO. 16-0503-0002

AMENDED SECTION 131

131. AUTHORITY OF HEARING OFFICER.

The hearing officer shall consider only information that was available to the Department at the time the decision was made. If appellant shows that there is additional relevant information that was not presented to the Department with good cause, the hearing officer shall remand the case to the Department for consideration. No hearing officer shall have the jurisdiction or authority to invalidate any federal or state statute, rule, regulation, or court order. *The hearing officer shall defer to the Department's interpretation of statutes, rules, regulations or policy unless the hearing officer finds the interpretation to be contrary to statute or an abuse of discretion. The hearing officer shall not* retain jurisdiction on any matter after it has been remanded to the Department. ()

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-9905
(originally published as 16-0101-9905)

NOTICE OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2001 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Fifty-sixth Idaho Legislature if the rule is approved by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. The rule may be rejected, amended or modified by concurrent resolution of the Legislature.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Sections 39-105 and 39-107, Idaho Code. In addition, it is a federal requirement that the Department of Environmental Quality (DEQ) collect sufficient money to fund an operating permit program in accordance with Title V of the Clean Air Act. See 40 CFR 70.4(b)(7) and (8).

DESCRIPTIVE SUMMARY: A detailed summary of the reasons for commencing the proposed rulemaking is set forth in the initial proposal published in the Idaho Administrative Bulletin, Volume 01-1, January 3, 2001, pages 268 through 271. Section 525 has been adopted as initially proposed; Subsections 527.06.b.ii. and iii. have been revised in response to public comment. DEQ's Rulemaking and Public Comment Summary, which contains a complete consideration of the issues raised by the public and an explanation of the reasons for changes between the text of the proposed rule and the text of the pending rule, is included in the rulemaking record, which can be obtained by contacting the undersigned.

FEE SUMMARY: This rule decreases collection of registration fees for two years and draws on the fund balance to reach a level equal to the agency appropriation from the fee account. During the two year fee reduction, expenditures may reach approximately 1.5 times annual collections. Collection of the fees is authorized by Section 39-115(3), Idaho Code.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit its web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this rulemaking, contact Marjorie MartzEmerson at (208)373-0502, mmartzem@deq.state.id.us.

Dated this 26th day of January, 2001.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton, Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
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IDAPA 58, TITLE 01, Chapter 01

RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

There are substantive changes from the proposed rule text.
Text added to the pending rule is in italic.

Only those sections that have changed from the original proposed
text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative
Bulletin, [Volume 01-1, January 3, 2001, pages 268 through 271.](#)

This rule has been adopted as a pending rule by the Agency and is now pending
review and adoption by the 2001 Idaho State Legislature as a final rule.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 58-0101-9905

SECTION 527

527. REGISTRATION.

Any person owning or operating a facility or source for which Sections 525 through 538 applies shall, by May 1, 1993 and each May 1 thereafter register with the Department and submit the following: (5-1-94)

Subsection 527.06

06. Regulated Air Pollutant Registration Fee. *A registration fee of thirty dollars (\$30) per ton for all regulated air pollutants listed in Subsection 527.04. The registration fee may be paid in two (2) installments as provided in Subsection 532.01.* The registration fee set out in Subsection 527.06 shall be reviewed at least every two (2) years to assure the funds meet the presumptive minimum as defined by EPA. The annual registration fee set forth in Subsection 527.06.a. may be paid in two (2) installments as provided in Subsection 532.01. Fees for permit modifications or permit renewals in Subsection 527.06.b. shall be submitted with the application. (~~4-5-00~~)()

Amended Subsections 527.06.b.ii. and 527.06.b.iii.

ii. Fees for minor *permit* modifications as *provided in Section 383* shall be one thousand dollars (\$1,000); and ()

iii. Fees for *significant permit* modifications as *provided in Section 382* shall be five thousand dollars (\$5,000). ()

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-0003

NOTICE OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2001 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Fifty-sixth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Sections 39-105 and 39-107, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reasons for commencing the proposed rulemaking is set forth in the initial proposal published in the Idaho Administrative Bulletin, Volume 00-11, November 1, 2000, pages 40 through 44. Section 204 has been adopted as initially proposed; Section 582 has been revised in response to public comment. DEQ's Rulemaking and Public Comment Summary, which contains a complete consideration of the issues raised by the public and an explanation of the reasons for changes between the text of the proposed rule and the text of the pending rule, is included in the rulemaking record, which can be obtained by contacting the undersigned.

GENERAL INFORMATION: For more information about the DEQ's programs and activities, visit its web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rule, contact Mike McGown at (208)373-0502 or mmcgown@deq.state.id.us.

Dated this 26th day of January, 2001.

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IDAPA 58, TITLE 01, Chapter 01

RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

**There are substantive changes from the proposed rule text.
Text added to the pending rule is in italic.**

**Only those sections that have changed from the original proposed
text are printed in this Bulletin following this notice.**

**The text of the proposed rule was published in the Idaho Administrative
Bulletin, Volume 00-11, November 1, 2000, pages 40 through 44.**

This rule has been adopted as a pending rule by the Agency and is now pending review and adoption by the 2001 Idaho State Legislature as a final rule.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 58-0101-0003

SECTION 582

582. INTERIM CONFORMITY PROVISIONS FOR NORTHERN ADA COUNTY FORMER NONATTAINMENT AREA FOR PM-10.

The purpose of Section 582 is to implement part of the settlement of "Idaho Clean Air Force, et al. v. EPA, et al." Section 582 requires that the growth in transportation related PM-10 emissions be offset annually in the absence of federal transportation conformity requirements in the former PM-10 nonattainment area in northern Ada County, Idaho. Section 582 will remain in place until a PM-10 maintenance demonstration and maintenance plan containing a motor vehicle emissions budget can be developed, submitted to the U.S. Environmental Protection Agency (EPA) and approved as meeting the requirements of Section 175A of the Clean Air Act, and the transportation plan and TIP for northern ADA County has been found to conform to the applicable implementation plan. The Department will prepare a PM-10 maintenance plan within the agreed upon time frame to be submitted to EPA for approval. ()

Subsection 582.03

03. Adoption Of Control Measures And Demonstration Of Emissions Reductions. As a precondition to: ()

Amended Subsections 582.03.a., 582.02.b., and 582.03.c.

a. The expenditure of any non-exempt federal transportation funds that would be prohibited under a conformity lapse: ()

b. The construction of any regionally significant projects that would be prohibited under a conformity lapse: ()

c. The execution by the Idaho Transportation Department or the Ada County Highway District of any project agreements required by 23 U.S.C. Section 106(a) that would be prohibited under a conformity lapse; or ()

No Changes To The Remaining Subsections 582.03.

Amended Subsection 582.04

04. Department Review. Following adoption by the MPO, the control measures designed to achieve the new emissions reductions for the next fiscal year, associated emissions calculations, and the demonstrations required by Subsection 582.03 shall be submitted to the Department *no later than April 1 of each year*. The Department shall review and approve the submission if the Department determines that the requirements of Subsection 582.03 are met *in accordance with the following:* ()

a. The Department will respond to the submittal within thirty (30) days of receipt. The response may include approval of the submission, a request for further information, or conditional approval of the control measures

subject to submission of evidence that entities responsible for implementation of the measures have adopted any ordinances, appropriations or other approvals needed to complete the implementation of such measures. If further information is required, such information shall be submitted to the Department within thirty (30) days of request. The Department shall take final action to approve or deny the submission within ninety (90) days of the MPO's submission of the documentation required by Subsection 582.03.; and ()

b. The Department shall by July 1 of each year during the interim period provide to the MPO, the Ada County Highway District Commissioners and the Idaho Department of Transportation a report listing the emissions control measures implemented and the emissions control measures planned but not yet implemented for the then-current fiscal year, together with the Department's written determination as to whether the Emissions Reductions associated with such emissions control measures satisfy the requirements under Section 582. ()

Amended Subsection 582.06

06. Restrictions if Emissions Reductions Not Adopted. If the MPO adopts control measures for the purpose of achieving emissions reductions in a fiscal year, and the relevant local governmental entities do not adopt the necessary implementing ordinances or appropriate necessary funds, if any, by the beginning of the following fiscal year, the MPO shall not expend any non-exempt federal transportation funds or construct any regionally significant projects, that would be prohibited under a conformity lapse, in such following fiscal year until each of the relevant local governmental entities, if any, take such actions as may be necessary to implement the control measures previously approved by the MPO and the Department. ()

Subsection 582.07

07. Restrictions on TIP if Emissions Reductions Not Adopted or Achieved. If: ()

a. Control measures required to achieve emissions reductions for a prior fiscal year have not been implemented, or ()

b. The Department does not approve the control measures submitted by the MPO as adequate to achieve the required emissions reductions for any fiscal year, then: ()

Amended Subsections 582.07.b.i. and 582.07.b.ii.

i. The MPO shall not submit any TIP or TIP revision for a project subject to the requirements of Subsection 582.03, that would be prohibited under a conformity lapse, to the Idaho Transportation Department for inclusion into the State Transportation Improvement Program or to FHWA/FTA for approval, and ()

ii. No new agreement for a project subject to the requirements of Subsection 582.03, that would be prohibited under a conformity lapse, may be executed by the Idaho Transportation Department or the Ada County Highway District until control measures adequate to achieve the total emissions reductions required for any prior fiscal year are implemented and the control measures adequate to achieve the total emissions reductions for the next fiscal year are approved. ()

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58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

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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.

There are no proposed rules being promulgated or published in this issue of the Bulletin.

Please refer to the Idaho Administrative Bulletin, **March 7, 2001, Volume 01-3** for notices and text of all rulemakings, public hearing schedules, Governor's executives orders, and agency contact names.

Citizens of your county can view all issues of the Idaho Administrative Bulletin at the county law libraries.

Copies of the Administrative Bulletin and other rules publications are available for purchase. For subscription information and ordering call (208) 332-1820 or write the Office of the Administrative Rules Coordinator, Department of Administration, 650 W. State St., Room 100, Boise, Idaho 83720. Visa and Mastercard accepted.

The Idaho Administrative Bulletin and Administrative Code are available on the Internet at the following address: <http://www.state.id.us/> - from the State of Idaho Home Page select Administration Rules.

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