

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**

**58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO**

**DOCKET NO. 58-0101-1602**

**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. The action is authorized by Sections 39-105 and 39-107, Idaho Code.

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

**Tuesday, September 6, 2016 - 3:00 PM**

**Department of Environmental Quality  
Conference Room A  
1410 N. Hilton  
Boise, ID 83706**

The hearing site 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:** This rulemaking has been initiated to delete Section 582, Interim Conformity Provisions for Northern Ada County Former Nonattainment Area for PM-10. In reviewing the Rules for Control of Air Pollution in Idaho, DEQ discovered that Section 582 is outdated and no longer applicable. Section 582 was originally promulgated in 2001 to address Clean Air Act transportation conformity requirements for the PM10 Ada County nonattainment area. Transportation conformity requires an area experiencing air quality problems to have a transportation plan consistent with air quality goals. Section 582 was promulgated as a temporary measure that was necessary until a required maintenance plan was developed. The maintenance plan has since been developed and was approved by EPA on October 17, 2003.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in the fall of 2016 for adoption of a pending rule. This pending rule docket is expected to be final and effective upon adjournment of the 2017 legislative session if adopted by the Board and approved by the Legislature. DEQ will submit the final rule docket to EPA for removal of Section 582 from Idaho's State Implementation Plan.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: Not applicable.

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was not conducted. DEQ determined that negotiated rulemaking is not feasible due to the simple nature of this rulemaking and because the provisions are outdated and are no longer applicable.

**IDAHO CODE SECTION 39-107D STATEMENT:** This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Carl Brown at [carl.brown@deq.idaho.gov](mailto:carl.brown@deq.idaho.gov) or (208) 373-0206.

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 September 6, 2016.

Dated this 3rd Day of August, 2016

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](mailto:paula.wilson@deq.idaho.gov)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0101-1602  
(Only Those Sections With Amendments Are Shown.)

~~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.~~

~~(3-30-01)~~

~~01. Definitions. Terms not specifically defined in Subsection 582.01 are defined in Sections 565 and 566 of these rules.~~

~~(3-30-01)~~

~~a. Annual Reduction Amount. Represents the estimated, annual average increase in PM-10 emissions in the former nonattainment area expected between the years 1997 and 2005 and is calculated at seven hundred fifty (750) kg/day.~~

~~(3-30-01)~~

~~b. Consent Decree. The consent decree approved by the Ninth Circuit Court of Appeals to resolve “Idaho Clean Air Force, et al. v. EPA, et al.,” (Ninth Circuit Docket Nos. 99-70289 & 99-70576).~~

~~(3-30-01)~~

~~c. Emissions Reductions. Reductions in emissions of PM-10 or PM-10 precursors to be achieved by transportation control measures (as defined in 40 CFR 93.101) or other binding emissions control measures. Control measures adopted by the Metropolitan Planning Organization and approved by the Department shall be enforceable obligations of the State Implementation Plan (SIP).~~

~~(3-30-01)~~

~~d. Former Nonattainment Area. That portion of northern Ada County designated as a nonattainment area for PM-10 by 40 CFR 81.87 prior to March 12, 1999.~~

~~(3-30-01)~~

~~e. Interim Period. The period beginning with the fiscal year commencing October 1, 2000, until EPA approves a maintenance plan containing a motor vehicle emission budget for the former nonattainment area and the Metropolitan Planning Organization adopts a transportation plan and TIP that is found to conform in accordance with Section 176(e) of the Clean Air Act and 40 CFR Part 93.~~

~~(3-30-01)~~

~~f. Metropolitan Planning Organization (MPO). For purposes of Section 582, Community Planning Association of Southwest Idaho (COMPASS), or its successor organization, is the MPO for the former nonattainment area.~~

~~(3-30-01)~~

~~g. Regionally Significant Project. A transportation project, other than an exempt project, that is on a facility which serves regional transportation needs (such as access to and from the area outside the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including, at a minimum: (3-30-01)~~

~~i. All principal arterial highways; (3-30-01)~~

~~ii. All fixed guideway transit facilities that offer an alternative to regional highway travel; and (3-30-01)~~

~~iii. Any other facilities determined to be regionally significant through Section 570, interagency consultation. (3-30-01)~~

~~02. Applicability. The provisions of Section 582 shall apply during the interim period. The transportation conformity requirements of 40 CFR Part 93 applicable to nonattainment areas shall apply to the former nonattainment area pursuant to 42 U.S.C. Section 7506(e)(5) if the area is designated nonattainment or attainment with an approved maintenance plan. The provisions of Section 582 shall no longer apply after a maintenance demonstration and maintenance plan containing motor vehicle emissions budget(s) for PM 10 is submitted by the Department as a State Implementation Plan (SIP) revision, has been approved by EPA as meeting the requirements of Section 175A of the Clean Air Act, and a transportation plan and TIP have been found to conform to the applicable implementation plan pursuant to 40 CFR Part 93. (3-30-01)~~

~~03. Adoption of Control Measures and Demonstration of Emissions Reductions. As a precondition to: (3-30-01)~~

~~a. The expenditure of any non-exempt federal transportation funds that would be prohibited under a conformity lapse; (3-30-01)~~

~~b. The construction of any regionally significant projects that would be prohibited under a conformity lapse; (3-30-01)~~

~~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 (3-30-01)~~

~~d. The execution of agreements with contractors to begin construction on a highway project that is not exempt from a conformity determination pursuant to 40 CFR 93.126 and 93.127 during any fiscal year during the interim period, the MPO shall: (3-30-01)~~

~~i. Demonstrate that the control measures adopted to achieve emissions reductions in prior fiscal years have been implemented and will continue to be implemented during the next fiscal year; (3-30-01)~~

~~ii. Demonstrate that the control measures adopted to achieve emissions reductions have achieved the magnitude of emissions reductions expected as a result of the implementation of such measures; (3-30-01)~~

~~iii. Adopt (subject to approval by the Department pursuant to Subsection 852.04) control measures adequate to achieve emissions reductions reasonably calculated to reduce actual emissions during the next fiscal year in the former nonattainment area by the annual reduction amount, at a minimum, in addition to any emissions reductions required to be achieved prior to the beginning of such fiscal year; and (3-30-01)~~

~~iv. With regard to control measures that will not be implemented directly by the MPO, obtain written commitments from the responsible entities that the control measures will be implemented in the manner and within the fiscal year required to meet the emission reductions. (3-30-01)~~

~~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:~~ (3-30-01)

~~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~~ (3-30-01)

~~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.~~ (3-30-01)

~~05. **First Year Emissions Reductions.** For the initial fiscal year to which Section 582 applies, the MPO shall adopt new control measures reasonably calculated to achieve emissions reductions of two thousand (2000) kg/day. The MPO may take credit for any reductions in transportation-related emissions of PM-10 that were actually achieved by the implementation of enforceable control measures or other measures following March 12, 1999, and that continue to be implemented during the interim period.~~ (3-30-01)

~~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.~~ (3-30-01)

~~07. **Restrictions on TIP if Emissions Reductions Not Adopted or Achieved.** If:~~ (3-30-01)

~~a. Control measures required to achieve emissions reductions for a prior fiscal year have not been implemented, or~~ (3-30-01)

~~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:~~ (3-30-01)

~~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~~ (3-30-01)

~~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.~~ (3-30-01)

5832. -- 584. (RESERVED)