

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-0901

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. 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 p.m.

**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.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0101-0901

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 518.04 or 518.05. ()
- 03. Fees.** All applicants for an inspection station or retest station license shall submit, at the time of the original submission of the application, the license fee set by the governing authority. The fee payment shall be made payable to the governing authority. ()
- 04. 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. ()

05. 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 518.04 with the exception of Subsection 518.04.b. ()

06. 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 518.05 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. ()

07. 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. Fees. All applicants for an emissions technician license shall submit, at the time of the original submission of the application, the license fee set by the governing authority. The fee payment shall be made payable to the governing authority. ()

03. 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. ()

04. 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).