

Proposed Motions for the May 16, 2019
Meeting of the Idaho Board of Environmental Quality

Agenda Item #12
Rules Regulating Swine Facilities - Fee Rule
Docket No. 58-0109-1901F

I move that the Idaho Board of Environmental Quality adopt as temporary rules the rules presented under Docket No. 58-0109-1901F, with an effective date of June 30, 2019. This temporary rule adoption is for a previously approved codified fee rule chapter under IDAPA 58, rules of the Department of Environmental Quality:

IDAPA 58.01.09, Rules Regulating Swine Facilities

TEMPORARY RULE JUSTIFICATION

IDAPA 58.01.09, Rules Regulating Swine Facilities – Fee Rule

Docket No. 58-0109-1901F

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 previously approved and codified 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. The Department of Environmental Quality (DEQ) would not be able to fulfill its statutory obligations 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.

The fee or charge imposed by the rule(s) is necessary to avoid immediate danger. The fee(s) or charge(s) reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee 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 DEQ is able to continue to offer services such as permit issuance. This rulemaking does not impose a fee or charge beyond what was previously approved and codified in the prior rules. The fee category and statutory authority for imposition of the fee are listed below.

Idaho Code § 39-104A specifically authorizes DEQ to promulgate rules regulating large swine feeding operations. These rules regulate an activity regulated by the federal government but could potentially be considered broader in scope. DEQ will address any requirements under subsections 107D(2) and (3) upon proposal of the rule chapter.

Idaho Code § 39-119, permit application fee