

ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

ADMINISTRATIVE RULES REVIEW

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2010 Legislative Session

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IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.05.01 - RULES OF THE BOARD OF DRINKING WATER AND WASTEWATER PROFESSIONALS

DOCKET NO. 24-0501-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. 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, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 54-2406, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending 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 the change:

The proposed rule updates the Board's web address as it has changed. The rule reduces the fees for endorsement, original license, and the license renewal to reduce the Board's cash balance. The rule also creates, defines, and sets forth the qualifications for a Class 1 Restricted license and Very Small Wastewater System license. The Very Small Wastewater license is based upon DEQ rule changes that now allow for a very small wastewater facility license. The Class 1 Restricted license is designed to assist facilities with part-time operators and staff to allow more flexible qualifications for a license to run a specific facility. This rule will also clarify an ambiguity in the qualifications for a land application license. Changes from the proposed rule are being made in section 300.02.c. to the required courses. Courses required along with experience are an approved six-hour pumps and motors course and an approved six-hour lagoon operation and maintenance course or an approved six-hour large soil absorption system course for a combined total of one hundred twelve (112) hours.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in Book 2 of the October 7, 2009 Administrative Bulletin, Vol. 09-10, pages 118 through 125.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 54-2407, Idaho Code:

Idaho Code 54-2407 allows the Board to establish fees. The changes would reduce the amount of fees collected for the dedicated funds of the Board of Drinking and Wastewater Professionals by approximately \$38,190 per year based on 3461 licensees and 358 applicants.

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 impact on general funds.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Cherie Simpson at 208 334-3233.

DATED this 8th day of December, 2009.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
1109 Main St. Ste. 220
Boise, ID 83702
(208) 334-3233 Ph.
(208) 334-3945, fax

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED FEE RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-2406, Idaho Code.

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

THURSDAY - OCTOBER 22, 2009 - 10:00 a.m.

BUREAU OF OCCUPATIONAL LICENSES
1109 Main St., Ste. 220
Boise, ID

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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The proposed rule updates the Board's web address as it has changed. The rule reduces the fees for endorsement, original license, and the license renewal to reduce the Board's cash

balance. The rule also creates, defines, and sets forth the qualifications for a Class 1 Restricted license and Very Small Wastewater System license. The Very Small Wastewater license is based upon DEQ rule changes that now allow for a very small wastewater facility license. The Class 1 Restricted license is designed to assist facilities with part-time operators and staff to allow more flexible qualifications for a license to run a specific facility. This rule will also clarify an ambiguity in the qualifications for a land application license.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

Per Section 54-2407, Idaho Code, allows the Board to establish fees. The changes would reduce the amount of fees collected for the dedicated funds of the Board of Drinking and Wastewater Professionals by approximately \$38,190 per year based on 3,461 licensees and 358 applicants.

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 as a result of this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the Board of Drinking Water and Wastewater Professionals has been working with licensees, municipalities, the Department of Environment Quality and the Idaho Rural Water Association on qualifications for a Class 1 Restricted License.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2009.

DATED this 17th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING FEE RULE

005. ADDRESS OF IDAHO BOARD OF DRINKING WATER AND WASTEWATER PROFESSIONALS (RULE 5).

The office of the Board of Drinking Water and Wastewater Professionals is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is wwp@ibol.idaho.gov. The Board's official web site ~~is~~ can be found at <http://www.ibol.idaho.gov/wwp.htm>. (3-30-06)()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS (RULE 10).

- 01. Board.** The Idaho Board of Drinking Water and Wastewater Professionals. (3-24-05)
- 02. Bureau.** The Idaho Bureau of Occupational Licenses. (3-24-05)
- 03. Class I Restricted License.** Class I restricted license means a water or wastewater license associated with a specific class I system. A restricted license is available for water distribution or treatment or for wastewater collection or treatment. A restricted license is not transferable and does not qualify for endorsement. (____)
- 034. DEQ.** The Idaho Department of Environmental Quality. (3-24-05)
- 045. Direct Supervision.** Supervision in a way that will ensure the proper operation and maintenance of the public drinking water or public wastewater system. Supervision shall include, but not be limited to, providing written, hands-on, or oral instruction as well as verification that the instructions are being completed. The supervisor has an active on-site and on-call presence at the specific facility. (2-26-08)
- 056. Endorsement.** Endorsement (often referred to as “reciprocity”) is that process by which a person licensed in another jurisdiction may apply for a license in Idaho. (3-24-05)
- 067. EPA.** The United States Environmental Protection Agency. (3-24-05)
- 078. Experience.** One (1) year of experience is equivalent to one thousand six hundred hours (1,600) worked. (2-26-08)
- 089. Operating Personnel.** Operating personnel means any person who is employed, retained, or appointed to conduct the tasks associated with the day-to-day operation and maintenance of a public drinking water system or a public wastewater system. Operating personnel shall include every person making system control or system integrity decisions about water quantity or water quality that may affect public health. (3-24-05)
- 0910. Person.** A human being, municipality, or other governmental or political subdivision or other public agency, or public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent or other legal representative of the foregoing or other legal entity. (3-24-05)
- 101. Public Drinking Water System or Public Water System.** Public drinking water system or public water system means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals

daily at least sixty (60) days of the year. Such term includes any collection, treatment, storage, and distribution facilities under control of the operator of such system, and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Every community and nontransient noncommunity water system, and each transient water system using a surface water source or ground water source directly influenced by surface water, shall be operated by a certified drinking water operator. (3-24-05)

142. Public Wastewater System or Wastewater System. Public wastewater system or wastewater system means those systems, including collection systems and treatment systems, that are owned by a city, county, state or federal unit of government, a nonprofit corporation, district, association, political subdivision or other public entity, or that generate or collect two thousand five hundred (2,500) or more gallons a day; or that have been constructed in whole or in part with public funds. This does not include any wastewater treatment system operated and maintained exclusively by a single family residence or any wastewater system consisting solely of a gravity flow, nonmechanical septic tank and subsurface treatment and distribution system, or industrial wastewater systems under private ownership. (3-24-05)

123. State. The State of Idaho. (3-24-05)

(BREAK IN CONTINUITY OF SECTIONS)

175. LICENSE TYPES AND CLASSIFICATIONS (RULE 175).

The Board shall issue each of the following licenses under the provisions of Chapter 24, Title 54, Idaho Code. (3-24-05)

- 01. Drinking Water Distribution Operator.** (3-24-05)
 - a.** Class Operator-In-Training. (3-24-05)
 - b.** Class Very Small Water System. (3-24-05)
 - c.** Class I Restricted. (____)
 - ed.** Class I. (3-24-05)
 - de.** Class II. (3-24-05)
 - ef.** Class III. (3-24-05)
 - fg.** Class IV. (3-24-05)
- 02. Drinking Water Treatment Operator.** (3-24-05)
 - a.** Class Operator-In-Training. (3-24-05)

- a. Class I. (3-24-05)
- b. Class II. (3-24-05)
- c. Class III. (3-24-05)
- d. Class IV. (3-24-05)
- 06. **Backflow Assembly Tester.** (3-24-05)

(BREAK IN CONTINUITY OF SECTIONS)

200. FEES FOR EXAMINATION AND LICENSURE (RULE 200).

The fees for each license type and classification shall be as follows: (3-24-05)

- 01. **Application Fee.** Application fee -- twenty-five dollars (\$25). (3-24-05)
- 02. **Examination Fee.** The examination fees shall be those fees charged by the Association of Boards of Certification (ABC) or other approved examination provider. (3-24-05)
- 03. **Endorsement Fee.** Endorsement fee -- ~~forty~~ thirty-five dollars (\$435).
(~~3-30-06~~)(____)
- 04. **Original License Fee.** Original license fee -- ~~forty~~ thirty-five dollars (\$435).
(~~3-30-06~~)(____)
- 05. **Annual Renewal Fee.** Annual renewal fee -- ~~forty~~ thirty-five dollars (\$435).
(~~3-30-06~~)(____)
- 06. **Reinstatement Fees.** Reinstatement fee -- twenty-five dollars (\$25). (3-24-05)
- 07. **Refund of Fees.** No refund of fees shall be made to any person who has paid such fees for application, examination, reexamination, or reinstatement of a license. (3-24-05)

(BREAK IN CONTINUITY OF SECTIONS)

300. REQUIREMENTS FOR LICENSE (RULE 300).

Applicants shall submit an application together with the required fees and such documentation as is required. (3-24-05)

- 01. **Examination Requirement.** Applicants must pass a written examination for each

individual classification in each type of licensure with a minimum score of seventy percent (70%). For those classifications of Class II through IV, successful completion of the examinations from the immediate lower type and classification shall be a prerequisite to examination eligibility for the next higher classification of the same type, except that applicants for wastewater collection operator or wastewater laboratory analyst or drinking water distribution operator licenses may apply for any classification examination for which they hold the required education and experience. (3-30-06)

a. The examination will reflect different levels of knowledge, ability and judgment required for the established license type and class. The Board will administer examinations at such times and places as the Board may determine. (3-24-05)

b. The examination for all types and classes of licensure shall be validated and provided by the Association of Boards of Certification (ABC). The American Backflow Prevention Association (ABPA) backflow assembly tester examination is also approved for backflow assembly tester licensure. (5-8-09)

c. Applicants who fail an examination must make application to retake the same type and class examination and pay the required examination fees prior to retaking the examination. (3-24-05)

d. Applicants must take and pass the examination within one (1) year of application approval. After one (1) year a new application and applicable fees must be submitted. (3-30-07)

02. Education and Experience Requirements. Only actual verified on-site operating experience at a treatment, distribution or collection system will be acceptable. (3-24-05)

a. Each applicant for an Operator-In-Training License must have a high school diploma or GED and pass the Class I exam or pass the very small water system exam. (5-8-09)

b. To qualify for a Very Small Water System license an operator must have a high school diploma or GED and ~~one hundred eighty-eight (10088)~~ hours of acceptable operator-in-training experience at a water system and complete an approved six-hour water treatment or chlorination course and an approved six-hour water distribution course for a combined total of one hundred (100) hours. (~~5-8-09~~)()

c. To qualify for a Very Small Wastewater System license, an operator must have a high school diploma or GED and fifty (50) hours of acceptable operator-in-training experience at a wastewater collection system and fifty (50) hours of acceptable operator-in-training experience at a wastewater treatment system and complete an approved six-hour pumps and motors course; and an approved six-hour lagoon operation and maintenance course; or an approved six-hour large soil absorption system course for a combined total of one hundred ~~twelve~~ (112) hours. ()

d. To qualify for a Class I Restricted water or wastewater license an operator must have a high school diploma or GED and obtain two hundred sixty (260) hours of acceptable work experience with the system in one (1) year and work a full operating year with the system and complete sixteen (16) hours of continuing education relevant to the license and pass the relevant

Class I examination. Upon obtaining one thousand six hundred (1,600) hours of supervised operating experience for each license, the operator shall be eligible to apply for an unrestricted Class I license. There is no limit on the amount of time needed to obtain the necessary experience to qualify for the unrestricted license. A restricted license is limited to a specific system. ()

ee. To qualify for a Class I license an applicant must have a high school diploma or GED and one (1) year of acceptable experience at a Class I or higher system. To upgrade an OIT license to a Class I the applicant must provide documented proof to the Board of having completed one (1) year of supervised operating experience in a Class I or higher public drinking water or wastewater system, and payment of the required fees. (2-26-08)

ef. To qualify for a Class II treatment or lab analyst license II an applicant must have a high school diploma or GED and three (3) years of acceptable Class I operating experience at a Class I or higher system. (2-26-08)

eg. To qualify for a Class III treatment or lab analyst III license an applicant must have a high school diploma or GED and two (2) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable Class II operating experience of a Class II or higher system, including two (2) years of experience in daily on-site charge, supervision of personnel, or management of a major segment of a system in the same or next lower class. (2-26-08)

fh. To qualify for a Class IV treatment or lab analyst IV license an applicant must have a high school diploma or GED; and four (4) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable Class III operating experience at a Class III or higher system, including two (2) years of experience in daily on-site charge, supervision of personnel, or management of a major segment of a system in the same or next lower class. (2-26-08)

gi. To qualify for a Class II collection or distribution license an operator must have a high school diploma or GED and three (3) years of acceptable operating experience at a Class I or higher system. (3-24-05)

hj. To qualify for a Class III collection or distribution license an operator must have a high school diploma or GED and two (2) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable operating experience of a Class I or higher system, including two (2) years of experience in daily on-site charge, supervision of personnel, or management of a major segment of a system in the same or next lower class. (3-24-05)

ik. To qualify for a Class IV collection or distribution license an operator must have a high school diploma or GED; and four (4) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable operating experience at a Class I or higher system, including two (2) years of experience in daily on-site charge, supervision of personnel, or management of a major segment of a system in the same or next lower class. (3-24-05)

jl. To qualify for a lagoon license, an operator must have a high school diploma or

GED and twelve (12) months of acceptable supervised operating experience at a Lagoon system. (3-24-05)

~~h.m.~~ To qualify for a Wastewater Land Application license, an operator must have a high school diploma or GED, a current wastewater treatment license that is at least Class I or higher, and minimum six (6) months of hands-on operating experience at a wastewater land application system. The wastewater land application operator that is a responsible charge or substitute responsible charge operator must be licensed at the type and class equal to or greater than the classification of the wastewater system. (~~3-24-05~~)()

~~h.n.~~ To qualify for a backflow assembly tester license, an applicant must have a high school diploma or GED, and shall document successful completion of a Board-approved backflow assembly tester training program in compliance with the Cross Connection Control Accepted Procedure and Practice Manual and consisting of theory instruction, practical instruction, and a practical examination in compliance with the USC Test procedures. (3-30-06)

~~h.o.~~ To qualify for an original wastewater laboratory analyst license, an applicant must hold a current water treatment, wastewater treatment or lagoon license. (3-24-05)

03. Substituting Education for Experience. Applicants may substitute approved education for operating and responsible charge experience as specified below. (3-24-05)

a. No substitution for operating experience shall be permitted for licensure as a very small system operator or a Class I operator. (3-24-05)

b. For Classes II, III and IV, substitution shall only be allowed for the required experience when fifty percent (50%) of all stated experience (both operating and responsible charge) has been met by actual on-site operating experience. (3-24-05)

c. For Class II, a maximum of one and one-half (1½) years of post high school education in the environmental control field, engineering or related science may be substituted for one and one-half (1½) years of operating experience. (3-24-05)

d. For Class III and IV, a maximum of two (2) years of post high school education in the environmental control field, engineering or related science may be substituted for two (2) years of operating experience; however the applicant must still have one (1) year of responsible charge experience. (3-24-05)

e. Education substituted for operating experience may not be also credited toward the education requirement. (3-24-05)

f. One (1) year of post high school education may be substituted for one (1) year experience up to a maximum of fifty percent (50%) of the required operating or responsible charge experience. (3-24-05)

04. Substituting Experience for Education. Where applicable, approved operating and responsible charge experience may be substituted for education as specified below: (3-24-05)

a. One (1) year of operating experience may be substituted for two (2) years of grade school or one (1) year of high school with no limitation. (3-24-05)

b. For Class III and IV, additional responsible charge experience (that exceeding the two-year class requirements) may be substituted for post high school education on a two (2) for one (1) basis: two (2) years additional responsible charge equal one (1) year post high school education. (3-24-05)

05. Substituting Experience for Experience. Related experience may be substituted for experience up to one-half (½) of the operating experience requirement for Class II, III and IV. Experience that may be substituted includes but is not limited to the following: (3-24-05)

a. Experience as an environmental or operations consultant; (3-24-05)

b. Experience in an environmental or engineering branch of federal, state, county, or local government; (3-24-05)

c. Experience as a wastewater collection system operator; (3-24-05)

d. Experience as a wastewater treatment plant operator; (3-24-05)

e. Experience as a water distribution system operator and/or manager; (3-24-05)

f. One (1) year of post high school education may be substituted for one (1) year experience up to a maximum of fifty percent (50%) of the required operating or responsible charge experience. (3-24-05)

g. Experience in waste treatment operation and maintenance. (3-24-05)

06. Equivalency Policy. Substitutions for education or experience requirements needed to meet minimum requirements for license will be evaluated upon the following equivalency policies: (3-24-05)

a. High School - High School diploma equals GED or equivalent as approved by the Board equals four (4) years. (3-24-05)

b. College - Thirty-five (35) credits equal one (1) year (limited to curricula in environmental engineering, environmental sciences, water/wastewater technology, and/or related fields as determined by the Board). (3-24-05)

c. Continuing Education Units (CEU) for operator training courses, seminars, related college courses, and other training activities. Ten (10) classroom hours equal one (1) CEU; forty-five (45) CEUs equal one (1) year of college. (3-24-05)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO
DOCKET NO. 58-0101-0901 (FEE RULE)
NOTICE OF RULEMAKING - ADOPTION 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 2010 Idaho State Legislature for final approval. The pending rule will become final and effective if approved during the Second Regular Session of the Sixtieth Idaho Legislature by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved 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, Idaho Code, notice is hereby given that the Board has adopted a pending fee rule. This action is authorized by Sections 39-105, 39-107, and 39-116B, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, June 3, 2009, Vol. 09-6, pages 105 through 109. The proposed rule has not been revised in response to public comments received; however, the rule has been revised at Sections 518 and 519. The remainder of the rule has been adopted as proposed. After further internal discussion and review, the inspection station and technician license fee requirements set out in Subsections 518.03 and 519.02 have been removed. The financial aspects of running and administering the program will be dealt with as part of the overall procurement process with the selected contractors or subcontractors. Section 39-116B, Idaho Code, only details a motor vehicle registration fee not to exceed \$20 per vehicle. The Rulemaking and Public Comment Summary can be obtained at http://www.deq.idaho.gov/rules/air/58_0101_0901_pending.cfm or by contacting the undersigned.

FEE SUMMARY: This rule includes an inspection fee that shall not exceed \$20 per vehicle (Section 524). Imposition of the fee is authorized by Section 39-116B(2)(g), Idaho Code.

IDAHO CODE SECTION 39-107D STATEMENT: This rule does not regulate an activity not regulated by the federal government nor is it more stringent than federal regulations. The Clean Air Act requires, in marginal ozone nonattainment areas, a vehicle inspection and maintenance program. This rule is broader in scope than the federal law as it applies to sources in an area not yet designated nonattainment. In addition, promulgation of this rule is required by Section 39-116B, Idaho Code.

This rule constitutes an important preemptive step for the Treasure Valley to take to attempt to avoid an ozone nonattainment designation. The ozone national ambient air quality standard is a standard designed to protect human health and the environment. It is clear under federal law that scientists have determined that a vehicle inspection and maintenance program is an important control measure to implement for ozone reduction.

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Martin Bauer at (208) 373-0440 or martin.bauer@deq.idaho.gov.

Dated this 13th day of October, 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 NOTICE PUBLISHED WITH THE 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 39-116B, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this proposed rulemaking will be held as follows:

TUESDAY - JULY 14, 2009 - 3:30 pm

DEPARTMENT OF ENVIRONMENTAL QUALITY
Conference Room B
1410 N. Hilton, Boise, Idaho

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to implement Idaho Code § 39-116B, which requires the Department of Environmental Quality (DEQ) to enter into rulemaking to establish the minimum requirements for a vehicle emissions testing program when ambient air quality concentrations are at or above 85% of a national ambient air quality standard and motor vehicle emissions constitute one of the two top contributing sources to the concentrations. These minimum requirements will assist affected local entities in determining whether to (1) enter into a joint exercise of powers agreement to implement the vehicle emissions testing program or (2) establish an alternative program in lieu of vehicle emissions testing. If local entities do not choose either one of the two options, DEQ must implement the vehicle emissions program.

Cities, counties, and all citizens in areas required to implement vehicle emissions testing may be interested in commenting on this proposed rule. After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality at the October 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 proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code Section 67-5220 and IDAPA 58.01.23.810-815. On January 7, 2009, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 09-1, page 450. On March 2, 2009, a preliminary draft negotiated rule was made available for public review. Meetings were held on February 3, 2009 and March 17, 2009. Several members of the public participated in this negotiated rulemaking process by attending the meetings and by submitting written comments.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government nor is it more stringent than federal regulations. The Clean Air Act requires, in marginal ozone nonattainment areas, a vehicle inspection and maintenance program. This proposed rule is broader in scope than the federal law as it applies to sources in an area not yet designated nonattainment. In addition, promulgation of this rule is required by Idaho Code 39-116B.

This proposed rule constitutes an important preemptive step for the Treasure Valley to take to attempt to avoid an ozone nonattainment designation. The ozone national ambient air quality standard is a standard designed to protect human health and the environment. It is clear under federal law that scientists have determined that a vehicle inspection and maintenance program is an important control measure to implement for ozone reduction.

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 Martin Bauer at (208) 373-0440 or martin.bauer@deq.idaho.gov.

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 July 14, 2009.

DATED this 1st day of May, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING FEE RULE

517. MOTOR VEHICLE INSPECTION AND MAINTENANCE PROGRAM.

01. Purpose. The purpose of Sections 517 through 526 is to set forth the minimum standards for a motor vehicle inspection and maintenance program, established pursuant to Section 39-116B, Idaho Code, for registered motor vehicles as defined in Section 49-123, Idaho Code. This program is designed to follow the basic inspection and maintenance program defined in 40 CFR 51.352. ()

02. Applicability. Sections 517 through 526 apply only to the counties of Ada and Canyon and the cities of Boise, Eagle, Garden City, Meridian, Kuna, Star, Caldwell, Greenleaf, Melba, Middleton, Nampa, Notus, Parma, and Wilder. ()

03. Options. ()

a. Section 39-116B, Idaho Code, provides the counties and cities listed in Subsection 517.02 with the following implementation options. The counties and cities may: ()

i. Enter into a joint exercise of powers agreement with the Director to implement a motor vehicle inspection and maintenance program; or ()

ii. Obtain Department approval to implement an alternative motor vehicle emissions control strategy that will result in emissions reductions equivalent to that of a motor vehicle inspection and maintenance program. ()

b. If neither of the options listed in Subsection 517.03.a. are selected, the Department shall implement the motor vehicle inspection and maintenance program. ()

04. Governing Authority. For the purpose of Sections 517 through 526, governing authority means the governing entity responsible for the development and implementation of the motor vehicle inspection and maintenance program. The governing entity may be the counties and cities listed in Subsection 517.02 or the Department. The governing authority shall adopt Sections 517 through 526 of these rules. ()

05. Exemptions. Sections 517 through 526 do not apply to the following: ()

a. Electric or hybrid motor vehicles; ()

b. Motor vehicles with a model year less than five (5) years old; ()

c. Motor vehicles with a model year older than 1981; ()

d. Classic automobiles as defined by Section 49-406A, Idaho Code; ()

e. Motor vehicles with a maximum vehicle gross weight of less than fifteen hundred (1500) pounds; ()

f. Motor vehicles registered as motor homes as defined by Section 49-114, Idaho

Code: ()

g. Motorized farm equipment; and ()

h. Registered motor vehicles engaged solely in the business of agriculture. ()

518. REQUIREMENTS FOR LICENSING AUTHORIZED INSPECTION STATIONS OR RETEST STATIONS.

01. General. ()

a. No person or enterprise shall in any manner represent any place as an inspection station or retest station unless such station is operated under a valid license issued by the governing authority. ()

b. No license for any inspection station or retest station may be assigned, transferred or used by other than the original applicant for that specific station. ()

02. Applications for License. Applications for license as an inspection station or retest station shall be made on the forms provided by the governing authority. No license shall be issued unless the governing authority finds that the facilities, tools and equipment of the applicant comply with the requirements set forth in Subsections 518.03 or 518.04. ()

03. Requirements for Licensed Inspection Stations. In order to qualify for issuance and continuance of an inspection station license, an establishment must meet the following requirements: ()

a. Must have a permanent location; ()

b. Must sign a contract pledging the station will not make any emissions related adjustments or repairs on the vehicles it emissions tests; ()

c. Must ensure that at least one employee, who has been issued an emissions technician license by the governing authority, is on duty at all times of station operation; ()

d. Must demonstrate the ability to perform the emissions test and comply with reporting and recordkeeping requirements established by the governing authority; ()

e. Must obtain and maintain in force appropriate business liability insurance; and ()

f. Must have the tools, equipment and supplies, as required by the governing authority, available for performance of the emissions test. ()

04. Requirements for Licensed Retest Stations. In order to qualify for issuance and continuance of a retest station license, an establishment must meet the requirements listed in Subsection 518.03 with the exception of Subsection 518.03.b. ()

05. Approval Procedure. ()

a. Applications received by the governing authority will be reviewed for completeness and an inspection of the facility will be performed. An inspection report will be prepared for the governing authority's review. ()

b. Stations which meet the requirements of Subsections 518.01 through 518.04 will be granted an inspection station license or retest station license and issued a station sign. The station sign and license shall be posted in a conspicuous place, readily visible to the public. The station sign and license shall remain the property of the governing authority. ()

06. Revocation of Inspection Station or Retest Station License. The governing authority has the authority to issue warnings and suspend or revoke a station license upon a showing that emission tests are not being performed in accordance with these rules and any other specifications or procedures enacted by the governing authority. ()

519. REQUIREMENTS FOR LICENSING AUTHORIZED EMISSIONS TECHNICIANS.

01. Applications for License. Application for a license as an emissions technician shall be filed with the governing authority. Applications for the emissions technician license shall be completed on forms provided by the governing authority. ()

02. Requirements for Issuance of an Emissions Technician License. An applicant must demonstrate the knowledge and skill necessary to perform an emissions test of motor vehicle engines. The governing authority shall require the minimum standards set forth in 40 CFR 51.367, incorporated by reference into these rules at Section 107. ()

03. Revocation of Emissions Technician License. The governing authority has the authority to issue warnings and suspend or revoke an emissions technician license upon a showing that emission tests are not being performed in accordance with these rules or any other specifications or procedures enacted by the governing authority. ()

520. INSPECTION FREQUENCY.

The inspections shall occur no more than once every two (2) years. If the owner of the motor vehicle obtains a waiver pursuant to Section 526, the motor vehicle must be inspected the following year. ()

521. TEST PROCEDURE REQUIREMENTS.

The governing authority shall require the minimum standards set forth in 40 CFR 51.357(a), incorporated by reference into these rules at Section 107. ()

522. TEST STANDARDS.

The governing authority shall require the minimum standards set forth in 40 CFR 51.357(b), incorporated by reference into these rules at Section 107. ()

523. TEST EQUIPMENT.

The governing authority shall require the minimum standards set forth in 40 CFR 51.358,

incorporated by reference in to these rules at Section 107. ()

524. INSPECTION FEE.

The fee for a motor vehicle inspection, as established in Section 39-116B(2)(g), Idaho Code, shall not exceed twenty dollars (\$20) per vehicle. This fee is necessary to carry out the provisions of Sections 517 through 526 and to fund an air quality public awareness and outreach program.

()

525. PUBLIC OUTREACH.

The governing authority shall issue a pamphlet for distribution to owners of motor vehicles. The pamphlet shall include, but not be limited to, the reasons for and the methods of the inspection. The governing authority may also establish and operate an informational hotline, website, or any other means of outreach that is deemed to be efficient and effective by the governing authority.

()

526. WAIVERS.

The governing authority shall require the minimum standards set forth in 40 CFR 51.360(a), incorporated by reference into these rules at Section 107. If the owner of the motor vehicle obtains a waiver, the motor vehicle must be inspected the following year.

()

01. Financial Hardship. If repairs required under Section 526 pose a financial hardship on the owner of the motor vehicle, the governing authority shall have the authority to issue a waiver without requiring expenditure of the amounts listed in 40 CFR 51.360(a). Such determination of hardship shall be made on a case-by-case basis by the governing authority.

()

02. Public Service Vehicles Operating Less than 1,000 Miles Per Year. For public service vehicles owned by a governmental entity and operated less than one thousand (1,000) miles per year, the governing authority shall have the authority to issue a waiver without requiring expenditure of the amounts listed in 40 CFR 51.360(a).

()

527. -- 549. (RESERVED).