

# **IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY**

## **DOCKET NO. 58-0000-2000F (FEE RULE)**

### **NOTICE OF OMNIBUS RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. 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. § 300j *et seq.*
- IDAPA 58.01.25 – Chapter 1, Title 39, Idaho Code; Clean Water Act, 33 U.S.C. §§ 1342 and 1345

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222, Idaho Code, a public hearing has been scheduled and will be held as follows:

#### **PUBLIC HEARING**

**Contingent upon COVID 19 safety protocols, the public may attend in person or remotely via telephone and video conferencing. Remote attendance is encouraged. Information for signing up is provided below.**

**Wednesday, October 7, 2020 – 9:30 a.m. (MDT)**

**In Person:  
DEQ State Office  
1410 N. Hilton Street  
Conference Center  
Boise, Idaho 83706**

**All attendees must comply with current COVID-19 safety protocols for public gatherings.**

#### **Via Telephone and Video Conferencing:**

**To sign up for remote attendance via telephone and video conferencing, contact [Paula Wilson](#) by September 30, 2020.**

The hearing location will be accessible to persons with disabilities, and language translators will be made available upon request. To request accommodations for language translation, contact the undersigned by September 30, 2020.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of the purpose of the proposed rulemaking:

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.

This proposed rule includes 1) the temporary fee rules adopted by the Board in February 2020, and 2) revisions to several fee rule chapters as described below.

Revisions made to the February 2020 temporary fee rules are not considered changes to existing rules and, therefore, are not shown in strike-out/underline format. For revisions that were negotiated, the strike-out/underline format proposed revisions are available for viewing in the latest posted negotiated rule drafts. The negotiated rulemaking records, including negotiated rulemaking summaries and negotiated rule drafts, are available on the web page links provided below.

More information regarding this rule docket is available at [deq.idaho.gov/58-0000-2000F](http://deq.idaho.gov/58-0000-2000F).

▪ **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
- Revisions Updating Federal Regulations Incorporated by Reference:

These proposed revisions are to ensure that the state rules remain consistent with federal regulations. The Rules for the Control of Air Pollution in Idaho, IDAPA 58.01.01, are updated annually to maintain consistency with federal regulations implementing the Clean Air Act. This proposed rule updates federal regulations incorporated by reference with the July 1, 2020 Code of Federal Regulations (CFR) effective date.

▪ **IDAPA 58.01.05, Rules and Standards for Hazardous Waste**

- Docket No. 58-0000-1900F
- Docket No. 58-0105-1901
- Revisions Updating Federal Regulations Incorporated by Reference:

These proposed revisions are to ensure that the state rules remain consistent with federal regulations. Idaho's Rules and Standards for Hazardous Waste, IDAPA 58.01.05, are updated annually to maintain consistency with the federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). This proposed rule updates federal regulations incorporated by reference with the July 1, 2020 Code of Federal Regulations (CFR) effective date. The proposed rule also includes minor non-substantive corrections.

▪ **IDAPA 58.01.06, Solid Waste Management Rules**

- Docket No. 58-0000-1900F
- Revisions Negotiated Under Docket No. 58-0106-1901:

These revisions are proposed in response to [Executive Order No. 2019-02](#), Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that certain rules are outdated, unnecessary, or redundant. Various sections throughout IDAPA 58.01.06, Solid Waste Management Rules, have been identified for deletion, simplification, or consolidation with other sections. The negotiated rulemaking record is available at [deq.idaho.gov/58-0106-1901](http://deq.idaho.gov/58-0106-1901).

▪ **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
- Revisions Negotiated Under Docket No. 58-0112-1901:

These revisions are proposed in response to [Executive Order No. 2019-02](#), Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that its two revolving loan rule chapters could be simplified and consolidated into a single chapter. DEQ proposes to delete IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program, and merge necessary and relevant sections of IDAPA 58.01.20 with IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans. DEQ has initiated a separate rulemaking for the deletion of IDAPA 58.01.20 (Docket No. 58-0120-1901). The negotiated rulemaking record is available at [deq.idaho.gov/58-0112-1901](http://deq.idaho.gov/58-0112-1901).

▪ **IDAPA 58.01.13, Rules for Ore Processing by Cyanidation**

- Docket No. 58-0000-1900F
- Revisions Negotiated Under Docket No. 58-0113-1901:

The Idaho Mining Association (IMA) requested, via letter submitted to the Director on March 18, 2019, that DEQ revise the rules to move away from prescriptive design and construction requirements to performance-based outcomes for design, construction and closure. IMA's letter is posted at [deq.idaho.gov/58-0113-1901](http://deq.idaho.gov/58-0113-1901). The current rules, adopted by the Board in 2005 and approved by the Idaho Legislature in 2006, adopted minimum design and construction criteria for all cyanidation facilities. IMA's letter to DEQ states that technologies and industry best practices for cyanidation facilities have changed since 2006. DEQ initiated negotiated rulemaking to evaluate such changes and to determine if the rules should be updated.

The proposed rule includes revisions to account for current best available technologies or best practices for design, construction and closure of cyanidation facilities that can achieve necessary regulatory goals of protecting human health and the environment and addresses the following:

- (1) applicability of the design criteria to different types of cyanidation facilities;
- (2) consideration of a broader range of acceptable materials included in the design;
- (3) broader interpretation of performance and compliance regarding constructability of leak detection systems;
- (4) variability in design approach based on the physical characteristics of impounded materials; and
- (5) variability in design approach based on the chemical characteristics of impounded materials and process water; and
- (6) cyanidation permit application and administration, including recovery of costs incurred by DEQ in processing permit applications and administering issued permits.

The negotiated rulemaking record is available at [deq.idaho.gov/58-0113-1901](http://deq.idaho.gov/58-0113-1901).

▪ **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
- Revisions Negotiated Under Docket No. 58-0120-1901 (Chapter Repeal):

These revisions are proposed in response to [Executive Order No. 2019-02](#), Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that its two revolving loan rule chapters could be simplified and consolidated into a single chapter. DEQ proposes to delete IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program, and merge necessary and relevant sections of IDAPA 58.01.20 with IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans. DEQ has initiated a separate rulemaking for the revisions to IDAPA 58.01.12 (Docket No. 58-0112-1901). The negotiated rulemaking record is available at [deq.idaho.gov/58-0120-1901](http://deq.idaho.gov/58-0120-1901).

▪ **IDAPA 58.01.25, Rules Regulating the Idaho Pollutant Discharge Elimination System Program**

- Docket No. 58-0000-1900F
- Revisions Negotiated Under Docket No. 58-0125-2001:

To maintain delegated authority for the IPDES program, state rules need to be updated routinely to maintain consistency with federal regulations implementing the Clean Water Act. The purpose of this rulemaking is to ensure the Rules Regulating the Idaho Pollutant Discharge Elimination System (IPDES) Program, IDAPA 58.01.25, remain consistent with federal regulations and to make clarifications in response to ambiguities identified during DEQ's administration of the IPDES program.

In 2015, 2017, 2019, and 2020, updated federal regulations became effective for National Pollutant Discharge Elimination System (NPDES) permitting authorities. These regulations require commensurate changes to portions of the IPDES rules with regard to updating definitions, applications, and reporting requirements for the state and facilities permitted under the program. DEQ is proposing to update those items incorporated by reference impacted by the federal changes. DEQ also proposes changes to the IPDES rules to clarify requirements related to fee payment, public comments, appeals, and other ambiguities identified since implementation of the program in July 2018.

This proposed rule updates federal regulations incorporated by reference with the July 1, 2020 Code of Federal Regulations (CFR) effective date. To maintain consistency for all federal regulations listed in IDAPA 58.01.25.003, this update includes the regulations that have not been revised since the initial incorporation by reference. DEQ negotiated the original rule language and incorporated by reference federal regulations affecting the program.

The negotiated rulemaking record is available at [deq.idaho.gov/58-0125-2001](http://deq.idaho.gov/58-0125-2001).

After consideration of public comments, DEQ intends to present the final proposal to the Board in November 2020 for adoption as pending rules. With respect to IDAPA 58.01.13, Ore Processing by Cyanidation, DEQ intends to present the final proposal to the Board for adoption as both an amendment to the temporary rules and as pending rules.

**FEE SUMMARY:** With the exception of revisions to IDAPA 58.01.13, Rules for Ore Processing by Cyanidation, this rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature in the prior rules. A description of each fee category is provided below.

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 - crop residue burn fee, Idaho Code § 39-114(4); application fee for industrial or commercial air pollution source permits, Idaho Code § 39-115(3); motor vehicle inspection fee, Idaho Code § 39-116B

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

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

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

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

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

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

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

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

**Fee Summary - Revisions in IDAPA 58.01.13 Negotiated Under Docket No. 58-0113-1901:**

The current rule requires applicants to submit a fee ranging from \$5,000 for a pilot facility not processing more than 10,000 tons of ore to \$20,000 for a facility processing more than 120,000 tons of ore during the life of the facility. The current rule also includes the option for the applicant to enter into an agreement with the Department for actual costs incurred to process an application and issue a final permit in lieu of paying a fee. This proposed rule eliminates the fee schedule and requires the applicant to enter into an agreement with the Department for actual costs incurred to process an application and issue a final permit. Section 39-118A(2)(c), Idaho Code, authorizes the Director of DEQ to require a reasonable fee for processing permit applications.

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

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

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

IDAPA 58.01.25, *Rules Regulating the Idaho Pollutant Discharge Elimination System Program* – application fee and/or annual fee, Idaho Code § 39-175C

**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:

This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2021 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**Fiscal Impact - Revisions in IDAPA 58.01.13 Negotiated Under Docket No. 58-0113-1901:**

Section 39-118A(2)(c), Idaho Code, authorizes the Director of DEQ to require a reasonable fee for processing permit applications. The proposed rule includes a fee for processing a permit application but does not include any fees following issuance of the permit. As facilities are permitted, there will be an impact to the state general fund for administration of a cyanidation permit program; however, it would vary based on the number and size of permitted facilities operating in Idaho. The estimated average annual general fund impact is \$6,000 per permitted facility.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, agencies shall proceed through negotiated rulemaking whenever it is feasible to do so. DEQ made the following determinations regarding feasibility to conduct negotiated rulemaking:

Negotiated rulemaking was not feasible for the temporary fee rules adopted by the Board in February 2020 because engaging in negotiated rulemaking for the previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

Negotiated rulemaking was not feasible for the revisions updating federal regulations incorporated by reference in IDAPA 58.01.01, *Rules for the Control of Air Pollution in Idaho*, and IDAPA 58.01.05, *Rules and Standards for Hazardous Waste*, due to the simple nature and because DEQ has no discretion with respect to adopting federal regulations necessary to maintain state primacy of the federal programs. Whenever possible, DEQ incorporates federal regulations by reference to ensure that the state rules are consistent with federal regulations.

Negotiated rulemaking was feasible for revisions in the following rule chapters. These revisions were negotiated with stakeholders and members of the public. The negotiated rulemaking record for each docket is available on the listed web pages.

IDAPA 58.01.06, Solid Waste Management Rules  
Docket No. 58-0106-1901 - [deq.idaho.gov/58-0106-1901](http://deq.idaho.gov/58-0106-1901)

IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans  
Docket No. 58-0112-1901 - [deq.idaho.gov/58-0112-1901](http://deq.idaho.gov/58-0112-1901)

IDAPA 58.01.13, Rules for Ore Processing by Cyanidation  
Docket No. 58-0113-1901 - [deq.idaho.gov/58-0113-1901](http://deq.idaho.gov/58-0113-1901)

IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program (Chapter Repeal)  
Docket No. 58-0120-1901 - [deq.idaho.gov/58-0120-1901](http://deq.idaho.gov/58-0120-1901).

IDAPA 58.01.25, Rules Regulating the Idaho Pollutant Discharge Elimination System Program  
Docket No. 58-0125-2001 - [deq.idaho.gov/58-0125-2001](http://deq.idaho.gov/58-0125-2001)

**INCORPORATION BY REFERENCE:** The following rule chapters include revisions updating federal regulations incorporated by reference:

IDAPA 58.01.01, *Rules for the Control of Air Pollution in Idaho*  
IDAPA 58.01.05, *Rules and Standards for Hazardous Waste*  
IDAPA 58.01.25, *Rules Regulating the Idaho Pollutant Discharge Elimination System Program*

Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief summary of why the incorporation by reference is necessary:

Adoption of federal regulations is necessary to maintain program primacy. Incorporation by reference allows DEQ to keep its rules up to date with federal regulation changes and simplifies compliance for the regulated community. Information for obtaining a copy of the federal regulations is included in the rules.

In compliance with Idaho Code 67-5223(4), for each fee rule chapter with updates to federal regulations incorporated by reference, DEQ prepared a brief synopsis detailing the substantive differences between the previously incorporated material and the latest revised edition or version of the incorporated material being proposed for incorporation by reference. The Overview of Incorporations by Reference documents are available at [deq.idaho.gov/58-0000-2000F](http://deq.idaho.gov/58-0000-2000F).

**IDAHO CODE SECTION 39-107D STATEMENT:** With the exception of revisions to IDAPA 58.01.13, *Rules for Ore Processing by Cyanidation*, these rules are either (1) not broader in scope or more stringent than federal law nor propose to regulate an activity not regulated by the federal government, or (2) have previously been approved as meeting the requirements of Section 39-107D, Idaho Code.

**IDAHO CODE SECTION 39-107D STATEMENT FOR REVISIONS IN IDAPA 58.01.13 NEGOTIATED UNDER DOCKET NO. 58-0113-1901:** IDAPA 58.01.13, *Rules for Ore Processing by Cyanidation*, regulates activities not regulated by the federal government. The following is a summary of additional information required by Sections 39-107D(2) through (3), Idaho Code, supporting the adoption of these rules. These rules establish the procedures and requirements for the issuance and maintenance of a permit to construct, operate, and close that portion of a cyanidation facility that is intended to contain, treat, or dispose of process water or process-contaminated water containing cyanide.

*Section 107D(2)(a), Idaho Code. To the degree that a department action is based on science, in proposing any rule or portions of any rule subject to this section, the department shall utilize the best available peer reviewed science and supporting studies conducted in accordance with sound and objective scientific practices.*

The requirements set forth in this proposed rule are based upon best available peer reviewed science provided by participants in the negotiated rulemaking conducted pursuant to Section 67-5220, Idaho Code. In addition, the requirements set forth in this proposed rule are industry accepted standards and proven regulatory requirements shown to be generally protective of human health and the environment.

To the extent practicable, the proposed rule reflects derivations of the standards and evaluation criteria used in the state of Nevada to regulate cyanidation facilities. Nevada's rules more broadly address mining facilities, not cyanidation facilities specifically. The standards specific to cyanidation facilities were developed based on numerous references providing the best available peer reviewed science. These references are included in the rulemaking record and available at [deq.idaho.gov/58-0113-1901](http://deq.idaho.gov/58-0113-1901).

***Section 39-107D(2)(b), Idaho Code. To the degree that a department action is based on science, in proposing any rule or portions of any rule subject to this section, the department shall utilize data collected by accepted methods or best available methods if the reliability of the method and the nature of the decision justifies use of the data.***

Data was not collected or analyzed as part of this rulemaking process.

***Section 39-107D(3)(a), Idaho Code. Identification of each population or receptor addressed by an estimate of public health effects or environmental effects.***

The release of contaminants from cyanidation facilities may adversely impact beneficial uses in both surface and ground water. The populations and receptors of contaminants generated by these facilities potentially include, depending on a facility's location, domestic and community drinking water systems, recreationists, agriculture, and wildlife. Contaminants of concern with the potential of release from cyanidation facilities include, but are not limited to, cyanide, nitrates, chlorine, heavy metals, and sediment.

In Idaho, ground water supplies drinking water to approximately 95% of Idaho's citizens. Of these consumers, approximately one million rely on regulated public water systems for drinking water. Another 500,000 Idahoans utilize ground water from private wells for drinking water. Protection of this resource is critical to the health of the citizens of Idaho.

Ground water also replenishes surface water supplies throughout Idaho. In areas with degraded ground water, the quality of the interconnected surface water can be negatively impacted. The release of contaminants to surface water either directly or indirectly through the ground water can have adverse environmental effects on aquatic habitats, such as increased algal blooms and systemic or neurological effects in susceptible species. The release of contaminants to surface water may also affect communities or individuals who use surface water as a drinking water source by, for example, making the water unfit for consumption or increasing treatment costs.

***Section 107D(3)(b) through (e), Idaho Code. Identification of the expected risk or central estimate of risk for the specific population or receptor and identification of each appropriate upper bound or lower bound estimate of risk, of each significant uncertainty identified in the process of the assessment of public health effects or environmental effects and any studies that would assist in resolving the uncertainty, and studies known to the department that support, are directly relevant to, or fail to support any estimate of public health effect or environmental effects and the methodology used to reconcile inconsistencies in the data.***

The proposed rule includes permitting process requirements and criteria for the design, construction, operation, and closure of a cyanidation facility. The design criteria are intended to ensure that cyanidation facilities are constructed, operated, and closed in a manner that complies with Idaho's existing standards for protection of human health and the environment, including surface and ground water quality standards. Because specific standards for protecting of human health and the environment already exist in other rules, there is no need to duplicate them in this proposed rule. The criteria included as part of this proposed rule are not based on any express estimate or analysis of risk to public health or the environment. Instead, the criteria are based on best available peer reviewed science and generally accepted design principles used by engineers and regulators to safely contain, control, and treat pollutants associated with ore processing by cyanidation consistent with other existing standards. Application of the criteria in this proposed rule and other rules administered by the Department or other state agencies will result in minimal risk of release of contaminants from the cyanidation facility into the environment and appropriate response in the event of a release.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the proposed rule, contact the undersigned.

**SUBMISSION OF WRITTEN COMMENTS:** Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before October 16, 2020.

Dated this 19th day of August, 2020.

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Boise, Idaho 83706  
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**58.01.12 – RULES FOR ADMINISTRATION OF WASTEWATER  
AND DRINKING WATER LOAN FUNDS**

**000. LEGAL AUTHORITY.**

The Idaho Board of Environmental Quality, pursuant to authority granted in Chapters 1, 36, and 76, Title 39, Idaho Code, did adopt the following rules for the administration of the Wastewater and Drinking Water Loan Funds. ( )

**001. TITLE AND SCOPE.**

**01. Title.** These rules are titled IDAPA 58.01.12, “Rules for Administration of Wastewater and Drinking Water Loan Funds.” ( )

**02. Scope.** The provisions of these rules will establish administrative procedures and requirements for establishing, implementing and administering two (2) state loan programs for providing financial assistance to eligible applicants of wastewater and drinking water projects. The U.S. Environmental Protection Agency provides annual capitalization grants to the state of Idaho for these programs. Financial assistance projects must be in conformance with the requirements of the Subchapter VI of the federal Clean Water Act (33 U.S.C. Sections 1381 et seq.) and the Safe Drinking Water Act (42 U.S.C. Section 300j et seq.). ( )

**002. (RESERVED)**

**003. ADMINISTRATIVE APPEALS.**

Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality.” ( )

**004. INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED MATERIAL.**

**01. Incorporation by Reference.** These rules do not contain documents incorporated by reference. ( )

**02. Availability of Referenced Material.** The “Clean Water State Revolving Fund Handbook” and the “Drinking Water Loan Account Handbook” (Handbooks) are available at the Idaho Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208) 373-0502, or DEQ website <http://www.deq.idaho.gov>. ( )

**005. CONFIDENTIALITY.**

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 1, Title 74, Idaho Code, and IDAPA 58.01.21, “Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality.” ( )

**006. POLICY.**

It is the policy of the Idaho Board of Environmental Quality through the Idaho Department of Environmental Quality, to administer the Wastewater Loan Fund for the purpose of protecting and enhancing the quality and value of the water resources of the state of Idaho by financially assisting in the prevention, control and abatement of water pollution and the Drinking Water Loan Fund for the purpose of providing assistance to eligible public drinking water systems for the planning, design, and construction of facilities to ensure safe and adequate drinking water. It is also the intent of the Idaho Board of Environmental Quality to assign a priority rating to those projects that will most significantly improve the quality of the waters of the state and most adequately protect the public health. ( )

**007. DEFINITIONS.**

For the purpose of the rules contained in this chapter, the following definitions apply: ( )

**01. Applicant.**

**a.** When used in the context of wastewater loan fund, applicant is defined as a municipality or nonpoint source project sponsor that has the ability to establish and maintain a loan repayment source. Individuals and for-profit corporations are not eligible. ( )

**b.** When used in the context of drinking water loan fund, applicant is defined as any eligible system making application for drinking water loan funds. ( )

**02. Best Management Practice.** A practice or combination of practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan which are determined to be the most cost-effective and practicable means of preventing or reducing the amount of pollution

- generated by nonpoint sources to a level compatible with water quality needs. ( )
- 03. Board.** The Idaho Board of Environmental Quality. ( )
- 04. Categorical Exclusion (CE).** Category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental information document nor an environmental impact statement is required. ( )
- 05. Close or Closing.** The date on which the loan recipient issues and physically delivers to the Department the bond or note evidencing the loan to the loan recipient, specifically determining the principal, interest and fee amounts that shall be repaid and the schedule for payment. ( )
- 06. Collector Sewer.** That portion of the wastewater treatment facility whose primary purpose is to receive sewage from individual residences and other individual public or private structures and which is intended to convey wastewater to an interceptor sewer or a treatment plant. ( )
- 07. Community Water System.** A public drinking water system that: ( )
- a.** Serves at least fifteen (15) service connections used by year round residents of the area served by the system; or ( )
- b.** Regularly serves at least twenty-five (25) year-round residents. ( )
- 08. Construction.** The erection, building, acquisition, alteration, reconstruction, improvement or extension of wastewater treatment or drinking water facilities, including preliminary planning to determine the economic and engineering feasibility, the engineering, architectural, legal, fiscal and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of wastewater treatment or drinking water facilities; the inspection and supervision of the construction; and start-up of the associated facilities. ( )
- 09. Contaminant.** Any physical, chemical, biological, or radiological substance or matter in water. ( )
- 10. Department.** The Idaho Department of Environmental Quality. ( )
- 11. Director.** The Director of the Idaho Department of Environmental Quality or his/her designee. ( )
- 12. Disadvantaged Community.** The service area of a wastewater treatment facility or a public water system that meets affordability criteria established by the Department of Environmental Quality after public review and comment. ( )
- 13. Disadvantaged Loans.** Loans made to a disadvantaged community. ( )
- 14. Distribution System.** Any combination of pipes, tanks, pumps, and other equipment that delivers water from the source(s), treatment facility(ies), or a combination of source(s) and treatment facility(ies) to the consumer. Chlorination may be considered as a function of a distribution system. ( )
- 15. Eligible Costs.** Costs which are necessary for planning, designing and/or constructing drinking water or wastewater treatment facilities, or implementation of water pollution control projects. To be eligible, costs must be reasonable and not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 041. ( )
- 16. Environmental Impact Statement (EIS).** A document prepared by the applicant when the Department determines that the proposed construction project may significantly affect the environment. The major purpose of the EIS will be to describe fully the significant impacts of the project and how these impacts can be either avoided or mitigated. The environmental review procedures contained in Chapter 5 of the Handbooks may be used as

guidance when preparing the EIS. ( )

**17. Environmental Information Document (EID).** Any written environmental assessment prepared by the applicant describing the environmental impacts of a proposed wastewater or drinking water construction project. This document will be of sufficient scope to enable the Department to assess the environmental impacts of the proposed project and ultimately determine if an EIS is warranted. ( )

**18. Financial Management System.** Uniform method of recording, summarizing and analyzing financial information about the loan applicant. ( )

**19. Finding of No Significant Impact (FONSI).** A document prepared by the Department presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an EIS will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it. ( )

**20. Handbook(s).** The “Clean Water State Revolving Fund Handbook” and/or the “Drinking Water Loan Account Handbook.” ( )

**21. Implementation Plan.** Completed project implementation plan or work plan provides detailed documentation of the proposed project including list of tasks, schedule of tasks, agency/contractor/entity responsible for implementation of the project tasks, adequate time schedules for completion of all budget tasks, and the anticipated results of the project. ( )

**22. Ineligible Costs.** Costs which are not eligible for funding pursuant to these rules. ( )

**23. Interceptor Sewer.** That portion of the wastewater treatment facility whose primary purpose is to transport domestic sewage or nondomestic wastewater from collector sewers to a treatment plant. ( )

**24. Loan Recipient.** An applicant who has been awarded a loan. ( )

**25. Managerial Capability.** The capability of the loan applicant to support the proper financial and technical operation of the system. ( )

**26. Maximum Contaminant Level (MCL).** The maximum permissible level of a contaminant in water which is delivered to any user of a public water system. ( )

**27. Noncommunity Water System.** A public water system that is not a community water system. ( )

**28. Nondomestic Wastewater.** Wastewaters originating primarily from industrial or commercial processes which carry little or no pollutants of human origin. ( )

**29. Nonpoint Source Pollution.** Water pollution that enters the waters of the state from nonspecific and diffuse sources and is the result of runoff, precipitation, drainage, seepage, hydrological modification or land disturbing activities. ( )

**30. Nonpoint Source Project Sponsor.** Any applicant for wastewater loan funds to address nonpoint source pollution. ( )

**31. Operation and Maintenance Manual.** For wastewater or drinking water facilities, a guidance and training manual outlining the optimum operation and maintenance of the facilities and their components. For nonpoint source water pollution control projects, a plan that incorporates applicable sections of the Natural Resources Conservation Service Field Office Technical Guide, for implementation of best management practices. ( )

**32. Planning Document.** A document which describes the condition of a public wastewater or drinking water system and presents a cost effective and environmentally sound alternative to achieve or maintain regulatory compliance. Engineering reports and facility plans are examples of such planning documents. The

planning documents shall be prepared by or under the responsible charge of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Requirements for planning documents prepared using loan funds are provided in Section 030 of these rules and in the Handbooks. ( )

**33. Plan of Operation.** A schedule of specific actions and completion dates for construction, start-up and operation of the facility or for implementation of wastewater or drinking water projects. ( )

**34. Point Source.** Any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be discharged to the waters of the state. This term as used in these rules does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition. ( )

**35. Pollutant.** Any chemical, biological, or physical substance whether it be solid, liquid, gas, or a quality thereof, which if released into the environment can, by itself or in combination with other substances, create a nuisance or render that environment harmful, detrimental, or injurious to public health, safety or welfare or to domestic, commercial, industrial, recreational, aesthetic or other beneficial uses. ( )

**36. Priority List.** An integrated list of proposed wastewater treatment facility and nonpoint source pollution control projects rated as described in Section 020; or a list of proposed drinking water projects rated by severity of risk to public health, the necessity to ensure compliance with IDAPA 58.01.08, Idaho Rules for Public Drinking Water Systems, and the Safe Drinking Water Act (42 U.S.C. Section 300j et seq.), population affected, and need on a household basis for protection of Idaho's public drinking water. ( )

**37. Public Drinking Water System/Public Water System/Water System.** A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections, regardless of the number of water sources or configuration of the distribution system, or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under the 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. Such term does not include any "special irrigation district." A public water system is either a "community water system" or a "noncommunity water system." ( )

**38. Readiness to Proceed.** The progress which a loan applicant has made towards completion of time-consuming tasks necessary to complete a loan application (e.g. bond election, local improvement district formation, judicial confirmation towards debt authority, completion of facility plan). ( )

**39. Reserve Capacity.** That portion of the facility that is designed and incorporated in the constructed facilities to handle future demand upon the system. ( )

**40. Sewer Use Ordinance/Sewer Use Resolution.** An ordinance or resolution that requires new sewers and connections to be properly designed and constructed, prohibits extraneous sources of inflow and prohibits introduction of wastes into the sewer in an amount that endangers the public safety or the physical or operational integrity of the wastewater treatment facility. ( )

**41. State.** The state of Idaho. ( )

**42. Supplemental Grants.** A state funded grant awarded in conjunction with a loan from the water pollution control loan account. ( )

**43. Suspension.** An action by the Director to suspend a loan contract prior to project completion for a specified cause. Suspended contracts may be reinstated. ( )

**44. Sustainability.** Sustainability will include efforts for energy and water conservation, extending the life of capital assets, green building practices, and other environmentally innovative approaches to infrastructure repair, replacement and improvement. ( )

**45. Termination.** An action by the Director to permanently terminate a loan contract prior to project completion for a specific cause. Terminated contracts will not be reinstated. ( )

**46. User Charge System.** A system of rates and service charges applicable to specific types of users, including any legal enforcement mechanism as may be required and which provides sufficient reserves and/or revenues for debt retirement, operation and maintenance, and replacement of the installed equipment or structures. ( )

**47. Wastewater.** A combination of the liquid and water-carried wastes from dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any groundwater, surface water and storm water that may be present; liquid and water that is physically, chemically, biologically, or rationally identifiable as containing excreta, urine, pollutants or domestic or commercial wastes; sewage. ( )

**48. Wastewater Treatment Facility.** Any facility, including land, equipment, furnishings and appurtenances thereof, used for the purpose of collecting, treating, neutralizing or stabilizing wastewater and removing pollutants from wastewater including the treatment plant, collectors, interceptors, outfall and outlet sewers, pumping stations, sludge treatment and handling systems, land disposal systems; a sewage treatment plant. ( )

**49. Water Pollution Control Project.** Any project that contributes to the removal, curtailment, or mitigation of pollution of the surface waters or groundwater of the state, or the restoration of the quality of said waters, and conforms to any applicable planning document which has been approved and/or adopted such as the State Water Quality Management Plan. This includes the planning, design, construction/implementation or any other distinct stage or phase of a project. ( )

**50. Water System Protection Ordinance.** An ordinance adopted pursuant to Chapter 32, Title 42, Idaho Code, or other applicable law that requires new connections to be properly designed and constructed, which prohibits cross-connections with non-potable water sources and in all ways protects the water system from injection of contaminants, and that provides for fees for service from users or classes of users. ( )

**008. ELIGIBLE SYSTEMS.**

**01. Basic Drinking Water Considerations.** Public and private community water systems and nonprofit noncommunity water systems. ( )

**02. Basic Wastewater Considerations.** Municipal or non-profit owned wastewater point source treatment facilities, lagoons, reuse facilities, and systems using nonpoint source methodologies of wastewater disposal. ( )

**03. Assistance to Ensure Compliance.** Public water systems not eligible for project loans may receive assistance if: ( )

**a.** The use of the assistance will ensure compliance; ( )

**b.** The owner or operator of the system agrees to undertake feasible and appropriate changes in operations (including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures); ( )

**c.** The Department determines that the measures are necessary to ensure that the system has the technical, managerial, and financial capability to comply with state and federal drinking water requirements over the long term; and ( )

**d.** Prior to providing assistance under this section to a public water system that is in significant noncompliance with any requirement of IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act (42 U.S.C. Section 300j et seq.), the Department conducts a review to determine whether this section applies to the system. ( )

**009. INELIGIBLE SYSTEMS.**

- 01. Basic Considerations.** Systems not eligible for project loans are described in Subsection 009.02. ( )
- 02. Systems Not Eligible.** The following systems will not be considered eligible for project loans: ( )
- a.** Wastewater systems that are owned by individuals or for-profits; ( )
  - b.** Drinking water systems in significant noncompliance with any requirement of IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems,” and the Safe Drinking Water Act (42 U.S.C. Section 300j et seq.); ( )
  - c.** Drinking water systems under disapproval designation as outlined in IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems”; or ( )
  - d.** Systems delinquent in payment of fines, state revolving fund loans, penalties, or fee assessments due to DEQ. ( )

**010. FINANCIAL AND MANAGEMENT CAPABILITY ANALYSIS.**

No loans shall be awarded for projects unless the applicant has demonstrated and certified that it has the legal, technical, managerial, and financial capabilities as provided for in these rules to ensure construction, operation and maintenance, and to repay principal and interest which would be due on a loan. ( )

**01. Information Needed.** Before an application will be considered complete, the applicant must submit all necessary information on a form prescribed by the Department along with substantiating documentation. The information may include, but not be limited to, demographic information of the applicant, estimated construction or implementation costs, annual operating costs, and information regarding the financing of the project, including the legal debt limit of the applicant and the existence and amount of any outstanding bonds or other indebtedness which may affect the project. ( )

**02. Incorporated Nonprofit Applicants.** ( )

**a.** In addition to all other information required to be submitted by these rules, an incorporated nonprofit applicant must demonstrate to the satisfaction of the Department by its articles of incorporation and/or bylaws, that: ( )

- i.** The corporation is nonprofit and lawfully incorporated pursuant to Chapter 3, Title 30, Idaho Code; ( )
- ii.** The corporation is authorized to incur indebtedness to construct, improve or repair wastewater or drinking water facilities and/or implement water pollution control nonpoint source projects; ( )
- iii.** The corporation is authorized to secure indebtedness by pledging corporation assets, including any revenues raised through a user charge system; ( )
- iv.** The corporation exists either perpetually or for a period long enough to repay a project loan; and ( )
- v.** The corporation is capable of raising revenues sufficient to repay a loan. ( )

**b.** The Department may impose conditions on the making of a facility loan or water pollution control nonpoint source project to an incorporated nonprofit applicant which are necessary to carry out the provisions of these rules and the provisions of Chapter 36 or 76, Title 39, Idaho Code. ( )

**03. Cost Allocation.** An applicant proposing a wastewater, drinking water or nonpoint source project

designed to serve two (2) or more entities must show how the costs will be allocated among the participating entities. Such applicants must provide an executed intermunicipal service agreement which, at a minimum, incorporates the following information: ( )

- a. The basis upon which the costs are allocated; ( )
- b. The formula by which the costs are allocated; and ( )
- c. The manner in which the cost allocation system will be implemented. ( )

**04. Waivers.** The requirement in Section 010 may be waived by the Department if the applicant can demonstrate: ( )

- a. Such an agreement is already in place; ( )
- b. There is documentation of a service relationship in the absence of a formal agreement; or ( )
- c. An applicant exhibits sufficient financial strength to continue the project if one (1) or more of the applicants fails to participate. ( )

**011. -- 019. (RESERVED)**

**020. PRIORITY RATING SYSTEM.**

Projects are identified for placement on priority lists by surveying eligible entities directly on an annual basis. Limited loan funds are awarded to projects based on priority ratings and readiness to proceed. Projects are rated by the Department on a standard priority rating form using public health, sustainability, the condition of the existing system and water quality criteria. ( )

**01. Purpose.** A priority rating system shall be utilized by the Department to annually allot available funds to wastewater and drinking water projects determined eligible for funding assistance under these rules. ( )

**02. Wastewater Priority Rating.** The priority rating system shall be based on a numerical point system. Priority criteria shall contain the following points: ( )

a. Public health emergency or hazard certified by the Idaho Board of Environmental Quality, the Department, a District Health Department or by a District Board of Health – one hundred and fifty (150) points. ( )

b. Regulatory compliance issues (e.g., noncompliance and resulting legal actions relating to infrastructure deficiencies at a wastewater facility) -- up to one hundred (100) points. ( )

c. Watershed restoration (e.g., implementation of best management practices or initiation of construction at wastewater collection and treatment facilities as part of an approved total maximum daily load plan, implementation of nonpoint source management actions in protection of a threatened water, or is part of a special water quality effort) -- up to one hundred (100) points. ( )

d. Watershed protection from impacts (e.g., improvement of beneficial use(s) in a given water body, evidence of community support, or recognition of the special status of the affected water body) -- up to one hundred (100) points. ( )

e. Preventing impacts to uses (nonpoint source pollution projects) -- up to one hundred (100) points. ( )

f. Sustainability efforts (e.g., prospective efforts at energy conservation, water conservation, extending the life of capital assets, green building practices, and other environmentally innovative approaches to infrastructure repair, replacement and improvement) -- up to fifty (50) points. ( )

- g.** Affordability (current system user charges exceed state affordability guidelines) -- ten (10) points. ( )
- 03. Drinking Water Priority Rating.** The priority rating system shall be based on a numerical points system. Priority criteria shall contain the following points. ( )
- a.** Public Health Hazard. Any condition that creates, or may create, a danger to the consumer's health, which may include any one (1) or more of the following, may be awarded a maximum of one hundred (100) points: ( )
- i.** Documented unresolved violations of the primary drinking water standards including maximum contaminant levels, action levels, and treatment techniques (to include maximum contaminant levels for acute and chronic contaminants); ( )
- ii.** Documented unresolved violations of pressure requirements; ( )
- iii.** Documented reduction in source capacity that impacts the system's ability to reliably serve water; ( )
- iv.** Documented significant deficiencies (e.g., documented in a sanitary survey) in the physical system that are causing the system to not reliably serve safe drinking water; or ( )
- v.** Documented unregulated contaminants that have been shown by EPA to be a risk to public health. ( )
- b.** General Conditions of Existing Facilities. Points shall be given based on deficiencies, which would not constitute a public health hazard, for pumping, treating, and delivering drinking water - up to sixty (60) points. ( )
- c.** Sustainability Efforts (e.g., prospective efforts at energy conservation, water conservation, extending the life of capital assets, green building practices, and other environmentally innovative approaches to infrastructure repair, replacement and improvement) - up to fifty (50) points. ( )
- d.** Consent Order, Compliance Agreement Schedule, or Court Order. Points shall be given if the system is operating under and in compliance with a Consent Order, Compliance Agreement Schedule, or Court Order and the proposed construction project will address the Consent Order, Compliance Agreement Schedule, or Court Order - up to thirty (30) points. ( )
- e.** Incentives. Bonus points shall be awarded to systems that promote source water protection, conservation, economy, proper operation maintenance, and monitoring - up to ten (10) points. ( )
- f.** Affordability. Points shall be given when current system user charges exceed state affordability guidelines - ten (10) points. ( )
- 04. Rating Forms.** Rating criteria for Section 020 set forth in rating forms that are available in the Handbooks. ( )
- 05. Priority List.** A list shall be developed from projects rated according to Section 020, submitted for public review and comment, and submitted to the Board for approval. ( )
- a.** Priority Reevaluation. Whenever significant changes occur, which in the Department's judgment would affect the design parameters or treatment requirements by either increasing or decreasing the need for or scope of any project, a reevaluation of that priority rating will be conducted. ( )
- b.** Project Bypass. A project that does not or will not meet the Department schedule that allows for timely utilization of loan funds may be bypassed, substituting in its place the next highest ranking project(s) that is

ready to proceed. An eligible applicant that is bypassed will be notified in writing of the reasons for being bypassed. ( )

**06. Amendment of a Priority List.** The Director may amend a Priority List as set forth in Section 995 of these rules. ( )

**021. DISADVANTAGED LOANS.**

Disadvantaged Loan Awards. In conjunction with the standard loans, the Department may award disadvantaged loans to applicants deemed disadvantaged using the following criteria: ( )

**01. Qualifying for a Disadvantaged Loan.** In order to qualify for a disadvantaged loan, a loan applicant must have a residential user rate for either drinking water or wastewater services that exceed two percent (2%) of the applicant community's median household income or, if the user rate is between one and one-half percent (1½%) and two percent (2%) of the applicant community's median household income, the community must also have: unemployment that exceeds the state average; and a decreasing population. The applicant shall agree to a thirty (30) year loan unless the design life of the project is documented to be less than thirty (30) years. The annual user rate would be based on all operating, maintenance, replacement, and debt service costs (both for the existing system and for upgrades). If the applicant's service area is not within the boundaries of a municipality, or if the applicant's service area's median household income is not consistent with the municipality as a whole, the applicant may use the census data for the county in which it is located or may use a representative survey, conducted by a Department approved, objective third party, to verify the median household income of the applicant's service area. ( )

**02. Adjustment of Loan Terms.** DEQ will equally apportion funds available for principal forgiveness to all prospective disadvantaged loan recipients. For wastewater loan funding, the length of the repayment period is set at the borrower's discretion, up to the maximum repayment period of thirty (30) years. For drinking water loan funding, extensions of repayment term to thirty (30) years are only allowed for disadvantaged applicants. Consistent with achieving user rates as per the criteria set forth in Section 021, and where possible with available funds, loan terms may be adjusted in the following order: decreasing the interest rate and providing principal forgiveness. ( )

**a. Decreasing Interest Rate.** The loan interest rate may be reduced from the rate established by the Director for standard loans to a rate that results in an annual user rate equaling the criteria set forth in Section 021. The interest rate may be reduced to as low as zero percent (0%). ( )

**b. Principal Forgiveness.** If even at zero percent (0%) interest, the annual user rate per residential user still exceeds the criteria set forth in Section 021, then the principal that causes the user charge to exceed the criteria set forth in Section 021 may be partially forgiven or reduced. The principal reduction cannot exceed fifty percent (50%) of the total loan, unless the user rate will exceed \$100 per month (in which case the principal reduction may exceed fifty percent (50%)). Principal forgiveness terms may be revised (from initial estimates established in the annual Intended Use Plan) based upon final construction costs, such that loan terms do not result in user rates that are below the criteria set forth in Section 021. ( )

**022. SUPPLEMENTAL GRANTS.**

In conjunction with loans, the Department may award state funded supplemental grants, not to exceed ninety percent (90%) of total eligible costs, to loan recipients in the following manner: ( )

**01. Projects Not Funded by Loans.** Planning and design projects may receive grant assistance up to ninety percent (90%) funding of eligible costs not funded by a loan; and ( )

**02. Costs in Excess of Financial Ability.** ( )

**a.** Loan recipients may receive supplemental grant assistance for eligible costs that exceed the amount a loan recipient is able to pay. In order to qualify for a supplemental grant, a loan recipient must have the following: ( )

**i.** An annual user rate per household which exceeds one and one-half percent (1 1/2%) of the median household income from the most recent census data. If the loan recipient's service area is not within the boundaries of

a municipality, the loan recipient may use the census data for the county in which it is located or may use an income survey approved by the Department; and ( )

ii. The annual user rate includes all operating, maintenance, replacement and debt service costs, both for the existing system and for upgrades. ( )

b. If a loan recipient meets the requirement of Section 022, a supplemental grant may be made for the amount of the project that causes the annual user rate for wastewater service per household to exceed one and one-half percent (1 1/2%) of the median household income, subject to available funds. ( )

**023. -- 029. (RESERVED)**

**030. PROJECT SCOPE AND FUNDING.**

Loan funds awarded under this program may be used to prepare a facility planning document which identifies the cost effective and environmentally sound alternative to achieve or maintain compliance with IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," the Safe Drinking Water Act, 42 U.S.C., Sections 300j et seq., IDAPA 58.01.16, "Wastewater Rules," and the Clean Water Act, 33 U.S.C. Sections 1381 et seq., and which is approvable by the Department. Loan funds may also be used for design and construction of the chosen alternative. ( )

**01. Nonpoint Source Implementation Funding.** Eligible nonpoint source water pollution control projects may be funded when all of the following criteria are met: ( )

a. Consistent with and implements the Idaho Nonpoint Source Management Plan. ( )

b. Data is used to substantiate a nonpoint source pollutant problem or issue exists and is described or directly referenced. ( )

c. Completed project implementation plan or work plan. ( )

d. Project commitment documentation through demonstrated ability for loan repayment. ( )

e. The project includes documentation that the project owner(s), manager(s), or the sponsoring agency will maintain the project for the life of the project (e.g., Maintenance Agreement). ( )

f. The project provides adequate tracking and evaluation of the effectiveness of the water quality improvements being funded by either the project owner/manager or the sponsoring agency throughout the life of the project. ( )

g. The project demonstrates nexus/benefit to municipality through a letter of support from one (1) or more affected municipalities. ( )

**02. Facility Funding.** Projects may be funded in steps: ( )

a. Step 1. Planning document prepared in accordance with the Handbook. ( )

b. Step 2. Design which includes the preparation of the detailed engineering plans and specifications necessary for the bidding and construction of the project. ( )

c. Step 3. Construction, which includes bidding and actual construction of the project. ( )

d. Step 4. A combination of Step 2 and Step 3. ( )

e. Combination Step Funding. Projects may be funded in any combination of the steps with the approval of the Department. Separate loans may be awarded for Step 1 or Step 2 projects. If a Step 1 or Step 2 project proceeds to construction, either the Step 1 or Step 2 loan, or both, may be consolidated with the Step 3 loan. If a project does not proceed to construction, outstanding Step 1 and Step 2 loans will be amortized and a repayment schedule prepared by the Department. ( )

**f.** Cost Effective Requirement. Step 2, Step 3 or Step 4 loans shall not be awarded until a final cost effective and environmentally sound alternative has been selected by the Step 1 planning document and approved by the Department. If the planning document has not been completed pursuant to IDAPA 58.01.22, “Rules for Administration of Planning Grants for Drinking Water and Wastewater Facilities,” then the loan recipient shall provide an opportunity for the public to comment on the draft planning document. The public comment period shall be held after alternatives have been developed and the Department has approved the draft planning document. The loan recipient shall provide written notice of the public comment period and hold at least one (1) public meeting within the jurisdiction of the loan recipient during the public comment period. At the public meeting, the draft planning document shall be presented by the loan recipient with an explanation of the alternatives identified. The cost effective and environmentally sound alternative selected shall consider public comments received from those affected by the proposed project. After the public meeting and public comment period, the final alternative will be selected and the Environmental Information Document will be prepared. ( )

**g.** Funding For Wastewater Reserve Capacity. Funding for reserve capacity of a treatment plant will not exceed a twenty (20) year population growth and funding for reserve capacity of an interceptor will not exceed a forty (40) year population growth as determined by the Department. ( )

**h.** Funding for Drinking Water Reserve Capacity. Funding for reserve capacity of a drinking water system shall not exceed a twenty (20) year population growth, except that distribution and transmission lines which may be planned for a forty (40) year useful life. ( )

**031. LIMITATION OF PRELOAN ENGINEERING REVIEWS.**

Preloan engineering documents prepared by consulting engineers will be reviewed by Department staff only when accompanied by a certificate that the consulting engineer carries professional liability insurance in accordance with Section 050. ( )

**032. LOAN FEE.**

**01. Loan Fee.** The Department may elect to impose a loan fee when necessary to offset the costs of administering the loan program, to provide planning assistance, or to otherwise facilitate the operation of the loan efforts. The loan fee shall not exceed one percent (1%) of the unpaid balance of the loan at the time each loan payment is due. ( )

**02. Effect on Loan Interest Rate.** The loan interest rate, as described in Section 050, will be reduced by the corresponding percentage of the loan fee. ( )

**03. Payment of Loan Fee.** The loan fee shall be due and payable concurrently with scheduled loan principal and interest repayments over the repayment period. ( )

**033. -- 039. (RESERVED)**

**040. LOAN APPLICATION AND REVIEW.**

**01. Submission of Application.** Those eligible systems that received high priority ranking and are ready to proceed shall be invited to submit an application. The applicant shall submit to the Department, a completed application on a form as prescribed by the Department. ( )

**02. Application Requirements.** Applications shall contain the following documentation, as applicable: ( )

**a.** A lawful resolution passed by the governing body authorizing an elected official or officer of the applicant to execute a loan contract and sign subsequent loan disbursement requests; ( )

**b.** Contracts for engineering or other technical services and the description of costs and tasks set forth therein shall be in sufficient detail for the Department to determine whether the costs associated with the tasks are eligible costs pursuant to Section 041; ( )

- c.** Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum: ( )
- i.** Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; ( )
  - ii.** Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and ( )
  - iii.** Be covered by professional liability insurance in accordance with Section 050 of these rules. A certification of liability insurance shall be included in the application; ( )
- d.** A description of other costs, not included in the contracts for engineering or other technical services, for which the applicant seeks funding. The description of the costs and tasks for such costs must be in sufficient detail for the Department to determine whether the costs are eligible costs pursuant to Section 041; ( )
- e.** A demonstration that the obligation to pay the costs for which funding is requested is the result or will be the result of the applicant's compliance with applicable competitive bidding requirements for construction and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code; ( )
- f.** Step 1 -- Scope of work describing the work tasks to be performed in the preparation of the planning document if required in accordance with Section 030, a schedule for completion of the work tasks and an estimate of staff hours and costs to complete the work tasks; ( )
- g.** Step 2 -- Design, or Step 4 -- Design and Construction: ( )
- i.** Planning document, including a final environmental document and decision in accordance with Section 042; ( )
  - ii.** Financial and management capability analysis as provided in Section 010; and ( )
  - iii.** Intermunicipal service agreements between all entities within the scope of the project, if applicable; ( )
- h.** Step 3 -- Construction: ( )
- i.** Documented evidence of all necessary easements and land acquisition; ( )
  - ii.** Biddable plans and specifications of the approved wastewater treatment facility alternative; ( )
  - iii.** A plan of operation and project schedule; ( )
  - iv.** A user charge system, sewer use or water system protection ordinance and financial management system; and ( )
  - v.** A staffing plan and budget; ( )
- i.** Step 4 -- Design and Construction. Loan applicants must submit all documentation specified in Section 040 prior to advertising for bids on construction contracts; ( )
- j.** Nonpoint Source Implementation Funding: ( )
- i.** Information demonstrating that the project is consistent with and implements the Idaho Nonpoint Source Management Plan; ( )

- ii. Data that substantiates a nonpoint source pollution problem or issue exists; ( )
- iii. A project implementation plan or workplan; ( )
- iv. Project commitment documentation that demonstrates the ability for loan repayment; ( )
- v. Documentation that the project owner, manager or sponsoring agency will maintain the project for the life of the project; ( )
- vi. A demonstration that there will be adequate tracking and evaluation of the effectiveness of the water quality improvements being funded by either the project owner/manager or the sponsoring agency throughout the life of the project; and ( )
- vii. A description of the nexus/benefit to a municipality and a letter of support from one (1) or more affected municipalities. ( )

**03. Determination of Completeness of Application.** The Department will review the application to determine whether it includes all of the information required by Section 040. ( )

**04. Notification of Incompleteness of Application.** Written notification if an application is incomplete, including an explanation of missing documentation will be sent to the applicant. The applicant may provide the missing documentation. ( )

**05. Reapplication for Loan.** The action of disapproving, recalling or terminating a loan in no way precludes or limits the former applicant from reapplying for another loan when the project deficiencies are resolved and project readiness is secured. ( )

**041. DETERMINATION OF ELIGIBILITY OF COSTS.**

The Department will review the application, including any contracts required to be submitted with the application, to determine whether the costs are eligible costs for funding. ( )

**01. Eligible Costs.** Eligible costs are those determined by the Department to be: ( )

- a. Necessary costs; ( )
- b. Reasonable costs; and ( )
- c. Costs that are not ineligible as described in Section 041. ( )

**02. Necessary Costs.** The Department will determine whether costs are necessary by comparing the tasks for which the costs will be incurred to the scope of the project as described in the plan of study for facility planning documents, the project implementation plan or work plan for nonpoint source projects, and any other relevant information in the application that describes the scope of the project to be funded. ( )

**03. Reasonable Costs.** Costs will be determined by the Department to be reasonable if the obligation to pay the costs is the result of or will be the result of the applicant's compliance with applicable competitive bidding requirements for construction and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code. ( )

**04. Examples of Costs That May Be Eligible.** Examples of costs that may be eligible, if determined necessary, reasonable and not ineligible costs include: ( )

- a. Costs of salaries, benefits, and expendable material the applicant incurs in the project except ordinary operating expenses of local government, such as salaries and expenses of mayors, city council members, attorneys, commissioners, board members, or managers; ( )
- b. Costs under construction contracts bid and executed in compliance with state public works

- construction laws; ( )
- c. Professional and consulting services utilizing a lump sum contract, a negotiated hourly rate contract, a time and materials contract, or cost plus a fixed fee contract; ( )
  - d. Planning directly related to the projects; ( )
  - e. System evaluations; ( )
  - f. Financial and management capability analysis; ( )
  - g. Preparation of construction drawings, specifications, estimates, and construction contract documents; ( )
  - h. Landscaping; ( )
  - i. Removal and relocation or replacement of utilities for which the applicant is legally obligated to pay; ( )
  - j. Material acquired, consumed, or expended specifically for the project; ( )
  - k. A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations; ( )
  - l. Preparation of an operation and maintenance manual; ( )
  - m. Preparation of a plan of operation; ( )
  - n. Start-up services; ( )
  - o. Project identification signs; ( )
  - p. Public participation for alternative selection; ( )
  - q. Development of user charge and financial management systems; ( )
  - r. Development of sewer use or water system protection ordinance; ( )
  - s. Staffing plans and budget development; ( )
  - t. Certain direct and other costs as determined eligible by the Department; ( )
  - u. Costs of complying with the Federal Water Pollution Control Act (P.L. 92-500) as amended, 33 USC Section 1251 et seq. and the Safe Drinking Water Act (42 U.S.C. Section 300j et seq, loan requirements applied to specific projects; and ( )
  - v. Site acquisition costs, including right of way, plant site, wastewater land application sites and sludge disposal areas. Land purchase shall be from a willing seller. ( )
- 05. Ineligible Project Costs.** Costs which are ineligible for funding include, but are not limited to: ( )
- a. Basin or area wide planning not directly related to the project; ( )
  - b. Bonus payments not legally required for completion of construction before a contractual completion date; ( )

- c. Personal injury compensation or damages arising out of the project; ( )
- d. Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; ( )
- e. Costs outside the scope of the approved project; ( )
- f. Ordinary operating expenses of local government, such as salaries and expenses of mayors, city council members, attorneys, commissioners, board members, or managers; ( )
- g. Construction of privately owned wastewater treatment facilities; ( )
- h. Cost of land in excess of that needed for the proposed project; ( )
- i. Cost of refinancing existing indebtedness; ( )
- j. Engineering costs incurred without professional liability insurance; ( )
- k. Costs of condemnation; ( )
- l. Reserve funds; and ( )
- m. Costs incurred prior to acceptance of the loan unless specifically approved in writing as eligible pre-award costs by the Department. ( )

**06. Notification Regarding Ineligible Costs.** Prior to providing a loan offer, the Department will notify the applicant if certain costs are not eligible for funding and the reasons for the Department’s determination. If such costs are included in the engineering contract, the Department will also provide notification to the engineer. The applicant may provide the Department additional information in response to the notice. ( )

**07. Eligible Costs and the Loan Offer.** The loan offer shall reflect those costs determined by the Department to be eligible costs. The loan offer, however, may include estimates of some eligible costs that have not yet been set, such as construction costs. Actual eligible costs may differ from such estimated costs set forth in the loan offer. In addition, loan disbursements may be increased or decreased if eligible costs are modified as provided in Section 060. ( )

**042. ENVIRONMENTAL REVIEW.**

**01. Environmental Documentation.** Guidance on how to complete an environmental review is found in Chapter 5 of the applicable Handbook. For eligible projects funded solely with non-federal funds (e.g. State Revolving Loan Fund repayments), see Section 042. For eligible projects, the loan recipient shall complete an environmental review as part of and in conjunction with a planning document. Projects funded exclusively as nonpoint or estuary management projects may not be required to complete an environmental review. The loan recipient shall consult with the Department at an early stage in the loan process to determine the required level of environmental review. Based on review of existing information, and assessment of environmental impacts, the loan recipient shall complete one (1) of the following per the Department’s instruction: ( )

- a. Submit a request for Categorical Exclusion (CE) with supporting backup documentation as specified by the Department; ( )
  - b. Prepare an Environmental Information Document (EID) in a format specified by the Department; ( )
- or
- c. Prepare an Environmental Impact Statement (EIS) in a format specified by the Department. ( )

**02. Categorical Exclusions.** If the loan recipient requests a CE, the Department will review the request and, based upon the supporting documentation, take one (1) of the following actions: ( )

**a.** Determine if the action is consistent with categories eligible for exclusion whereupon the Department will issue a notice of CE from substantive environmental review. Once the CE is granted for the selected alternative, the Department will publish a notice of CE in a local newspaper in the geographical area of the proposed project to inform the public of this action, following which the planning document can be approved and the loan award can proceed; or ( )

**b.** Determine if the action is not consistent with categories eligible for exclusion and that issuance of a CE is not appropriate. If a CE is not issued, the Department will notify the loan recipient to prepare an EID. ( )

**03. Environmental Information Document Requirements.** When an EID is required, the loan recipient shall prepare the EID in accordance with the following Department procedures: ( )

**a.** Various laws and executive orders related to environmentally sensitive resources shall be considered as the EID is prepared. Appropriate state and federal agencies shall be consulted regarding these laws and executive orders; ( )

**b.** A full range of relevant impacts, both direct and indirect, of the proposed project shall be discussed in the EID, including measures to mitigate adverse impacts, cumulative impacts, and impacts that shall cause irreversible or irretrievable commitment of resources; and ( )

**c.** The Department will review the draft EID and either request additional information about one (1) or more potential impacts, or draft a “finding of no significant impact” (FONSI). ( )

**04. Final Finding of No Significant Impact.** The Department will publish the draft FONSI in a local newspaper in the geographical area of the proposed project and will allow a minimum thirty (30) day public comment period. Following the required period of public review and comment, and after any public concerns about project impacts are addressed, the FONSI will become final. The Department will assess the effectiveness and feasibility of the mitigation measures identified in the FONSI and EID prior to the issuance of the final FONSI and approval of the planning document. ( )

**05. Environmental Impact Statement (EIS) Requirements.** If an (EIS) is required, the loan recipient shall: ( )

**a.** Consult with all affected federal and state agencies, and other interested parties, to determine the required scope of the document; ( )

**b.** Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment; ( )

**c.** Conduct a public meeting which may be in conjunction with a planning document meeting; and ( )

**d.** Prepare and submit a final EIS incorporating all agency and public input for Department review and approval. ( )

**06. Final EIS.** Upon completion of the EIS by the loan recipient and approval by the Department of all requirements listed in Section 042, the Department will issue a record of decision, documenting the mitigation measures to be required of the loan recipient. The loan agreement can be completed once the final EIS has been approved by the Department. ( )

**07. Partitioning the Environmental Review.** Under certain circumstances, the building of a component/partition of a system may be justified in advance of all environment review requirements for the remainder of the system. The Department will approve partitioning the environment review in accordance with established procedures. ( )

**08. Use of Environmental Reviews Conducted by Other Agencies.** If environmental review for the

project has been conducted by another state, federal, or local agency, the Department may, at its discretion, issue its own determination by adopting the document and public participation process of the other agency. ( )

**09. Validity of Review.** Environmental reviews, once completed by the Department, are valid for five (5) years from the date of completion. If a loan application is received for a project with an environmental review which is more than five (5) years old, the Department will reevaluate the project, environmental conditions and public views and will: ( )

**a.** Reaffirm the earlier decision; or ( )

**b.** Require supplemental information to the earlier EIS, EID, or request for CE. Based upon a review of the updated document, the Department will issue and distribute a revised notice of CE, FONSI, or record of decision. ( )

**10. Exemption From Review.** Loan projects may be exempt from certain federal crosscutting authorities at the discretion of the Department as long as in any given year the annual amount of loans, equal to the most recent federal capitalization grant, complies with all of the federal crosscutting authorities. ( )

**043. -- 049. (RESERVED)**

**050. LOAN OFFER AND ACCEPTANCE.**

**01. Loan Offer.** Loan offers will be delivered to successful applicants by representatives of the Department or by registered mail. ( )

**02. Acceptance of Loan Offer.** Applicants have sixty (60) days in which to officially accept the loan offer on prescribed forms furnished by the Department. The sixty (60) day acceptance period commences from the date indicated on the loan offer notice. If the applicant does not accept the loan offer within the sixty (60) day period the loan funds may be offered to the next project of priority. ( )

**03. Acceptance Executed as a Contract Agreement.** Upon signature by the Director and upon signature by the authorized representative of the eligible applicant, the loan offer shall become a contract. Upon accepting a loan offer, an eligible applicant becomes a loan recipient. The disbursement of funds pursuant to a loan contract is subject to a finding by the Director that the loan recipient has complied with all loan contract conditions and has prudently managed the project. The Director may, as a condition of disbursement, require that a loan recipient vigorously pursue any claims it has against third parties who will be paid in whole or in part, directly or indirectly, with loan funds. No third party shall acquire any rights against the state or its employees from a loan contract. ( )

**04. Estimate of Reasonable Cost.** All loan contracts will include the eligible costs of the project. Some eligible costs may be estimated and disbursements may be increased or decreased as provided in Section 060. ( )

**05. Terms of Loan Offers.** The loan offer shall contain such terms as are prescribed by the Department including, but not limited to: ( )

**a.** Terms consistent with these rules, the project step to be funded under the loan offer, and Title 39, Chapter 36, Idaho Code; ( )

**b.** Special clauses as determined necessary by the Department for the successful investigation, design, construction and management of the project; ( )

**c.** Terms consistent with applicable state and federal laws pertaining to planning documents, design, and construction, including the Public Works Contractors License Act and the Public Contracts Bond Act, Chapter 19, Title 54, Idaho Code, and the federal Clean Water Act and Safe Drinking Water Act requirements for projects funded with loan moneys of federal origin; ( )

**d.** Requirement for the prime engineering firm(s) and their principals retained for engineering

services to carry professional liability insurance to protect the public from the engineer's negligent acts and errors and omissions of a professional nature. The total aggregate of the engineer's professional liability insurance shall be one hundred thousand dollars (\$100,000) or twice the amount of the engineer's fee, whichever is greater. Professional liability insurance must cover all such services rendered for all project phases, whether or not such services or phases are state funded, until the certification of project performance is accepted by the Department; ( )

**e.** The project shall be bid, contracted and constructed according to the current edition of Idaho Standards for Public Works Construction unless the loan recipient has approved and adopted acceptable public works construction standards approved by the Department; ( )

**f.** The loan interest rate for loans made during the state fiscal year beginning July 1 will be established by the Director. The interest rate will be a fixed rate in effect for the life of the loan. The rate may equal but shall not exceed the current market rate; ( )

**g.** The loan fee pursuant to Section 032; ( )

**h.** All loans must be fully amortized within a period not to exceed thirty (30) years after project completion. The loan contract will be appended with a schedule of loan repayments stating the due dates and the amount due upon project completion. The loan recipient may elect for either a schedule of semi-annual or annual repayments at the time the loan is finalized; and ( )

**i.** Repayment default will occur when a scheduled loan repayment is thirty (30) days past due. If default occurs, the Department may invoke appropriate loan contract provisions and/or bond covenants. ( )

**051. ACCOUNTING AND AUDITING PROCEDURES.**

Loan recipients must maintain project accounts in accordance with generally accepted accounting principles. Projects may be audited on an annual basis according to government auditing standards issued by the U.S. Governmental Accountability Office. ( )

**052. -- 059. (RESERVED)**

**060. DISBURSEMENTS.**

**01. Loan Disbursements.** Requests to the Department for actual disbursement of loan proceeds will be made by the loan recipient on forms provided by the Department. ( )

**02. Loan Increases.** An increase in the loan amount as a result of an increase in eligible project costs will be considered, provided funds are available. Documentation supporting the need for an increase must be submitted to the Department for approval prior to incurring any costs above the eligible cost ceiling. ( )

**03. Loan Decreases.** If the actual eligible cost is determined by the Department to be lower than the estimated eligible cost the loan amount will be reduced proportionately. ( )

**04. Project Review to Determine Final Eligible Costs.** A project review by the Department or a Department designee will determine the final eligible costs. ( )

**05. Final Disbursement.** The final loan disbursement consisting of five percent (5%) of the total loan amount shall not be made until final inspection, final review, and a final loan repayment schedule have been completed. ( )

**061. LOAN CONSOLIDATION.**

If two (2) or more loans are consolidated into one (1) loan, the interest rate for the consolidated loan will be at the same rate as the loan being consolidated with the lowest interest rate. ( )

**062. -- 079. (RESERVED)**

**080. SUSPENSION OR TERMINATION OF LOAN CONTRACTS.**

**01. Causes.** The Director may suspend or terminate any loan contract prior to final disbursement for failure by the loan recipient or its agents, including engineering firm(s), contractor(s) or subcontractor(s) to perform. A loan contract may be suspended or terminated for good cause including, but not limited to, the following: ( )

**a.** Commission of fraud, embezzlement, theft, forgery, bribery, misrepresentation, conversion, malpractice, misconduct, malfeasance, misfeasance, falsification or unlawful destruction of records, or receipt of stolen property, or any form of tortious conduct; or ( )

**b.** Commission of any crime for which the maximum sentence includes the possibility of one (1) or more years' imprisonment or any crime involving or affecting the project; or ( )

**c.** Violation(s) of any term of the loan contract; or ( )

**d.** Any willful or serious failure to perform within the scope of the project, plan of operation and project schedule, terms of engineering subagreements, or contracts for construction; or ( )

**e.** Debarment of a contractor or subcontractor for good cause by any federal or state agency from working on public work projects funded by that agency. ( )

**02. Notice.** The Director will notify the loan recipient in writing and by certified mail of the intent to suspend or terminate the loan contract. The notice of intent shall state: ( )

**a.** Specific acts or omissions which form the basis for suspension or termination; and ( )

**b.** That the loan recipient may be entitled to appeal the suspension or termination pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." ( )

**03. Determination.** A determination will be made by the Board pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." ( )

**04. Reinstatement of Suspended Loan.** Upon written request by the loan recipient with evidence that the causes(s) for suspension no longer exists, the Director may, if funds are available reinstate the loan contract. If a suspended loan contract is not reinstated, the loan will be amortized and a repayment schedule prepared in accordance with provisions of the loan contract. ( )

**05. Reinstatement of Terminated Loan.** No terminated loan shall be reinstated. Terminated loans will be amortized and a repayment schedule prepared in accordance with provisions of the loan contract. ( )

**081. -- 994. (RESERVED)**

**995. WAIVER OF REQUIREMENTS AND AMENDMENT OF PRIORITY LIST.**

The Director may amend the Priority List and grant a waiver from the requirements of these rules on a case-by-case basis upon full demonstration by the loan recipient requesting the waiver that the following conditions exist. See also Section 020 of these rules. ( )

**01. Health Hazard.** A significant public health hazard exists; ( )

**02. Water Contamination.** A significant water contamination problem exists; ( )

**03. Pollution.** A significant point source of pollution exists causing a violation of Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards"; or ( )

**04. Affordability Criteria Exceeded.** The project will exceed affordability criteria adopted by the Department in the event the waiver is not granted. ( )

**996. -- 999. (RESERVED)**