

Proposed Motions for the February 13, 2020
Meeting of the Idaho Board of Environmental Quality

Agenda Item #1

Omnibus Rulemaking – Fee Rules, Docket No. 58-0000-2000F

I move that the Idaho Board of Environmental Quality adopt as temporary fee rules the rules presented under Docket No. 58-0000-2000F. This action is for the temporary adoption of IDAPA 58 rule chapters as they were presented in the pending rule dockets adopted by this Board in 2019 and submitted to the Second Regular Session of the 65th Idaho Legislature for review (2019 pending rule dockets).

IDAPA 58 rule chapters:

IDAPA 58.01.01
IDAPA 58.01.05
IDAPA 58.01.06
IDAPA 58.01.07
IDAPA 58.01.08
IDAPA 58.01.09
IDAPA 58.01.11
IDAPA 58.01.12
IDAPA 58.01.13
IDAPA 58.01.14
IDAPA 58.01.18
IDAPA 58.01.20
IDAPA 58.01.25

2019 pending rule dockets:

Docket No. 58-0000-1900F
Docket No. 58-0101-1903
Docket No. 58-0101-1904
Docket No. 58-0101-1905
Docket No. 58-0105-1901
Docket No. 58-0109-1901
Docket No. 58-0111-1901

Pursuant to Section 67-5226, Idaho Code, the Governor has found that temporary adoption of these rules is appropriate to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens.

These rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws.

The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules.

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The Governor has also found that the fees or charge(s) being imposed are justified and necessary to avoid immediate danger to the agency's budget, to the state's budget, to necessary state functions and services, and to avoid immediate danger of a potential violation of Idaho's constitutional requirement that it balance its budget.

Therefore, we are adopting these temporary fee rules to be effective upon the adjournment sine die of the Second Regular Session of the Sixty-fifth Idaho Legislature. This adoption is conditional and will only become effective if the rule dockets are not otherwise approved or rejected by the Idaho Legislature and/or not extended pursuant to the Idaho Administrative Procedure Act, including Sections 67-5291 and 67-5292, Idaho Code.

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

DOCKET NO. 58-0000-2000F

Adoption of the temporary rules is conditional and will only become effective if the rules are not otherwise approved or rejected by the Legislature and/or not extended pursuant to the Idaho Administrative Procedure Act.

The attached draft notice has been prepared for publication in the Idaho Administrative Bulletin at or shortly after sine die with the rules having an effective date as of sine die.

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

DOCKET NO. 58-0000-2000F

NOTICE OF OMNIBUS RULEMAKING - ADOPTION OF TEMPORARY FEE RULES

EFFECTIVE DATE: The effective date of the temporary rules being adopted through this omnibus rulemaking is upon the adjournment date of the Second Regular Session of the 65th Idaho Legislature (sine die).

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given that the Idaho Board of Environmental Quality (Board) has adopted temporary fee rules. The action is authorized pursuant to the following Idaho Code provisions. Citations to any federal statutes that provide the basis of authority or requirement for the rulemaking are also included.

IDAPA 58.01.01 - Sections 39-105, 39-107, 39-114(4), 39-115(3), and 39-116B, Idaho Code; Clean Air Act, 42 U.S.C. § 7401 *et seq.*

IDAPA 58.01.05 - Chapters 44 and 58, Title 39, Idaho Code; Solid Waste Disposal Act, 42 U.S.C. § 6901 *et seq.*

IDAPA 58.01.06 - Sections 39-105, 39-107, and 39-7408C, Idaho Code; Solid Waste Disposal Act, 42 U.S.C. § 6901 *et seq.*

IDAPA 58.01.07 - Chapters 1 and 88, Title 39, Idaho Code; Solid Waste Disposal Act, 42 U.S.C. §§ 6991 – 6991m

IDAPA 58.01.08 - Chapter 1, Title 39, Idaho Code; Chapter 21, Title 37, Idaho Code; Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*

IDAPA 58.01.09 - Sections 39-104A, 39-105, and 39-107, Idaho Code

IDAPA 58.01.11 - Sections 39-105, 39-107, 39-120, and 39-126, Idaho Code

IDAPA 58.01.12 - Chapters 1 and 36, Title 39, Idaho Code; Clean Water Act, 33 U.S.C. § 1251 *et seq.*

IDAPA 58.01.13 - Chapter 1, Title 39, Idaho Code

IDAPA 58.01.14 - Sections 39-105, 39-107, and 39-119, Idaho Code

IDAPA 58.01.18 - Sections 39-105, 39-107, 39-4405, and 39-7210, Idaho Code

IDAPA 58.01.20 - Chapters 1 and 76, Title 39, Idaho Code; Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*

IDAPA 58.01.25 - Chapter 1, Title 39, Idaho Code; Clean Water Act, 33 U.S.C. §§ 1342 and 1345

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting temporary rules:

On February 13, 2020, the Board adopted as temporary fee rules the IDAPA 58 rule chapters as they were presented in the pending rule dockets adopted by the Board in 2019 and submitted to the Second Regular Session of the 65th Idaho Legislature for review (2019 pending rule dockets). The 2019 pending rule dockets are posted in the [2020 Legislative Rules Review Books](#). The IDAPA 58 fee rule chapters and the 2019 pending rule dockets are listed below.

IDAPA 58.01.01, *Rules for the Control of Air Pollution in Idaho*

Docket No. 58-0101-1903

Docket No. 58-0101-1904

Docket No. 58-0101-1905

IDAPA 58.01.05, *Rules and Standards for Hazardous Waste*

Docket No. 58-0000-1900F

Docket No. 58-0105-1901

IDAPA 58.01.06, *Solid Waste Management Rules*

Docket No. 58-0000-1900F

IDAPA 58.01.07, *Rules Regulating Underground Storage Tank Systems*
Docket No. 58-0000-1900F

IDAPA 58.01.08, *Idaho Rules for Public Drinking Water Systems*
Docket No. 58-0000-1900F

IDAPA 58.01.09, *Rules Regulating Swine Facilities*
Docket No. 58-0109-1901

IDAPA 58.01.11, *Ground Water Quality Rule*
Docket No. 58-0111-1901

IDAPA 58.01.12, *Rules for Administration of Water Pollution Control Loans*
Docket No. 58-0000-1900F

IDAPA 58.01.13, *Rules for Ore Processing by Cyanidation*
Docket No. 58-0000-1900F

IDAPA 58.01.14, *Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services*
Docket No. 58-0000-1900F

IDAPA 58.01.18, *Idaho Land Remediation Rules*
Docket No. 58-0000-1900F

IDAPA 58.01.20, *Rules for Administration of Drinking Water Loan Program*
Docket No. 58-0000-1900F

IDAPA 58.01.25, *Rules Regulating the Idaho Pollutant Discharge Elimination System Program*
Docket No. 58-0000-1900F

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These temporary rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. DEQ would not be able to fulfill its statutory obligations without these rules. The state of Idaho would lose primacy over federal environmental laws without these rules. These rules are central to DEQ's mission to protect human health and the quality of Idaho's air, land, and water.

FEE SUMMARY: Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fees or charges being imposed are justified and necessary to avoid immediate danger and the fees are described below. This rulemaking does not impose a fee or charge beyond what was previously approved and codified.

The fees authorized in the Idaho Code sections listed below are part of the agency's 2020 budget that relies upon the existence of these fees or charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these temporary rules would create immediate danger to the state budget, immediate danger to

necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. Temporary adoption of these rules is necessary to ensure that (1) the state of Idaho maintains primacy over federal programs; (2) DEQ is able to continue to offer services such as permit and license issuance; and (3) DEQ is able to continue to administer programs such as voluntary remediation, and the wastewater and drinking water loan programs.

Listed below are the DEQ fee rule chapters, fee categories, and the statutory authority for imposition of the fees.

IDAPA 58.01.01, *Rules for the Control of Air Pollution in Idaho* - Idaho Code § 39-114(4), crop residue burn fee; Idaho Code § 39-115(3), application fee for industrial or commercial air pollution source permits; Idaho Code § 39-116B, motor vehicle inspection fee

IDAPA 58.01.05, *Rules and Standards for Hazardous Waste* - Idaho Code § 39-5813(3), hazardous waste siting license fee

IDAPA 58.01.06, *Solid Waste Management Rules* - Idaho Code § 39-7408(C), commercial solid waste siting license fee

IDAPA 58.01.07, *Rules Regulating Underground Storage Tank Systems* – Idaho Code §§ 39-119, 39-8802(d), annual UST fee

IDAPA 58.01.08, *Idaho Rules for Public Drinking Water Systems* – Idaho Code § 39-119, annual drinking water system fee

IDAPA 58.01.09, *Rules Regulating Swine Facilities* - Idaho Code § 39-119, permit application fee

IDAPA 58.01.11, *Ground Water Quality Rule* - Idaho Code § 39-119, point of compliance application fee

IDAPA 58.01.12, *Rules for Administration of Water Pollution Control Loans* – Idaho Code §§ 39-119, 39-3627(4), loan fee to offset costs of administering loan program

IDAPA 58.01.13, *Rules for Ore Processing by Cyanidation* – Idaho Code § 39-118A(2)(c), permit application fee

IDAPA 58.01.14, *Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services* – Idaho Code § 39-119, fees for environmental operating permits, licenses, inspection services and waiver application processing

IDAPA 58.01.18, *Idaho Land Remediation Rules* – Idaho Code § 39-7210(5), voluntary remediation program application fee

IDAPA 58.01.20, *Rules for Administration of Drinking Water Loan Program* – Idaho Code §§ 39-119, 39-3627(4), loan fee to offset costs of administering loan program

IDAPA 58.01.25, *Rules Regulating the Idaho Pollutant Discharge Elimination System Program* – Idaho Code § 39-175C

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary fee rules, contact the undersigned.

DATED this 13th day of February, 2020

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