

IDAHO ADMINISTRATIVE BULLETIN

June 1, 2011 -- Volume 11-6

Idaho Department of Administration
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IDAHO ADMINISTRATIVE BULLETIN

Table of Contents

June 1, 2011 -- Volume 11-6

PREFACE	4
IDAPA 02 - DEPARTMENT OF AGRICULTURE	
<i>02.04.20 - Rules Governing Brucellosis</i>	
Docket No. <i>02-0420-1101</i>	
Notice of Rulemaking - Temporary and Proposed Rule	15
IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE	
<i>16.03.05 - Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)</i>	
Docket No. <i>16-0305-1101</i>	
Notice of Rulemaking - Temporary and Proposed Rule	21
<i>16.03.10 - Medicaid Enhanced Plan Benefits</i>	
Docket No. <i>16-0310-0902</i>	
Notice of Rescission of Temporary Rule and Vacation of Proposed Rulemaking	24
Docket No. <i>16-0310-1005</i>	
Notice of Rulemaking - Adoption of Pending Rule and Amendment to Temporary Rule	25
IDAPA 20 - DEPARTMENT OF LANDS	
<i>20.07.02 - Rules Governing Oil and Gas Conservation in the State of Idaho</i>	
Docket No. <i>20-0702-1101</i>	
Notice of Rulemaking - Adoption of Temporary Rule	30
IDAPA 23 - BOARD OF NURSING	
<i>23.01.01 - Rules of the Idaho Board of Nursing</i>	
Docket No. <i>23-0101-1002</i>	
Notice of Rulemaking - Proposed Rule.....	35
IDAPA 27 - BOARD OF PHARMACY	
<i>27.01.01 - Rules of the Idaho State Board of Pharmacy</i>	
Docket No. <i>27-0101-1101</i>	
Notice of Intent to Promulgate Rules - Negotiated Rulemaking.....	38
IDAPA 30 - IDAHO COMMISSION FOR LIBRARIES	
<i>30.01.01 - Rules of the Idaho Commission for Libraries Governing the Use of Commission Services</i>	
Docket No. <i>30-0101-1101</i>	
Notice of Rulemaking - Proposed Rule.....	39
IDAPA 34 - SECRETARY OF STATE	
<i>34.05.01 - Rules Governing Farm Products Central Filing System</i>	
Docket No. <i>34-0501-1101</i>	
Notice of Rulemaking - Temporary and Proposed Rule	42
IDAPA 35 - STATE TAX COMMISSION	
<i>35.01.01 - Income Tax Administrative Rules</i>	
Docket No. <i>35-0101-1101</i>	
Notice of Rulemaking - Temporary and Proposed Rule	49

35.01.03 - Property Tax Administrative Rules
 Docket No. **35-0103-1101**
 Notice of Rulemaking - Temporary and Proposed Rule52
 Docket No. **35-0103-1102**
 Notice of Rulemaking - Adoption of Temporary Rule54

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT
39.02.72 - Rules Governing Administrative License Suspensions
 Docket No. **39-0272-1101**
 Notice of Rulemaking - Temporary and Proposed Rule60

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
58.01.01 - Rules for the Control of Air Pollution in Idaho
 Docket No. **58-0101-1001**
 Notice of Rulemaking - Temporary and Proposed Rule65
 Docket No. **58-0101-1101**
 Notice of Rulemaking - Adoption of Temporary and Pending Rule.....70
 Docket No. **58-0101-1102**
 Notice of Rulemaking - Temporary and Proposed Rule73

58.01.02 - Water Quality Standards
 Docket No. **58-0102-1102**
 Notice of Intent to Promulgate Rules - Negotiated Rulemaking.....77

58.01.04 - Rules for Administration of Wastewater Treatment Facility Grants
 Docket No. **58-0104-1001**
 Notice of Rulemaking - Temporary and Proposed Rule79

58.01.12 - Rules for Administration of Water Pollution Control Loans
 Docket No. **58-0112-1001**
 Notice of Rulemaking - Proposed Rule.....93

58.01.20 - Rules for Administration of Drinking Water Loan Program
 Docket No. **58-0120-1001**
 Notice of Rulemaking - Proposed Rule.....111

58.01.22 - Rules for Administration of Planning Grants for Public Drinking Water Facilities
 Docket No. **58-0122-1001**
 Notice of Rulemaking - Temporary and Proposed Rule128

**58.01.24 - Standards and Procedures for Application of Risk Based Corrective Action
 at Petroleum Release Sites**
 Docket No. **58-0124-1101**
 Notice of Intent to Promulgate Rules - Negotiated Rulemaking.....142

SECTIONS AFFECTED INDEX 144

LEGAL NOTICE - SUMMARY OF PROPOSED RULEMAKINGS 148

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES 151

SUBJECT INDEX 156

Preface

The Idaho Administrative Bulletin is a monthly publication of the Office of the Administrative Rules Coordinator, Department of Administration, pursuant to Section 67-5203, Idaho Code. The Bulletin is a compilation of all administrative rulemaking documents in Idaho. All official rulemaking notices, official rule text, executive orders of the Governor, all legislative documents affecting rules, and any other documents required by law are published in the Bulletin.

State agencies are required to provide public notice of all proposed rulemaking actions and must invite public input once proposed rulemaking has been initiated. The public receives notice of proposed rulemaking actions through the Idaho Administrative Bulletin and a Public Notice (legal notice) that publishes in specific newspapers throughout the state. The legal notice provides reasonable opportunity for the public to participate when a proposed rule publishes in the Bulletin. Interested parties can submit written comments to the agency or request public hearings of the agency if none have been scheduled. Such submissions or requests must be presented to the agency within the time and manner specified in the individual "Notice of Rulemaking" for each proposed rule that is published in the Bulletin. After the comment period closes, the agency considers fully all information submitted regarding the proposed rule. Comment periods and public hearings are not provided for when the agency adopts a temporary or pending rule.

CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

The Bulletin is cited by year and issue number. For example, Bulletin **09-1** refers to the first Bulletin issued in calendar year **2009**; Bulletin **10-1** refers to the first Bulletin issued in calendar year **2010**. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. **10-1** refers to January 2010; Volume No. **10-2** refers to February 2010; and so forth. Example: The Bulletin published in January 2010 is cited as Volume **10-1**. The December 2009 Bulletin is cited as Volume **09-12**.

RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE

The **Idaho Administrative Code** is published once a year and is a compilation or supplemental compilation of all final and enforceable administrative rules in effect in Idaho. In an effort to provide the reader with current, enforceable rules, temporary rules are also published in the Administrative Code. Temporary rules and final rules approved by the legislature during the legislative session, and published in the monthly Idaho Administrative Bulletin, supplement the Administrative Code. Negotiated, proposed, and pending rules are only published in the Bulletin and **not** printed in the Administrative Code.

To determine if a particular rule remains in effect, or to determine if a change has occurred, the reader should refer to the **Cumulative Rulemaking Index of Idaho Administrative Rules**, printed in each Bulletin.

THE DIFFERENT RULES PUBLISHED IN THE ADMINISTRATIVE BULLETIN

Idaho's administrative rulemaking process, governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, comprises five distinct activities: negotiated, proposed, temporary, pending and final rulemaking. Not all rulemakings involve all five. At a minimum, a rulemaking includes proposed, pending and final rulemaking. Many rules are adopted as temporary rules when they meet the required statutory criteria and agencies often engage in negotiated rulemaking at the beginning of the process to facilitate consensus building in controversial or complex rulemakings. In the majority of cases, the process begins with proposed rulemaking and ends with the final rulemaking. The following is a brief explanation of each type of administrative rule.

NEGOTIATED RULEMAKING

Negotiated rulemaking is a process in which all interested parties and the agency seek consensus on the content of a rule. Agencies are encouraged, and in some cases required, to engage in this rulemaking activity whenever it is feasible to do so. Publication of a “Notice of Intent to Promulgate - Negotiated Rulemaking” in the Administrative Bulletin by the agency is optional. This process should result in the formulation of a proposed or temporary rule, or both.

PROPOSED RULEMAKING

A proposed rulemaking is an action by an agency wherein the agency is proposing to amend or repeal an existing rule or to adopt a new rule. Prior to the adoption, amendment, or repeal of a rule, the agency must publish a “Notice of Rulemaking - Proposed Rule” in the Bulletin. This notice must include:

- a) the specific statutory authority (from Idaho Code) for the rulemaking including a citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking;
- b) a statement in nontechnical language of the substance of the proposed rule, including a specific description of any fee or charge imposed or increased;
- c) 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 when the pending rule will become effective; provided, however, that notwithstanding Section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or enforceability of the rule.
- d) the text of the proposed rule prepared in legislative format;
- e) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;
- f) the manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;
- g) the manner in which persons may request an opportunity for an oral presentation as provided in Section 67-5222, Idaho Code; and
- h) the deadline for public (written) comments on the proposed rule.

All proposed rulemakings that are submitted for publication in the Bulletin that would impose a fee or charge must be accompanied by a cost/benefit analysis that is prepared by the agency. This cost/benefit analysis must estimate, as reasonably as possible, the costs to the agency to implement the rule and the estimated costs that would be borne by citizens or the private sector. This analysis is filed with the Director of LSO who then forwards it to the appropriate germane joint subcommittee assigned to review the promulgating agency’s proposed rules.

When incorporating by reference, the notice of proposed rulemaking must include a brief synopsis detailing the need to incorporate by reference any additional materials into the rule. The agency must also provide information regarding access to the incorporated materials. At a minimum, and when available, the agency must provide an electronic link to the documents that can be accessed on a website or post this information on its own website, or both. This link can be placed into the rule and activated once it is posted on the Coordinator’s website.

As stated, the text of the proposed rule must be published in the Bulletin. After meeting the statutory rulemaking criteria for a proposed rule, the agency may proceed to the pending rule stage. A proposed rule does not have an assigned effective date, even when published in conjunction with a temporary rule, and therefore, is not enforceable. An agency may vacate (terminate) a rulemaking after the publication of a proposed rule if it decides, for whatever reason, not to proceed further to finalize the rulemaking. The publication of a “Notice of Vacation of Proposed Rulemaking” in the Bulletin officially stops the formal rulemaking process.

TEMPORARY RULEMAKING

Temporary rules may be adopted only when the governor finds that it is necessary for:

- a) protection of the public health, safety, or welfare; or
- b) compliance with deadlines in amendments to governing law or federal programs; or
- c) conferring a benefit.

If a rulemaking meets one or more of the above legal criteria and the governor finds it is necessary that a rule become effective before it has been submitted to the legislature for review and approval and without allowing for any public input, the agency may proceed and adopt a temporary rule. The law allows that agency to make a temporary rule immediately effective upon adoption. However, a temporary rule that imposes a fee or charge may be adopted only if the governor finds that the fee or charge is necessary to avoid an immediate danger which justifies the imposition of the fee or charge.

A temporary rule expires at the conclusion of the next succeeding regular legislative session unless the rule is extended by concurrent resolution, is replaced by a final rule, or expires under its own terms.

State law requires that the text of both a proposed rule and a temporary rule be published in the Administrative Bulletin. In cases where the text of the temporary rule is the same as the proposed rule, the rulemaking can be done concurrently as a proposed/temporary rule. Combining the rulemaking allows for a single publication of the text.

An agency may, at any time, rescind a temporary rule that has been adopted and is in effect. If the temporary rule is being replaced by a new temporary rule or if it has been published concurrently with a proposed rule that is being vacated, the agency, in most instances, will rescind the temporary rule.

PENDING RULEMAKING

A pending rule is a rule that has been adopted by an agency under regular rulemaking procedures and remains subject to legislative review before it becomes a final, enforceable rule.

When a pending rule is published in the Bulletin, the agency is required to include certain information in the "Notice of Rulemaking Pending Rule." This includes:

- a) a statement giving the reasons for adopting the rule;
- b) a statement of any change between the text of the proposed rule and the pending rule with an explanation of the reasons for any changes;
- c) the date the pending rule will become final and effective and a statement that the pending rule may be rejected, amended or modified by concurrent resolution of the legislature;
- d) an identification of any portion of the rule imposing or increasing a fee or charge and a statement that this portion of the rule shall not become final and effective unless affirmatively approved by concurrent resolution of the legislature;
- (e) the specific statutory authority for the rulemaking including a citation to the specific section of the Idaho Code that has occasioned the rulemaking, or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking; and
- (f) 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 when the pending rule will become effective; provided however, that notwithstanding section 67-5231, Idaho Code, the absence or

accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or the enforceability of the rule.

Agencies are required to republish the text of the rule when substantive changes have been made to the proposed rule. An agency may adopt a pending rule that varies in content from that which was originally proposed if the subject matter of the rule remains the same, the pending rule change is a logical outgrowth of the proposed rule, and the original notice was written so as to assure that members of the public were reasonably notified of the subject. It is not always necessary to republish all the text of the pending rule. With the permission of the Rules Coordinator, only the Section(s) that have changed from the proposed text are republished. If no changes have been made to the previously published text, it is not required to republish the text again and only the "Notice of Pending Rulemaking" is published.

FINAL RULEMAKING

A final rule is a rule that has been adopted by an agency under the regular rulemaking procedures and is in effect and enforceable.

No pending rule adopted by an agency will become final and effective until it has been submitted to the legislature for review. Where the legislature finds that an agency has violated the legislative intent of the statute under which the rule was made, a concurrent resolution may be adopted to reject the rulemaking or any part thereof. A "Notice of Final Rule" must be published in the Bulletin for any rule that is rejected, amended, or modified by the legislature showing the changes made. A rule reviewed by the legislature and not rejected, amended or modified becomes final with no further legislative action. No rule shall become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review. However, a rule that is final and effective may be applied retroactively, as provided in the rule.

AVAILABILITY OF THE ADMINISTRATIVE CODE AND BULLETIN

Internet Access - The Administrative Code and Administrative Bulletin are available on the Internet at the following address: <http://adminrules.idaho.gov>

SUBSCRIPTIONS AND DISTRIBUTION

For subscription information and costs, please contact the Department of Administration, Office of the Administrative Rules Coordinator, 650 W. State Street, Room 100, Boise, Idaho 83720-0306, telephone (208) 332-1820.

The Idaho Administrative Code - annual subscription on CD-ROM. The Code is an annual compilation of all final administrative rules and all enforceable temporary rules and also includes all executive orders of the Governor that have published in the Bulletin, all legislative documents affecting rules, a table of contents, reference guides, and a subject index.

The Idaho Administrative Bulletin - annual subscription available on individual CD-ROM sent out monthly. The Bulletin is an official monthly publication of the State of Idaho and is available for purchase on CD-ROM only. Yearly subscriptions or individual CD-ROM's are available for purchase.

Internet Access - The Administrative Code and Administrative Bulletin, and many other rules-related documents are available on the Internet at the following address: <http://adminrules.idaho.gov>

HOW TO USE THE IDAHO ADMINISTRATIVE BULLETIN

Rulemaking documents produced by state agencies and published in the **Idaho Administrative Bulletin** are organized by a numbering system. Each state agency has a two-digit identification code number known as the “**IDAPA**” number. (The “IDAPA” Codes are listed in the alphabetical/numerical index at the end of this Preface.) Within each agency there are divisions or departments to which a two-digit “TITLE” number is assigned. There are “CHAPTER” numbers assigned within the Title and the rule text is divided among major sections with a number of subsections. An example IDAPA number is as follows:

IDAPA 38.05.01.200.02.c.ii.

“**IDAPA**” refers to Administrative Rules in general that are subject to the Administrative Procedures Act and are required by this act to be published in the Idaho Administrative Code and the Idaho Administrative Bulletin.

“**38.**” refers to the Idaho Department of Administration

“**05.**” refers to Title **05**, which is the Department of Administrations’s Division of Purchasing

“**01.**” refers to Chapter **01** of Title 05, “Rules of the Division of Purchasing”

“**200.**” refers to Major Section **200**, “Content of the Invitation to Bid”

“**02.**” refers to Subsection 200.02.

“**c.**” refers to Subsection 200.02.c.

“**ii.**” refers to Subsection 200.02.c.ii.

DOCKET NUMBERING SYSTEM

Internally, the Bulletin is organized sequentially using a rule docketing system. All rulemaking actions (documents) are assigned a “DOCKET NUMBER.” The “Docket Number” is a series of numbers separated by a hyphen “-”, (**38-0501-1001**). The docket numbers are published sequentially by IDAPA designation (e.g. the two-digit agency code). The following example is a breakdown of a typical rule docket number:

“DOCKET NO. 38-0501-1001”

“**38-**” denotes the agency’s **IDAPA** number; in this case the Department of Administration.

“**0501-**” refers to the **TITLE AND CHAPTER** numbers of the agency rule being promulgated; in this case the Division of Purchasing (**TITLE 05**), Rules of the Division of Purchasing (**Chapter 01**).

“**1001**” denotes the year and sequential order of the docket being published; in this case the numbers refer to the first rulemaking action published in **calendar year 2010**. A subsequent rulemaking on this same rule chapter in calendar year 2010 would be designated as “**1002**”. The docket number in this scenario would be 38-0501-**1002**.

Within each Docket, only the affected sections of chapters are printed. (See **Sections Affected Index** in each Bulletin for a listing of these.) The individual sections affected are printed in the Bulletin sequentially (e.g. Section “200” appears before Section “345” and so on). Whenever the sequence of the numbering is broken the following statement will appear:

(BREAK IN CONTINUITY OF SECTIONS)

INTERNAL AND EXTERNAL CITATIONS TO ADMINISTRATIVE RULES IN THE CODE AND BULLETIN

When making a citation to another Section or Subsection of a rule that is part of the same rule, a typical internal citation may appear as follows:

“...as found in Section 201 of these rules.” OR “...in accordance with Subsection 201.06.c. of these rules.”

The citation may also include the IDAPA, Title, or Chapter number, as follows”

“...in accordance with IDAPA 38.05.01.201...”

“38” denotes the IDAPA number of the agency.

“05” denotes the TITLE number of the rule.

“01” denotes the Chapter number of the rule.

“201” denotes the main Section number of the rule to which the citation refers.

Citations made within a rule to a different rule chapter (external citation) should also include the name of the Department and the name of the rule chapter being referenced, as well as the IDAPA, Title, and Chapter numbers. The following is a typical example of an external citation to another rule chapter:

“...as outlined in the Rules of the Department of Administration, IDAPA 38.04.04, “Rules Governing Capitol Mall Parking.”

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2011

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
11-1	January 2011	*November 19, 2010	January 5, 2011	January 26, 2011
11-2	February 2011	January 14, 2011	February 2, 2011	February 23, 2011
11-3	March 2011	February 11, 2011	March 2, 2011	March 23, 2011
11-4	April 2011	March 11, 2011	April 6, 2011	April 27, 2011
11-5	May 2011	April 8, 2011	May 4, 2011	May 25, 2011
11-6	June 2011	May 13, 2011	June 1, 2011	June 22, 2011
11-7	July 2011	June 10, 2011	July 6, 2011	July 27, 2011
11-8	August 2011	July 8, 2011	August 3, 2011	August 24, 2011
11-9	September 2011	August 5, 2011	September 7, 2011	September 28, 2011
11-10	October 2011	**August 31, 2011	October 5, 2011	October 26, 2011
11-11	November 2011	October 7, 2011	November 2, 2011	November 23, 2011
11-12	December 2011	November 4, 2011	December 7, 2011	December 28, 2011

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2012

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
12-1	January 2012	*November 25, 2011	January 4, 2012	January 25, 2012
12-2	February 2012	January 13, 2012	February 1, 2012	February 22, 2012
12-3	March 2012	February 10, 2012	March 7, 2012	March 28, 2012
12-4	April 2012	March 11, 2012	April 4, 2012	April 25, 2012
12-5	May 2012	April 6, 2012	May 2, 2012	May 23, 2012
12-6	June 2012	May 11, 2012	June 6, 2012	June 27, 2012
12-7	July 2012	June 8, 2012	July 4, 2012	July 25, 2012
12-8	August 2012	July 6, 2012	August 1, 2012	August 22, 2012
12-9	September 2012	August 3, 2012	September 5, 2012	September 28, 2012
12-10	October 2012	**August 31, 2012	October 3, 2012	October 24, 2012
12-11	November 2012	October 5, 2012	November 7, 2012	November 28, 2012
12-12	December 2012	November 2, 2012	December 5, 2012	December 26, 2012

****Last day to submit a proposed rulemaking before moratorium begins and last day to submit a pending rule to be reviewed by the legislature.***

*****Last day to submit a proposed rule in order to have the rulemaking completed and submitted for review by legislature.***

ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBERS	
IDAPA 01	Accountancy , Board of
IDAPA 38	Administration , Department of
IDAPA 44	Administrative Rules Coordinator , Office of the
IDAPA 02	Agriculture , Idaho Department of
IDAPA 40	Arts , Idaho Commission on the
IDAPA 03	Athletic Commission
IDAPA 04	Attorney General , Office of the
IDAPA 53	Barley Commission , Idaho
IDAPA 51	Beef Council , Idaho
IDAPA 07	Building Safety , Division of Electrical Board (07.01) Plumbing Board (07.02) Building Codes & Manufactured Homes (07.03) Building Code Advisory Board (07.03.01) Public Works Contractors License Board (07.05) Uniform School Building Safety (07.06) HVAC Board (07.07)
IDAPA 43	Canola and Rapeseed Commission , Idaho
IDAPA 28	Commerce , Idaho Department of
IDAPA 06	Correction , Board of
IDAPA 19	Dentistry , Board of
IDAPA 08	Education , State Board of and State Department of
IDAPA 10	Engineers and Land Surveyors , Board of Professional
IDAPA 58	Environmental Quality , Department of
IDAPA 12	Finance , Department of
IDAPA 13	Fish and Game , Department of
IDAPA 14	Geologists , Board of Registration for Professional

ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBERS	
IDAPA 15	Governor, Office of the Idaho Commission on Aging (15.01) Idaho Commission for the Blind and Visually Impaired (15.02) Idaho Forest Products Commission (15.03) Division of Human Resources and Personnel Commission (15.04) Idaho Liquor Division (15.10) Idaho Emergency Communications Commission (15.06) Emergency Response Commission (15.13)
IDAPA 48	Grape Growers and Wine Producers Commission, Idaho
IDAPA 16	Health and Welfare, Department of
IDAPA 41	Health Districts, Public
IDAPA 45	Human Rights Commission
IDAPA 17	Industrial Commission
IDAPA 18	Insurance, Department of
IDAPA 05	Juvenile Corrections, Department of
IDAPA 09	Labor, Idaho Department of
IDAPA 20	Lands, Department of
IDAPA 30	Libraries, Commission for
IDAPA 52	Lottery Commission, Idaho State
IDAPA 22	Medicine, Board of
IDAPA 23	Nursing, Board of

**ALPHABETICAL INDEX OF STATE AGENCIES
AND CORRESPONDING IDAPA NUMBERS**

IDAPA 24	Occupational Licenses, Board of (24.20) Acupuncture, Board of (24.17) Architectural Examiners, Board of (24.01) Barber Examiners, Board of (24.02) Chiropractic Physicians, Board of (24.03) Contractors Board, Idaho (24.21) Cosmetology, Board of (24.04) Counselors and Marriage and Family Therapists, Licensing Board of Professional (24.15) Dentistry, Board of (24.16) Drinking Water and Wastewater Professionals, Board of (24.05) Driving Businesses Licensure Board, Idaho (24.25) Landscape Architects, Board of (24.07) Liquefied Petroleum Gas Safety Board, Idaho State (24.22) Midwifery, Idaho Board of (24.26) Morticians, State Board of (24.08) Nursing Home Administrators, Board of Examiners of (24.09) Occupational Therapy Licensure Board (24.06) Optometry, State Board of (24.10) Physical Therapy Licensure Board (24.13) Podiatry, State Board of (24.11) Psychologist Examiners, Idaho State Board of (24.12) Real Estate Appraiser Board (24.18) Residential Care Facility Administrators, Board of Examiners of (24.19) Social Work Examiners, State Board of (24.14) Speech and Hearing Services Licensure Board (24.23)
IDAPA 25	Outfitters and Guides Licensing Board
IDAPA 50	Pardons and Parole, Commission for
IDAPA 26	Parks and Recreation, Department of
IDAPA 27	Pharmacy, Board of
IDAPA 11	Police, Idaho State
IDAPA 29	Potato Commission, Idaho
IDAPA 55	Professional-Technical Education, Division of
IDAPA 59	Public Employee Retirement System of Idaho (PERSI)
IDAPA 31	Public Utilities Commission
IDAPA 56	Rangeland Resources Commission, Idaho
IDAPA 33	Real Estate Commission, Idaho
IDAPA 34	Secretary of State, Office of the
IDAPA 57	Sexual Offender Classification Board
IDAPA 49	Shorthand Reporters Board, Idaho Certified
IDAPA 60	Soil and Water Conservation Commission, Idaho State

ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBERS	
IDAPA 36	Tax Appeals, Board of
IDAPA 35	Tax Commission, State
IDAPA 39	Transportation Department, Idaho
IDAPA 54	Treasurer, Office of the State
IDAPA 21	Veterans Services, Division of
IDAPA 46	Veterinary Medical Examiners, Board of
IDAPA 47	Vocational Rehabilitation, Division of
IDAPA 37	Water Resources, Department of
IDAPA 42	Wheat Commission

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.20 - RULES GOVERNING BRUCELLOSIS

DOCKET NO. 02-0420-1101

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is May 1, 2011.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 25-601, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than June 15, 2011.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Currently, cattle are not required to be brucellosis tested prior to leaving Idaho's Brucellosis Designated Surveillance Area (DSA). As a result, two (2) of our trading partner states have implemented brucellosis testing requirements on all Idaho cattle imported into their state. In addition, two (2) other states are requiring that cattle leaving the DSA be individually identified with official identification. It is expected that more states will follow suit. These new import requirements pose a significant financial hardship to all Idaho cattle producers and limit their marketing options.

This rule will define Idaho's Designated Surveillance Area, outline brucellosis testing requirements for cattle leaving Idaho's Designated Surveillance Area and provide for official individual identification of all sexually intact cattle leaving Idaho's Designated Surveillance Area.

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

Requiring a brucellosis test for test eligible cattle within the DSA following a change of ownership and cattle leaving Idaho's DSA will likely address the concerns of Idaho's trading partner states thereby lifting testing requirements on cattle originating from outside of the Idaho DSA. Additionally, the rule will ensure that brucellosis affected cattle are not inadvertently introduced to other portions of Idaho or exported to our trading partner states. Producers outside the DSA will see decreased testing costs and maintain marketing options for their cattle. Requiring cattle within the DSA to be officially individually identified will help to maintain the marketability of cattle originating from Idaho's DSA.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the urgency of getting the temporary rule provisions in place. The temporary rule was discussed with cattle producers located in and around Idaho's DSA, the Idaho Cattlemen's Association, Idaho Farm Bureau and Idaho Dairymen's Association.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance

on technical questions concerning the temporary and proposed rule, contact Dr. Bill Barton, Administrator/State Veterinarian at (208) 332-8540.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 22, 2011.

DATED this 5th day of May, 2011,

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, Idaho 83701-0790
(208) 332-8500, Fax (208) 334-4062

**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE AND THE
PROPOSED RULE TEXT FOR DOCKET NO. 02-0420-1101**

010. DEFINITIONS.

The following definitions shall apply in the interpretation and enforcement of this chapter. (5-3-03)

01. Accredited Veterinarian. A veterinarian approved by the Administrator and USDA/APHIS/VS in accordance with provisions of Title 9, Part 161, Code of Federal Regulations to perform functions of State-Federal animal disease control programs. (5-3-03)

02. Administrator. The administrator of the Division of Animal Industries, Idaho State Department of Agriculture or his designee. (5-3-03)

03. Approved Brucella Vaccine. A vaccine product that is approved by and produced under license of the USDA for administration to cattle, domestic bison, swine or domestic cervidae for the purpose of enhancing the resistance to *brucellosis*. (5-3-03)

04. Approved Feedlot. A feedlot approved by the Administrator to feed female cattle and domestic bison, which have not been officially vaccinated against *brucellosis*. (5-3-03)

05. Brucellosis. An infectious disease of animals and humans caused by bacteria of the genus *Brucella*. (5-3-03)

06. Brucellosis Emergency. The declaration of an animal health emergency by the director as the result of the diagnosis of *brucellosis* in cattle, domestic bison, swine or domestic cervidae in the state of Idaho or in areas outside the state that could result in transmission of *brucellosis* to Idaho cattle, domestic bison, swine, or domestic cervidae. (5-3-03)

07. Brucellosis Herd Management Plan. A written document outlining management practices a livestock producer will take to minimize the exposure of cattle or domestic bison to brucellosis. The herd management plan shall be valid when signed by the owner and the State Veterinarian or his designee. (5-1-11)T

078. Cattle. All bovidae. (5-3-03)

- 089.** **Commuter Herd.** A herd of cattle or domestic bison that moves from Idaho to another state pursuant to the provisions of IDAPA 02.04.21, "Rules Governing the Importation of Animals," Section 220. (3-30-07)
- 0910.** **Department.** The Idaho State Department of Agriculture. (5-3-03)
- 11.** **Designated Surveillance Area.** An area of Idaho, as ordered by the director or his designee, where brucellosis positive wildlife are known or believed to exist and where comingling of wildlife and livestock may lead to transmission of brucellosis from wildlife to livestock. (5-1-11)T
- 102.** **Director.** The director of the Idaho State Department of Agriculture or his designee. (5-3-03)
- 113.** **Division of Animal Industries.** Idaho State Department of Agriculture, Division of Animal Industries. (5-3-03)
- 124.** **Domestic Bison.** All animals in the genus Bison that are owned by a person. (5-3-03)
- 135.** **Domestic Cervidae.** Elk, fallow deer and reindeer that are owned by a person. (5-3-03)
- 146.** **Exposed.** Animals that have had contact with other animals, herds, or materials that have been determined to be infected with or affected by Brucella. (5-3-03)
- 157.** **Federal Animal Health Official.** An employee of USDA, APHIS, VS who is authorized to perform animal health activities. (5-3-03)
- 168.** **Infected Animals or Herds.** Animals that are classified as reactors by the designated *brucellosis* epidemiologist or herds that contain one or more reactor animals. (5-3-03)
- 179.** **Negative.** Cattle, domestic bison, swine or domestic cervidae are classified negative: (5-3-03)
- a.** When their blood serum has been subjected to official serological tests and the test results fail to disclose evidence of Brucella infection; and (5-3-03)
- b.** If blood, milk or tissues are subjected to bacteriological methods for cultivating field-strain Brucella and none are recovered. An animal is classified as negative when all tests that are performed fail to disclose evidence of *brucellosis*. (5-3-03)
- 1820.** **Official Identification.** The unique individual identification of cattle, domestic bison, swine, or domestic cervidae in accordance with these rules. (5-3-03)
- 1921.** **Official Vaccinate.** A bovine or domestic bison female that was inoculated, in accordance with these rules and the *brucellosis* Eradication UM&R, with an approved Brucella vaccine. (5-3-03)
- 202.** **Operator.** The person who has authority to manage or direct a cattle, domestic bison, swine, or domestic cervidae premises, or conveyance and the animals thereon. (3-30-07)
- 213.** **Owner.** The person who owns or has financial control of cattle, domestic bison, swine, domestic cervidae, or a cattle, domestic bison, swine, or domestic cervidae premises. (3-30-07)
- 224.** **Parturient.** Visibly prepared to give birth or within two (2) weeks before giving birth. (3-30-07)
- 235.** **Person.** Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, or any legal entity, which is recognized by law as the subject of rights and duties. (5-3-03)
- 246.** **Postparturient.** Having already given birth. (3-30-07)

257. **Premises.** The ground, area, buildings, corrals, and equipment utilized to keep, hold, or maintain animals. (3-30-07)

268. **Quarantine.** A written order, executed by the Administrator, to confine or hold animals on a premise or any other location, and to prevent movement of animals from a premise or any other location when the administrator has determined that the animals have been found to be or are suspected to be exposed to or infected with *Brucella*, or the animals are not in compliance with the provisions of this chapter. (3-30-07)

279. **Reactor.** Cattle, domestic bison, swine or domestic cervidae are classified as reactors when their blood serum has been subjected to official serological tests and the test results indicate that the animal has been exposed to and infected with *Brucella*. Cattle, domestic bison, swine or domestic cervidae are also classified as reactors in the absence of significant serologic test results when other diagnostic methods, such as bacteriologic methods, result in the recovery of field-strain *Brucella* organisms, or a significant rise in the serologic titer occurs, or when other epidemiologic evidence of *Brucella* infection is demonstrated. (5-3-03)

2830. **Re-Identification of Official Vaccinates.** The identification of female cattle or other animals which have been officially vaccinated and identified, as provided in this chapter, and which have lost the official identification device or the tattoo has faded to the extent that it cannot be discerned. (5-3-03)

2931. **Restrain.** The confinement of cattle, domestic bison, swine, or domestic cervidae in a chute, or other device, for the purpose of efficiently, effectively, and safely inspecting, treating, vaccinating, or testing. (5-3-03)

302. **Restricted Movement Permit.** A VS Form 1-27, or other document approved by the Administrator for movement of reactor or exposed animals in commerce. (5-3-03)

313. **State Animal Health Official.** The Administrator, or his designee, responsible for disease control and eradication programs. (5-3-03)

324. **State/Federal Animal Health Laboratory.** The official laboratory in Idaho that is approved by the Administrator and USDA/APHIS/VS, to conduct serologic and bacteriologic tests to detect *Brucella*. (5-3-03)

335. **Suspect.** Cattle, domestic bison, swine, or domestic cervidae are classified as suspects when their blood serum has been subjected to official serologic tests and the results suggest infection but are inconclusive. If bacteriologic methods to culture *Brucella* from blood, milk or tissues were used, they did not yield field-strain *Brucella*. (5-3-03)

346. **Swine.** All animals in the family suidae. (5-3-03)

357. **Test Eligible.** Unless otherwise specifically provided in these rules, all sexually intact cattle and domestic bison eighteen (18) months of age and over, and all parturient, and postparturient cattle and domestic bison regardless of age. (3-30-07)

368. **Wild Bison.** All animals in the genus *Bison* that are not owned by a person. (5-3-03)

379. **Wild Elk.** All elk that are not owned by a person. (5-3-03)

011. ABBREVIATIONS.

01. **APHIS.** Animal Plant Health Inspection Service. (5-3-03)

02. **AVIC.** Area Veterinarian in Charge. (5-3-03)

03. **CFR.** Code of Federal Regulations. (5-3-03)

04. **DSA. Designated Surveillance Area.** (5-1-11)T

- ~~045.~~ MCI. Market Cattle Identification. (5-3-03)
- ~~056.~~ UM&R. Uniform Methods and Rules. (5-3-03)
- ~~067.~~ USDA. United States Department of Agriculture. (5-3-03)
- ~~078.~~ VS. Veterinary Services. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

028. BRUCELLOSIS TESTING.

The Administrator may require *brucellosis* testing of cattle, domestic bison, swine, domestic cervidae, or other animals. (5-3-03)

01. Duty to Restrain. It shall be the duty of each person who has control of such animals to pen the animals in suitable pens and restrain them for the test when directed to do so in writing by the Administrator. (5-3-03)

02. Records of Tests. When any cattle, domestic bison, swine, or domestic cervidae are tested for *brucellosis* a complete test record shall be made and the record shall be shown on an official *brucellosis* test form provided by the Administrator. The test form shall be completely filled out, including the following information: (5-3-03)

- a. The name and address of the owner and the location of the animals at the time of test. (5-3-03)
- b. The name and signature of the person conducting the test. (5-3-03)
- c. Individual identification number of each animal and the registration name and number of each purebred animal. (5-3-03)
- d. Age of each animal. (5-3-03)
- e. Sex of each animal. (5-3-03)
- f. Breed of each animal. (5-3-03)
- g. Species of animals tested. (5-3-03)
- h. Vaccination status, including the vaccination tattoo for each vaccinated animal. (5-3-03)
- i. Test results, if a *brucellosis* test has been performed, for each animal. (5-3-03)
- j. Date sample was collected for testing. (3-30-07)

03. Interstate Movement. All test eligible cattle and domestic bison exported from Idaho shall be tested negative for *brucellosis* within thirty (30) days prior to the interstate movement if required by the state of destination, or if the cattle or domestic bison are being moved from a DSA. (~~4-2-08~~)(5-1-11)T

04. Dairy Herds. *Brucellosis* ring tests shall be conducted on all dairy herds at least once every six (6) months. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

123. DESIGNATED SURVEILLANCE AREA (DSA).

All intact cattle and domestic bison within a DSA are subject to additional rule requirements for the prevention or eradication of *brucellosis*. (5-1-11)T

01. Individual Identification Requirements. All intact cattle and domestic bison, regardless of age, that leave the DSA must be identified with official individual identification. (5-1-11)T

02. Testing Requirements Within The DSA. The following official *brucellosis* test requirements apply to all test eligible cattle and domestic bison that are or have been located within the DSA at any time between January 1 and July 1 of any calendar year. (5-1-11)T

a. All test eligible cattle and domestic bison must have a negative *brucellosis* test within thirty (30) days prior to a change of ownership, interstate movement or prior to leaving the DSA, except cattle or domestic bison moving directly to an approved Idaho livestock market or a federally-inspected slaughter plant that will test the animals for *brucellosis* on arrival. (5-1-11)T

b. Variances or exceptions to the *brucellosis* testing requirements may be considered on an individual basis by the administrator, based upon a *brucellosis* herd management plan. (5-1-11)T

~~1234.~~ -- 129. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED, BLIND AND DISABLED (AABD)

DOCKET NO. 16-0305-1101

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2011.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-202, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than June 15, 2011.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Changes are being made in this chapter (IDAPA 16.03.05, "AABD") to align these rules with rules adopted by the 2011 Legislature in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits" for the Children's System Redesign Project. Those rules redesigned developmental disabilities (DD) benefits for children. Those benefits are now restructured under two Home and Community Based Services (HCBS) waivers, and a related State Plan option that replaces current State Plan benefits provided by developmental disabilities agencies (DDAs). The changes for the Children's System Redesign rules, and for these rules, are effective July 1, 2011.

Specifically, the proposed rule changes to align AABD rules with the Children's System Redesign rules in IDAPA 16.03.10:

1. Add clarification that Home and Community Bases Services are available to children or adults when the applicable waiver requirements are met;
2. Add references and clarifications in these rules to both IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," and IDAPA 16.03.18, "Medicaid Cost-Sharing" as needed; and
3. Add eligibility criteria requirements for the children's developmental disabilities waivers and provide any clarification necessary for implementing the children's system redesign.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in order to comply with deadlines in amendments to governing law. The corresponding amendments to IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits" were passed under [Docket No. 16-0310-1002](#) by the 2011 Legislature and will go into effect July 1, 2011.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: There is no cost to the state general fund associated with this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rulemaking is being done to align this chapter with changes in IDAPA 16.03.10 made under Docket No. 16-0310-1002 approved by the 2011 Legislature. Extensive negotiated rulemaking was conducted and public input was gathered under that docket.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules under this docket.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Alberto Gonzalez at (208) 334-5969.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 22, 2011.

DATED this 6th day of May, 2011.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE AND THE
PROPOSED RULE TEXT FOR DOCKET NO. 16-0305-1101**

787. HOME AND COMMUNITY BASED SERVICES (HCBS).

An aged, blind, or disabled ~~participant~~, ~~child or adult~~ who is not income eligible for SSI or AABD cash, in his own home or community setting, is eligible for Medicaid if he meets the conditions in Subsections 787.01 through 787.07 of these rules, and meets all requirements in one (1) of the waiver Sections 788 ~~through and 79089~~ of these rules.
~~(3-30-07)(7-1-11)T~~

- 01. Resource Limit.** Meets the AABD single person resource limit. (3-20-04)
- 02. Income Limit.** Income of the participant must not exceed three (3) times the Federal SSI monthly benefit for a single person. A married participant living at home with his spouse who is not an HCBS participant, may choose between the SSI, CP, and FSI methods. If his spouse is also an HCBS participant or lives in a nursing home, the couple may choose between the SSI and CP methods. (3-20-04)
- 03. Maintained in the Community.** The applicant must be able to be maintained safely and effectively in his own home or in the community with the waiver services. (3-20-04)
- 04. Cost of Care.** The cost of the participant's care must be determined to be cost effective as provided in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (3-30-07)
- 05. Waiver Services Needed.** The participant must need and receive, or be likely to need and receive, waiver services for thirty (30) consecutive days. The participant is ineligible when there is a break in need for, or receipt of, waiver services for thirty (30) consecutive days. (3-20-04)
- 06. Effective Date.** Waiver services are effective the first day the participant is likely to need and receive waiver services. Medicaid begins the first day of the month in which the first day of approved waiver services

are received. (3-20-04)

07. Annual Limit. The Department limits the number of participants approved for waiver services each year. A participant who applies for waiver services after the annual limit is reached, must be denied waiver services. (3-20-04)

08. Cost-Sharing. The requirements for cost-sharing by participants is found in IDAPA 16.03.18, "Medicaid Cost-Sharing." (7-1-11)T

(BREAK IN CONTINUITY OF SECTIONS)

790. CHILDREN'S DEVELOPMENTAL DISABILITY WAVIER(S).
In order to be eligible for the Children's Developmental Disability Waiver(s): (7-1-11)T

01. Child Through Age 17 - ICF/ID Level of Care. The participant must be a child, birth through age seventeen (17) and must require the level of care provided by an intermediate care facility for persons with intellectual disabilities (ICF/ID) under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits"; or (7-1-11)T

02. Child Age 3 Through 6 - ICF/ID Level of Care Plus Additional Requirements. The participant must be a child, age three (3) through six (6), and require the level of care provided by an intermediate care facility for persons with intellectual disabilities (ICF/ID); and (7-1-11)T

a. Have an autism spectrum diagnosis; or (7-1-11)T

b. Exhibit self-injurious, aggressive, or severely maladaptive behavior as evidenced by a General Maladaptive Index score of minus twenty-two (-22) or below on the Scales of Independent Behavior - Revised (SIB-R) or other behavioral assessment indicators identified by the Department and a severe deficit, defined as having a composite full scale functional age equivalency of fifty percent (50%) or less of the participant's chronological age. (7-1-11)T

790~~1~~. -- 798. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.10 - MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-0902

NOTICE OF RESCISSION OF TEMPORARY RULE AND VACATION OF PROPOSED RULEMAKING

EFFECTIVE DATE FOR RESCISSION OF TEMPORARY RULE: The effective date of the rescission of the temporary rule is July 1, 2011.

AUTHORITY: In compliance with Section 67-5221, Idaho Code, notice is hereby given that this agency has vacated the proposed rulemaking previously initiated under this docket and is rescinding the temporary rule previously adopted under this docket. The action is authorized pursuant to Sections 56-202(b), 56-203, 56-250 through 257, and 56-1003, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for rescinding the temporary rule and vacating the previously initiated rulemaking.

The temporary rule, published under this Docket No. 16-0310-0902, is being rescinded as of July 1, 2011. The proposed rule is being vacated. Changes in this rulemaking reduced the maximum amount of service hours under this chapter of rules for Developmental Disability Agencies' services. Reductions to service hours will continue as provided in IDAPA16.03.10, "Medicaid Enhanced Plan Benefits," Subsection 651.15.a. The temporary and proposed rule docket published in the [January 7, 2009, Idaho Administrative Bulletin, Vol. 09-1, pages 322 through 325](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

There is no fiscal impact to state general funds for the rescission of the temporary rule and vacation of the proposed rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the rescission of this temporary rule and vacation of the proposed rulemaking, contact Paul Leary at (208) 364-1836.

DATED this 6th day of May, 2011.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
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IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.10 - MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-1005

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE AND AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: The effective date of the amendments to the temporary rule is November 1, 2010. This pending rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Sections 56-202(b), 56-203(g), 56-203(i), 56-250 through 56-257, Idaho Code; also House Concurrent Resolution No. 48 (2006).

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the temporary rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

These rules are in response to House Concurrent Resolution No. 48, from the 2006 Legislature and are focused on continuing Mental Health program revisions that clarify program elements and establish supervision and minimum professional requirements. Based on input from stakeholder work groups, provider qualifications were revised to more accurately define the clinical training expectation for psychosocial rehabilitation program providers.

The amendments to the temporary and pending rules reflect input from stakeholders and serve to simplify the requirements.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the [November 3, 2010, Idaho Administrative Bulletin, Vol. 10-11, pages 92 through 97](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

There is no fiscal impact to the state general fund due to these rule changes.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact Patricia Guidry at (208) 364-1813.

DATED this 6th day of May, 2011.

Tamara Prisock
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450 W. State Street - 10th Floor
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DOCKET NO. 16-0310-1001 - ADOPTION OF PENDING RULE
AND AMENDMENT TO TEMPORARY RULE

Substantive changes have been made to the pending rule.
Italicized text that is underscored is new text that is being added.
Italicized text that is underscored and struck through is codified temporary text that is being removed from the temporary rule. This is also an amendment to the pending rule text.

Only those sections or subsections that have changed from the original temporary/proposed text are printed in this Bulletin following this notice.

The text of the temporary/proposed rule was published in the Idaho Administrative Bulletin, Volume 10-11, November 3, 2010, pages 92 through 97.

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2012 Idaho State Legislature for final adoption.

THE FOLLOWING IS THE AMENDED TEMPORARY RULE AND THE
AMENDED PENDING RULE TEXT FOR DOCKET NO. 16-0310-1005

130. PSYCHOSOCIAL REHABILITATIVE SERVICES (PSR) - PROVIDER AGENCY REQUIREMENTS.

Each agency that enters into a provider agreement with the Department for the provision of PSR services must meet the following requirements: (3-19-07)

Subsection 130.03

03. PSR Agency Staff Qualifications. The agency must assure that each agency staff person delivering PSR services meets at least one (1) of the qualifications in Section 131 of these rules and maintains ongoing compliance with the education requirements defined in Subsection 130.09 or Paragraph 131.03.b.c.iii. of this rule. (3-19-07)(11-1-10)(11-1-10)T

Subsection 130.06

06. Supervision. The agency must provide staff with adequate case-specific supervision to insure that the tasks on a participant's individualized treatment plan can be implemented effectively in order for the individualized treatment plan objectives to be achieved. An agency staff person without a Master's degree must be supervised by an individual with a Master's degree or a higher credential licensed master's level professional, as defined in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Subsection 715.03. PSR agency staff must be supervised in accordance with their applicable status as follows: (10-1-10)T

a. Certified Psychiatric Rehabilitation Practitioners (CPRP) may provide case-specific supervision to PSR Specialist other CPRP applicants who are working toward their when the supervising CPRP credential when the certified professional is directly supervised by a Master's level staff person professional defined in Subsection 715.03 of these rules. (5-8-09)(11-1-10)T(11-1-10)T

b. PSR Specialist applicants who are working toward, or have achieved, the USpra Certificate in Children's Psychiatric Rehabilitation must be supervised by a licensed master's level professional, as defined in Subsection 715.03 of these rules. (11-1-10)T

c. The supervisors must ensure that the individual staff members demonstrate adequate competency to work with all populations assigned to them. (11-1-10)T

d. Case-specific supervisory contact must be made weekly, at a minimum, with staff for whom supervision is a requirement. Documentation of supervision must be maintained by the agency and be available for review by the Department. (3-19-07)

e. An agency must assure that clinical supervision, as required in the rules of the Idaho Bureau of Occupational Licenses and the Idaho State Board of Medicine, is available to all staff who provide psychotherapy. The amount of supervision should be adequate to ensure that the individualized treatment plan objectives are achieved. Documentation of supervision must be maintained by the agency and be available for review by the Department. (5-8-09)

f. The licensed physician or other licensed practitioner of the healing arts must review and sign the individualized treatment plan as an indicator that the services are medically necessary and prescribed. (5-8-09)

131. PSYCHOSOCIAL REHABILITATIVE SERVICES (PSR) - AGENCY STAFF QUALIFICATIONS.
All agency staff delivering direct services must have at least one (1) of the following credentials: (5-8-09)

Subsection 131.03

03. Psychosocial Rehabilitation (PSR) Specialist. (5-8-09)

a. Individuals hired As of June 30, 2009, persons who are working as PSR Specialists to delivering Medicaid-reimbursable mental health services may continue to do so until January 1, 2012, at which time they In order to continue working as a PSR specialist beyond this date, the worker must have completed a certificate program or earned a certification in psychiatric rehabilitation based upon the primary population with whom they he works in accordance with the requirements set by the USpra-be certified as PSR Specialists in accordance with USpra requirements. An applicant who primarily works as a PSR specialist with transitional age youth between sixteen (16) and eighteen (18) years of age must meet requirements set by USpra. (5-8-09)(11-1-10)T(11-1-10)T

b. Individuals hired between July 1, 2009, and October 31, 2010, who are working as PSR Specialists to deliver Medicaid-reimbursable mental health services may continue to do so for a period not to exceed thirty (30) months from their initial date of hire. In order to continue as a PSR Specialist beyond a total period of thirty (30) months, the worker must have completed a certificate program or earned a certification in psychiatric rehabilitation based upon the primary population with whom he works in accordance with the requirements set by the USpra. (11-1-10)T

c. As of July 1, 2009, applicants to become PSR Specialists delivering Medicaid-reimbursable mental health services must have a bachelor's degree from a nationally accredited university in Primary Education, Special Education, Adult Education, Counseling, Human Services, Early Childhood Development, Family Science, Psychology, or Applied Behavioral Analysis. Applicants who have a major in one (1) of these identified subject areas, but have a bachelor's degree in another field, also meet this requirement. PSR Specialist applicants Individuals hired as of November 1, 2010, who are working as PSR Specialists to deliver Medicaid-reimbursable mental health services may continue to do so for a period not to exceed thirty (30) months from the initial date of hire. In order to continue as a PSR Specialist beyond a total period of thirty (30) months, the worker must have completed a certificate program or earned a certification in psychiatric rehabilitation based upon the primary population with whom he works in accordance with the requirements set by the USpra. Such workers must have a bachelor's degree or higher in any field. Each applicant must be educationally prepared in the core competencies of psychiatric rehabilitation principles as defined by USpra at www.USpra.org. Applicants must have or successfully complete a minimum of

~~sixty (60) approved classroom hours within the thirty (30) month timeline described at 131.03.c. College coursework and post college education offered through a variety of methods, including continuing education, workshops, and distance learning count toward this requirement.~~ (11-1-10)T

i. Credential Required for PSR Specialists Working Primarily with Adults. (11-1-10)T

(1) Applicants who intend to work primarily with adults, age eighteen (18) or older, must become a Certified Psychiatric Rehabilitation Practitioner in accordance with the USPRA requirements. (11-1-10)T

(2) Applicants who work primarily with adults, but also intend to work with participants under the age of eighteen (18), must have training addressing children's developmental milestones, or have evidence of classroom hours in equivalent courses. The worker's supervisor must determine the scope and amount of training the worker needs in order to work competently with children assigned to the worker's caseload. (11-1-10)T

ii. Credential Required for PSR Specialists Working Primarily with Children. (11-1-10)T

(1) Applicants who intend to work primarily with children under the age of eighteen (18) must obtain a certificate in children's psychiatric rehabilitation in accordance with the USPRA requirements. (11-1-10)T

(2) Applicants who primarily work with children, but who also intend to work with participants eighteen (18) years of age or older, must have training or have evidence of classroom hours addressing adult issues in psychiatric rehabilitation. The worker's supervisor must determine the scope and amount of training the worker needs in order to competently work with adults assigned to the worker's caseload. (11-1-10)T

iii. Classroom Hours. Classroom hours within the following content areas must completed for a USPRA credential may be used toward a PSR specialist applicant's continuing education requirements as described in Subsection 130.09 of these rules. All USPRA-approved classroom hours in the required content areas described in these rules must be successfully completed as evidenced by an applicant's documentation of prior education or according to the following timeline: The completion of required classroom hours must be documented in the agency's personnel records.

<u>TABLE 131.03.b – TIMELINE FOR COMPLETION OF USPRA APPROVED CLASSROOM HOURS</u>	
<u>i. Within ninety (90) days of employment</u>	<u>All applicants must have successfully completed ten (10) classroom hours in Domain I – Interpersonal Competencies: Principles of Psychiatric Rehabilitation and any topic(s) of choice within Domain I. Applicants who intend to work with participants under the age of eighteen (18) must have training addressing children's developmental milestones or have evidence of classroom hours in an equivalent course. Such training must count toward the ten (10) hour requirement for the first ninety (90) days.</u>
<u>ii. Within one hundred eighty (180) days of employment</u>	<u>All applicants must have successfully completed an additional ten (10) classroom hours, for a cumulative total of twenty (20) hours, in Domain II – Professional Role Competencies: USPRA Guidelines and any topic(s) of choice within Domain II.</u>
<u>iii. Within two hundred and seventy (270) days of employment</u>	<u>All applicants must have successfully completed an additional ten (10) classroom hours, for a cumulative total of thirty (30) hours, in Domain III – Community Integration: Community Support System Principles and any topic(s) of choice from Domain III.</u>
<u>iv. Within three hundred and sixty (360) days of employment</u>	<u>All applicants must have successfully completed an additional ten (10) hours, for a cumulative total of forty (40) hours in Domain IV – Assessment, Planning, and Outcomes: Psychiatric Rehabilitation Readiness and any topic(s) of choice from Domain IV.</u>

<u>TABLE 131.03.b – TIMELINE FOR COMPLETION OF USPRA-APPROVED CLASSROOM HOURS</u>	
<u>After one (1) year of employment</u>	<u>All applicants must successfully complete at least eight (8) classroom hours every one hundred eighty (180) days in order to complete the remaining twenty (20) hours of required classroom training, for a cumulative total of sixty (60) hours in Domain V – Interventions for Goal Achievement: Verbal and Non-verbal Communication and at least one (1) choice of topic(s) in each of the following domains, Domain VI – System Competencies and Domain VII – Diversity and Cultural Competency. All applicants must complete the sixty (60) hours of required classroom training within the thirty (30) month time limit.</u>

~~(5-8-09)(11-1-10)T(11-1-10)T~~

~~e. An applicant who meets the educational requirements under Subsection 131.03.b. of this rule PSR specialist applicants who were hired between July 1, 2009 and October 31, 2010 may work as a PSR Specialist for a period not to exceed eighteen ~~thirty~~ (18~~30~~) months while under the supervision of a staff member with a Master's degree or higher credential or a certified PSR Specialist. In order to continue as a PSR Specialist beyond a total period of eighteen ~~thirty~~ (18~~30~~) months, the worker must obtain ~~have completed~~ the USPRA certification ~~certificate~~ program or earned a certification in psychiatric rehabilitation based upon the population with whom they work.~~

~~(5-8-09)(11-1-10)T~~

d. An individual ~~who has been denied licensure or~~ who is qualified to apply for licensure to the Idaho Bureau of Occupational Licenses, in the professions identified under Subsections 131.01 through 131.03 of this rule, ~~who has failed his licensing exam or has been otherwise denied licensure~~ is not eligible to provide services under the designation of PSR Specialist ~~with the exception of those unless this~~ individuals ~~who have~~ ~~has~~ obtained ~~one (1) of~~ the USPRA ~~PSR Specialist certification~~ ~~credentials~~.

~~(5-8-09)(11-1-10)T(11-1-10)T~~

IDAPA 20 - DEPARTMENT OF LANDS

20.07.02 - RULES GOVERNING OIL AND GAS CONSERVATION IN THE STATE OF IDAHO

DOCKET NO. 20-0702-1101

NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is April 19, 2011.

AUTHORITY: In compliance with Section 67-5224 Idaho Code and IDAPA 20.01.01, Rules of Practice and Procedure Before the State Board of Land Commissioners (Board), Section 840, notice is hereby given that this agency has adopted a temporary rule. This action is authorized pursuant to Section 58-104(6), Idaho Code.

DESCRIPTIVE SUMMARY: No standards currently exist for well treatments and hydraulic fracturing performed in the initial development of oil and gas resources. Some well treatments do have the potential to harm ground water supplies if they are not designed and performed properly. The gas field currently being developed near New Plymouth, Idaho, does have wells adjacent to that town's domestic water supply wells. Officials in Payette County and New Plymouth have expressed concerns in regards to the potential for ground water issues associated with the gas wells and well treatments. The Oil and Gas Conservation Commission is charged with ensuring both the efficient extraction of oil and gas resources, and the protection of groundwater by Section 47-319(d)(3), Idaho Code.

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

This rule is needed to ensure the protection of the public health, safety, and welfare.

FEE SUMMARY: No fee is being imposed by this rule.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this temporary rule, contact Eric Wilson, (208) 334-0261 or ewilson@idl.idaho.gov.

DATED this 22nd day of April, 2011.

Eric Wilson
Minerals Program Manager
Idaho Department of Lands
PO Box 83720
Boise, Idaho 83720-0050
(208) 334-0261
Fax (208) 334-3698
ewilson@idl.idaho.gov

THE FOLLOWING IS THE TEMPORARY RULE TEXT OF DOCKET NO. 20-0702-1101

051. -- ~~054~~. (RESERVED).

055. WELL TREATMENTS.

01. Well Treatment Defined. A well treatment, for the purposes of these rules, is when actions are

performed on a well to acidize, fracture, or stimulate a well or the surrounding earth materials. (4-19-11)T

02. Application Required. An Application for Permit to Drill required by Section 050 must include any plans for well treatment if they are known before the well is drilled. If well treatments are not covered in the original drilling permit, then application to amend the permit must be made to the Commission. Approval by the Commission is required prior to the well treatments being implemented. The Commission may deny applications that do not include the permit number, well name, well location, as-built description, and the following: (4-19-11)T

- a.** Depth to perforations or the openhole interval. (4-19-11)T
- b.** The source of water. (4-19-11)T
- c.** Trade name and content of fluids. (4-19-11)T
- d.** Type of proppants. (4-19-11)T
- e.** Estimated pump pressures. (4-19-11)T
- f.** Method for the storage and disposal of well treatment fluids. (4-19-11)T
- g.** Size and design of storage pits, if proposed. (4-19-11)T
- h.** Expected fracture length in both the horizontal and vertical directions. (4-19-11)T
- i.** Information specific to hydraulic fracturing as described in Subsection 055.07. (4-19-11)T
- j.** Groundwater protection plan demonstrating how groundwater resources will be protected from contamination. (4-19-11)T
- k.** Geologic well logs identifying all potable water aquifers currently being used from the surface down to the bottom of the surface casing or eight hundred (800) feet below the surface, whichever is greater, and their vertical distance from proposed treatment zones. (4-19-11)T
- l.** Certification by a registered professional engineer that all aspects of the well construction, including the suitability and integrity of the cement used to seal the well, are designed to meet the requirements of proposed well treatments. (4-19-11)T
- m.** Additional information as required by the Commission. (4-19-11)T

03. Master Drilling/Treatment Plans. Where multiple stimulation activities will be undertaken for several wells proposed to be drilled to the same zone(s) within an area of geologic similarity, approval may be sought from the Commission for a comprehensive master drilling/treatment plan containing the information required. The approved master drilling/treatment plan must then be referenced on each individual well's Application for Permit to Drill. (4-19-11)T

04. Time Limit. If a treatment approved in a drilling permit is not completed within one (1) year, the permit will be considered expired and reapplication will be required prior to conducting the well treatment. (4-19-11)T

05. Routine Activities Exempt. Routine activities that do not affect the integrity of the wellbore or the reservoir, such as pump replacements, do not require an application. (4-19-11)T

06. Inspections and Reporting Requirements. The Commission may conduct inspections prior, during and after well treatments. Similar to the requirements of Section 090 of this rule, a report on the well treatment must be submitted within thirty (30) days of the treatment. The report shall present a detailed account of the work done and the manner in which such work was performed, including: (4-19-11)T

- a. The daily production of oil, gas, and water both prior to and after the operation. (4-19-11)T
- b. The size and depth of perforations. (4-19-11)T
- c. The quantity of sand, chemicals, or other materials employed in the operation. (4-19-11)T
- d. Information specific to hydraulic fracturing, as described in Subsection 055.07. (4-19-11)T
- e. Static pressure testing results before and after the well treatment. (4-19-11)T
- f. Any other information related to operations which alter the performance or characteristics of the well. (4-19-11)T
- 07. Hydraulic Fracturing (Fracing).** (4-19-11)T
- a. Hydraulic Fracturing, or Fracing. Defined. A method of stimulating or increasing the recovery of hydrocarbons by perforating the production casing and injecting fluids or gels into the surrounding rocks at extremely high pressures (up to ten thousand (10,000) psi and higher). Sand or other materials may be in the fluids to prop open the resulting fractures, and these materials are called proppant. (4-19-11)T
- b. Well Integrity. Prior to the well stimulation, the operator will perform a suitable mechanical integrity test of the casing or of the casing-tubing annulus or other mechanical integrity test methods and submit an affidavit certifying that the well can withstand the anticipated treatment pressures. (4-19-11)T
- c. The operator shall provide geological names, geological descriptions, and depth of the formation into which well stimulation fluids are to be injected. (4-19-11)T
- d. The operator shall provide detailed information to the Commission as to the base stimulation fluid source. The operator or his agent shall provide to the Commission, for each stage of the well stimulation program, the chemical additives, compounds and concentrations or rates proposed to be mixed and injected, including: (4-19-11)T
- i. Stimulation fluid identified by additive type (such as but not limited to acid, biocide, breaker, brine, corrosion inhibitor, crosslinker, demulsifier, friction reducer, gel, iron control, oxygen scavenger, pH adjusting agent, proppant, scale inhibitor, surfactant); (4-19-11)T
- ii. The chemical compound name and Chemical Abstracts Service (CAS) number shall be identified (such as the additive biocide is glutaraldehyde, or the additive breaker is ammonium persulfate, or the proppant is silica or quartz sand, and so on for each additive used); (4-19-11)T
- iii. The proposed rate or concentration for each additive shall be provided (such as gel as pounds per thousand gallons, or biocide at gallons per thousand gallons, or proppant at pounds per gallon, or expressed as percent by weight or percent by volume, or parts per million, or parts per billion); (4-19-11)T
- iv. The Commission retains discretion to request the formulary disclosure for the chemical compounds used in the well stimulation(s). (4-19-11)T
- e. The operator shall provide a detailed description of the proposed well stimulation design, which shall include: (4-19-11)T
- i. The anticipated surface treating pressure range; (4-19-11)T
- ii. The maximum injection treating pressure shall be within accepted safety limits as approved by a registered professional engineer. Accepted safety limits are generally eighty percent (80%) of the maximum pressure rating of the pressurized system; (4-19-11)T
- iii. The estimated or calculated fracture length and fracture height. (4-19-11)T

f. Upon request in the application or by written letter to the Commission, confidentiality protection shall be provided for trade secrets consistent with Section 9-340D(1), Idaho Code, and for “[a]rchaological and geologic records concerning exploratory drilling, logging, mining and other excavation” consistent with Section 9-340E(2), Idaho Code. (4-19-11)T

g. The injection of volatile organic compounds, such as benzene, toluene, ethyl benzene and xylene, also known as BTEX compounds, or any petroleum distillates into groundwater is prohibited. Water that is produced with oil and gas, and which may contain small amounts of naturally occurring petroleum distillates, may be used as well stimulation fluid in hydrocarbon bearing zones. (4-19-11)T

h. During the well stimulation operation, the operator shall monitor and record the annulus pressure at the bradenhead. If intermediate casing has been set on the well being stimulated, the pressure in the annulus between the intermediate casing and the production casing shall also be monitored and recorded. If the annulus pressure increases by more than five hundred (500) pounds per square inch gauge (psig) as compared to the pressure immediately preceding the stimulation, the operator shall verbally notify the Commission as soon as practicable but no later than twenty-four (24) hours following the incident. (4-19-11)T

i. The operator shall provide the Commission the following post well stimulation detail: (4-19-11)T

i. The actual total well stimulation treatment volume pumped; (4-19-11)T

ii. Detail as to each fluid stage pumped, including actual volume by fluid stage, proppant rate or concentration, actual chemical additive name, type, concentration or rate, and amounts; (4-19-11)T

iii. The actual surface pressure and rate at the end of each fluid stage and the actual flush volume, rate and final pump pressure; (4-19-11)T

iv. The instantaneous shut-in pressure, and the actual fifteen (15) -minute and thirty (30) -minute shut-in pressures when these pressure measurements are available; (4-19-11)T

v. A continuous record of the annulus pressure during the well stimulation; (4-19-11)T

vi. In lieu of Subparagraphs 055.07.i.(i) through 055.07.i.(v) of this rule, the operator may submit the actual well stimulation service contractor’s job log, without any cost/pricing data from the field ticket. If information on the actual field ticket describes a proprietary completion design and/or well stimulation design, confidentiality may be afforded per Paragraph 055.07.f. of this rule. (4-19-11)T

j. If the pressure did increase by more than five hundred (500) pounds per square inch gauge (psig) as described in Paragraph 055.07.h. of this rule, the operator shall include a report containing all details pertaining to the incident, including corrective actions taken, as an attachment to the information provided in Paragraph 055.07.i. of this rule. (4-19-11)T

k. The operator shall provide information to the Commission as to the amounts, handling, and if necessary, disposal at an identified appropriate disposal facility, or reuse of the well stimulation fluid load recovered during flow back, swabbing, and/or recovery from production facility vessels. Storage of such fluid shall be protective of groundwater as demonstrated by the use of either tanks or authorized lined pits. If lined pits are authorized to store fluid for use in well stimulation, or for reconditioning, for reuse, or to hold for appropriate disposal, then appropriate steps shall be taken to protect wildlife and migratory birds. (4-19-11)T

l. The Commission shall require all well treatment to be at least five hundred (500) vertical feet below potable water aquifers currently being used within one thousand (1,000) feet of the treated well. (4-19-11)T

08. Well Treatments Within Public Drinking Water System Delineated Well Capture Zones. (4-19-11)T

a. The Commission will not authorize pits or other methods of subsurface storage for associated

fracing fluids for well treatments within Idaho Department of Environmental Quality (DEQ) public drinking water system delineated well capture zones. Operators will be required to store and transport fracing fluids using above ground storage facilities and tanker trucks for well treatments in these locations. (4-19-11)T

b. The Commission may require the operator to complete groundwater monitoring before and after well treatment using existing water wells or installed groundwater monitoring wells (installed at the cost of the operator) for well treatments conducted within DEQ public drinking water system delineated well capture zones. The Commission shall approve the number, location, spacing and depth of any installed groundwater monitoring wells. If groundwater monitoring is required, the operator will provide the Commission with the results of the reports. (4-19-11)T

056. -- 059. (RESERVED).

IDAPA 23 - BOARD OF NURSING

23.01.01 - RULES OF THE IDAHO BOARD OF NURSING

DOCKET NO. 23-0101-1002

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-1404(11), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than June 15, 2011.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Board rules currently require that applicants for certification as a medication assistant pass an examination as a measure of beginning competence. Because of the anticipated very low volume of applicants, it is not financially feasible for vendors to develop an affordable psychometrically sound, legally defensible examination for use in Idaho, which has prevented the Board from issuing certification to otherwise qualified applicants. The rulemaking removes this impediment by authorizing the Board to measure beginning level competency through an alternative process.

The temporary rulemaking was approved by the 2011 Legislature. The complete text of the temporary rule was published in the [December 1, 2010 Idaho Administrative Bulletin, Vol. 10-12, pages 169 and 170](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

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 resulting from this rulemaking: None.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because there was a need to do temporary rulemaking and the rulemaking confers a benefit on applicants and the general public.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Sandra Evans, M.A.Ed., R.N., Executive Director, at (208) 577-2482.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 22, 2011.

DATED this 10th day of May, 2011.

Sandra Evans, M.A.Ed., R.N., Executive Director
Board of Nursing
280 N. 8th St. (8th & Bannock), Ste. 210
P. O. Box 83720
Boise, ID 83720-0061
Phone: (208) 577-2482
Fax: (208) 334-3262

Pursuant to Section 67-5221(1), Idaho Code, this docket is being published as a proposed rule.

This docket has been previously published as a temporary rule.
The temporary effective date is November 5, 2010.

The original text of the temporary rule was published in the Idaho Administrative Bulletin,
Volume 10-12, December 1, 2010, pages 169 and 170.

**THE FOLLOWING IS THE TEXT OF THE PROPOSED RULE
FOR DOCKET NO. 23-0101-1002**

494. APPLICATION FOR CERTIFICATION FOR MEDICATION ASSISTANT - CERTIFIED.

- 01. Application Submission.** An applicant for medication assistant - certified shall submit to the Board: (3-26-08)
- a.** A completed, notarized application form provided by the Board; (3-26-08)
 - b.** A notarized affidavit of graduation from an approved medication assistant - certified education and training program; (3-26-08)
 - c.** Evidence of successful completion of a medication assistant - certified competency evaluation, approved by the Board; (3-26-08)
 - d.** Payment of application fees as established in Section 497 of these rules; and (3-26-08)
 - e.** Applicant's current fingerprint-based criminal history check as set forth in Section 54-1401(3), Idaho Code. (3-26-08)
- 02. Temporary Certification.** (3-26-08)
- a.** At the Board's discretion, and pending completion of the competency evaluation and receipt of the criminal background report, a temporary certification may be issued to an applicant who meets all other requirements and is waiting for the federal criminal background report. (~~3-26-08~~)()
 - b.** Temporary certification is valid for six (6) months from the date of issuance or until a permanent certification is issued or denied, whichever occurs first. (3-26-08)
 - c.** The applicant must pay the temporary certification fee established in Section 498 of these rules. (3-26-08)
- 03. Denial of Certification.** Certification as a medication assistant - certified may be denied for any of the following grounds: (3-26-08)
- a.** Failure to meet any requirement established by statute or these rules; or (3-26-08)
 - b.** False representation of facts on an application for certification; or (3-26-08)
 - c.** Failure to pass the any certification examination required by the Board; or (~~3-26-08~~)()
 - d.** Having another person appear in his place for the any certification examination required by the

Board; or

~~(3-26-08)~~()

e. Engaging in any conduct which would be grounds for discipline under Section 54-1406A, Idaho Code, or these rules; or (3-26-08)

f. Revocation, suspension, limitation, reprimand, voluntary surrender, or any other disciplinary action or proceeding including investigation against a certificate to practice by another state or jurisdiction. (3-26-08)

04. Notification. If certification is denied, the Board will notify the applicant in writing of the reason for denial and inform him of his procedural rights under the Idaho Administrative Procedures Act. (3-26-08)

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1101

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that the Board of Pharmacy intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections 37-2715 and 54-171, Idaho Code.

MEETING SCHEDULE: Public meetings on the negotiated rulemaking will be held as follows:

Thursday, June 2, 2011, at 9 a.m. (PST)	Wednesday, June 22, 2011, at 9 a.m.	Monday, July 11, 2011, at 12:00 p.m.
Coeur d'Alene Resort 115 South 2nd Street Coeur d'Alene, Idaho	Idaho State Board of Pharmacy 1199 Shoreline Lane, Ste. #303 Boise, Idaho	ISU School of Pharmacy Leonard Hall, 970 South 5th Ave. Pocatello, Idaho

The meeting site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the meeting to the agency address below.

METHOD OF PARTICIPATION: Persons wishing to participate in the negotiated rulemaking must do the following:

Written comments will be accepted and the Board's Executive Director will be in attendance for discussion.

DESCRIPTIVE SUMMARY: The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principle issues involved:

In 2012, the Board expects to ask the Idaho State Legislature to repeal IDAPA 27.01.01, "Rules of the Idaho State Board of Pharmacy," and promulgate a new, updated, comprehensive version.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING COPIES: For assistance on technical questions concerning this negotiated rulemaking contact Mark Johnston, Executive Director, at (208)-334-2356 or mark.johnston@bop.idaho.gov.

A draft of a complete revision of the Rules of the Idaho State Board of Pharmacy (Board) can be found on the Board's web site at: <http://bop.accessidaho.org>.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 1, 2011.

DATED this 29th day of April, 2011.

Mark Johnston
Executive Director
Idaho State Board of Pharmacy
3380 Americana Terrace
Suite #320
PO Box 83720
Boise, Idaho 83720
Phone: (208) 334-2356
Fax: (208) 334-3536

IDAPA 30 - IDAHO COMMISSION FOR LIBRARIES

30.01.01 - RULES OF THE IDAHO COMMISSION FOR LIBRARIES GOVERNING THE USE OF COMMISSION SERVICES

DOCKET NO. 30-0101-1101

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 33-2503(2), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than June 15, 2011.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The current rule unnecessarily limits the loan period and number of talking book items which can be loaned. The rule change is necessary to allow for the increase in circulation of materials to eligible blind and physically handicapped persons who are registered with the Idaho Talking Book Service. The changes clarify the Talking Book Service circulation and loan processes and procedures, and provide a method for changes and updates by the Idaho Board of Library Commissioners.

The temporary rulemaking was extended by the 2011 Legislature by SCR 108. The complete text of the temporary rule was published in the [February 2, 2011 Idaho Administrative Bulletin, Vol. 11-2, pages 14 through 16](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

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 resulting from this rulemaking: None.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because there was a need to do temporary rulemaking.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Ann Joslin, State Librarian, at (208) 334-2150.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 22, 2011.

DATED this 19th day of April, 2011.

Ann Joslin
State Librarian
Idaho Commission for Libraries
325 W. State St.
P. O. Box 83720
Boise, ID 83702
Phone: (208) 334-2150
Fax: (208) 334-4016

Pursuant to Section 67-5221(1), Idaho Code, this docket is being published as a proposed rule.

This docket has been previously published as a temporary rule.
The temporary effective date is December 3, 2010.

The original text of the temporary rule was published in the Idaho Administrative Bulletin,
Volume 11-2, February 2, 2011, pages 14 through 16.

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 30-0101-1101

050. TALKING BOOK SERVICE (TBS).

01. Patron Status. (3-29-10)

a. Active status. To remain active, users must borrow at least one (1) book per year or subscribe to at least one (1) magazine provided through the service. (3-29-10)

b. Changes of status. The user must notify the Talking Book Service of address changes, a desire to cancel the service, and temporary or permanent service transfer to another state. (3-29-10)

c. Good standing. To receive a digital player and books, user's account must reflect: (3-29-10)

i. The current permanent mailing address and contact information; **and** ~~(3-29-10)~~()

ii. No history of lost machines as defined by library procedures or more than one (1) Recorded Cassette (RC) player currently checked out; **and** ~~(3-29-10)~~()

iii. ~~No more than four (4) overdue cassette titles.~~ ~~(3-29-10)~~

02. Materials Loaned. (3-29-10)

a. Formats. Recorded books, magazines, and descriptive videos and discs are loaned free to eligible registered users. The Talking Book Service keeps records of all loans. (3-29-10)

b. Equipment. Equipment necessary to listen to recorded materials will be loaned for as long as the user meets National Library Service eligibility requirements and is using the equipment to listen to materials provided by the Talking Book Service. Materials received from sources other than the Talking Book Service do not qualify for continuance of service. Playback equipment needing repair must be returned to the Talking Book Service. A replacement will be provided upon request. The user should not attempt to repair the playback equipment or replace the battery. (3-29-10)

c. Sharing materials. Users may not lend Talking Book Service materials or equipment to other persons. (3-29-10)

03. Circulation. (3-29-10)

a. Number of titles loaned. ~~Following is a list by format of~~ **The Board shall establish** the maximum number of titles each user may request **and that information is available at the Commission office.** Once a user reaches the established maximum number of titles, no additional titles will be sent in that format until outstanding titles are returned. A user may request a change in the number of titles received at any time, up to the maximum.

- ~~(3-29-10)~~()
- ~~i. Cassette books: Unlimited. (3-29-10)~~
 - ~~ii. Digital books: Two (2). (3-29-10)~~
 - ~~iii. Descriptive videos and discs: Two (2). (3-29-10)~~
 - ~~iv. Magazines: Unlimited. (3-29-10)~~
 - b. Loan periods.** The Board shall establish loan periods for all titles and that information is available at the Commission office. ~~(3-29-10)~~()
 - ~~i. Cassette books: Six (6) weeks. (3-29-10)~~
 - ~~ii. Digital books: Two (2) weeks, with one (1) two-week renewal. (3-29-10)~~
 - ~~iii. Descriptive videos and discs: Two (2) weeks. (3-29-10)~~
 - ~~iv. Magazines in green mailing containers: Two (2) weeks. (3-29-10)~~
 - ~~v. Magazines in cardboard containers: Do not return. (3-29-10)~~
 - c. Overdue materials.** Users are urged to return materials promptly so they can be circulated to other patrons. ~~Service for digital books will be suspended if a digital book is more than two (2) weeks overdue.~~ ~~(3-29-10)~~()
 - d. Fines.** No fines are levied for materials returned later than the circulation due date. (3-29-10)
 - e. Returning materials.** Materials can be returned free via the United State Postal Service using Free Matter for the Blind mailing cards. Place materials in a mailbox or take them to the Post Office. (3-29-10)
 - f. Lost or damaged materials.** The user is charged a replacement fee for each lost or damaged descriptive video or disc as outlined in Section 33-2620, Idaho Code, "Failure to Return Borrowed Material." (3-29-10)
- 04. Service Suspension.** If any of the rules of Section 050 of these rules are repeatedly violated, the user's service may be suspended pursuant to the following suspension procedure: (3-29-10)
- a.** Service staff will discuss the violation with the user. (3-29-10)
 - b.** A warning letter will be sent to the user that summarizes the discussion and the violation. The user will have an opportunity to reply within ten (10) business days. (3-29-10)
 - c.** If rule violations continue, a second warning letter will be sent citing the earlier warning letter and listing examples of subsequent violations. The service can be suspended for up to six (6) months. A specific date to reinstate service will be included in this letter. The user will have an opportunity to reply within ten (10) business days. (3-29-10)
 - d.** When service is reinstated, a letter will be sent notifying the user of reinstatement of service and reminding the user that further documented violations will result in another suspension of service. (3-29-10)

IDAPA 34 - SECRETARY OF STATE

34.05.01 - RULES GOVERNING FARM PRODUCTS CENTRAL FILING SYSTEM

DOCKET NO. 34-0501-1101

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is April 7, 2011.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 67-903(9), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than June 15, 2011.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

In 2010, the Secretary of State promulgated rules, which, in part, removed the county code and unit code tables from the Collateral Information Codes section of its rules governing Farm Products Central Filing System. That rulemaking was approved by the 2011 Legislature. Upon further consideration, it has been determined that these tables are a benefit to users of the Farm Products Central Filing System and the Secretary of State is promulgating this rule change to include the county code and unit code tables in its rules.

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

The addition of county code and unit code tables to the Collateral Information Codes section of the rules governing Farm Products Central Filing System provides a benefit to users of the System.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

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: None.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Jeff Harvey, UCC Supervisor, at (208) 332-2849.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 22, 2011.

DATED this 12th day of May, 2011.

Jeff Harvey, UCC Supervisor
Office of the Secretary of State
450 N. 4th St.
P. O. Box 83720
Boise, ID 83720-0080
Phone: (208) 332-2849
Facsimile: (208) 334-2847

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 34-0501-1101

200. COLLATERAL INFORMATION CODES.

Codes are used to describe farm product collateral on the Farm Products Financing Statements and amendments, on the master list maintained by the SOS, and on the PMLs distributed to registered buyers, commission merchants, and selling agents. Assignment of farm product codes and PML Groupings, county codes, and farm product unit codes shall be done by the SOS. The SOS will provide a list of the established codes upon request. [\(4-7-11\)T](#)

01. PML Groupings and Farm Product Codes. The table of PML Groupings, farm products, and their codes is as follows:

PML No.	PML Grouping	FP Code	FP Name
01	Wheat and Buckwheat	010	Wheat
		011	Buckwheat
02	Feed and Oil Grains	020	Barley
		021	Rye (including Triticale)
		022	Oats
		023	Sorghum Grain
		024	Flaxseed
		025	Safflower
		026	Rape (including Canola)
		027	Field Corn
		028	Millet
03	Hay	030	Hay
04	Ensilage	040	Ensilage

PML No.	PML Grouping	FP Code	FP Name
05	Potatoes	050	Potatoes
06	Sugar Beets	060	Sugar Beets
07	Dry Beans	070	Dry Beans
08	Dry Peas, Lentils and Garbanzos	080	Dry Peas
		081	Lentils
		082	Garbanzos (Chick Peas)
09	Sweet Corn	090	Sweet Corn
10	Onions and Garlic	100	Onions
		101	Onion Seed
		102	Garlic
11	Mint	110	Mint
12	Hops	120	Hops
13	Popcorn & Sunflower Seeds	130	Popcorn
		131	Sunflower Seeds
14	Soybeans	140	Soybeans
15	Rice	150	Rice
16	Seeds	160	Grass for Seed
		161	Alfalfa for Seed
		162	Other Hay Legumes for Seed
		163	Garden Vegetables and Flower Seeds
		164	Seed Potatoes
		165	Row Crops for Seed

PML No.	PML Grouping	FP Code	FP Name
17	Vegetables & Melons	170	Green Peas
		171	Tomatoes
		172	Lettuce
		173	Cucumbers
		174	Broccoli
		175	Cauliflower
		176	Lima Beans
		177	Green Beans
		178	Melons
		179	Carrots
		180	Turnips
		181	Asparagus
		182	Spinach and Collards
		183	Pumpkins and Squash
		184	Radishes
		185	Peppers
		186	Herbs
19	Fruits	190	Apples
		191	Apricots
		192	Cherries
		193	Nectarines
		194	Peaches
		195	Pears
		196	Plums
20	Berries	200	Strawberries
		201	Raspberries
21	Nursery Products	210	Sod
		211	Nursery Stock (Trees and Shrubs)
		212	Christmas Trees
		213	Flowers and Potted Plants

PML No.	PML Grouping	FP Code	FP Name
22	Mushrooms	220	Mushrooms
23	Grapes	230	Grapes
50	Beef Animals	500	Beef Cattle and Calves
		501	Beefalo
		502	Bison
51	Sheep, Wool	510	Sheep and Lambs Goats and Llamas
		511	Wool
		512	Goats
		513	Llamas
52	Hogs	520	Hogs
53	Dairy	530	Dairy Cattle
		531	Milk
54	Equines	540	Horses
		541	Mules
		542	Donkeys and Burros
55	Chickens and Eggs	550	Chickens
		551	Eggs
56	Other Fowl	560	Turkeys
		561	Ducks
		562	Geese
		563	Game Birds
		564	Ostriches, Emus, and Rheas
57	Mink, Rabbits and Fox	570	Mink and Pelts
		571	Rabbits
		572	Fox and Pelts

PML No.	PML Grouping	FP Code	FP Name
58	Apiary Products	580	Bees
		581	Honey
		582	Bees Wax
59	Fish and Other Aquaculture	590	Fish and Other Aquaculture
60	Big Game Animals (Deer and Elk)	600	Big Game Animals (Deer and Elk)
61	Worms	610	Worms
62	Semen	620	Cattle Semen
		621	Horse Semen

~~(4-7-11)~~(4-7-11)T

02. County Codes. The table of county codes is as follows. Unless otherwise indicated, counties are in Idaho.

<u>01</u>	<u>Ada</u>	<u>16</u>	<u>Cassia</u>	<u>31</u>	<u>Lewis</u>	<u>46</u>	<u>Garfield, Wa.</u>
<u>02</u>	<u>Adams</u>	<u>17</u>	<u>Clark</u>	<u>32</u>	<u>Lincoln</u>	<u>47</u>	<u>Pend Orielle, Wa.</u>
<u>03</u>	<u>Bannock</u>	<u>18</u>	<u>Clearwater</u>	<u>33</u>	<u>Madison</u>	<u>48</u>	<u>Spokane, Wa.</u>
<u>04</u>	<u>Bear Lake</u>	<u>19</u>	<u>Custer</u>	<u>34</u>	<u>Minidoka</u>	<u>49</u>	<u>Whitman, Wa.</u>
<u>05</u>	<u>Benewah</u>	<u>20</u>	<u>Elmore</u>	<u>35</u>	<u>Nez Perce</u>	<u>50</u>	<u>Malheur, Or.</u>
<u>06</u>	<u>Bingham</u>	<u>21</u>	<u>Franklin</u>	<u>36</u>	<u>Oneida</u>	<u>51</u>	<u>Elko, Nv.</u>
<u>07</u>	<u>Blaine</u>	<u>22</u>	<u>Fremont</u>	<u>37</u>	<u>Owyhee</u>	<u>52</u>	<u>Box Elder, Ut.</u>
<u>08</u>	<u>Boise</u>	<u>23</u>	<u>Gem</u>	<u>38</u>	<u>Payette</u>	<u>53</u>	<u>Cache, Ut.</u>
<u>09</u>	<u>Bonner</u>	<u>24</u>	<u>Gooding</u>	<u>39</u>	<u>Power</u>	<u>54</u>	<u>Rich, Ut.</u>
<u>10</u>	<u>Bonneville</u>	<u>25</u>	<u>Idaho</u>	<u>40</u>	<u>Shoshone</u>	<u>55</u>	<u>Lincoln, Wy.</u>
<u>11</u>	<u>Boundary</u>	<u>26</u>	<u>Jefferson</u>	<u>41</u>	<u>Teton</u>	<u>56</u>	<u>Teton, Wy.</u>
<u>12</u>	<u>Butte</u>	<u>27</u>	<u>Jerome</u>	<u>42</u>	<u>Twin Falls</u>	<u>57</u>	<u>Beaverhead, Mt.</u>
<u>13</u>	<u>Camas</u>	<u>28</u>	<u>Kootenai</u>	<u>43</u>	<u>Valley</u>	<u>58</u>	<u>Lincoln, Mt.</u>
<u>14</u>	<u>Canyon</u>	<u>29</u>	<u>Latah</u>	<u>44</u>	<u>Washington</u>	<u>59</u>	<u>Sanders, Mt.</u>
<u>15</u>	<u>Caribou</u>	<u>30</u>	<u>Lemhi</u>	<u>45</u>	<u>Asotin, Wa.</u>	<u>99</u>	<u>Not in Table</u>

(4-7-11)T

03. Unit Codes. The table for codes for units used to indicate the amount of a FP covered is as follows:

<u>A - acres</u>	<u>G - gallons</u>	<u>T - tons</u>
<u>B - bushels</u>	<u>H - head</u>	<u>V - hives</u>
<u>C - hundred weight</u>	<u>L - pounds</u>	<u>W - lugs</u>
<u>E - cases</u>	<u>N - bins</u>	<u>X - boxes</u>
<u>F - flats</u>	<u>S - sacks</u>	<u>Z - stubs</u>

(4-7-11)T

IDAPA 35 - STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-1101

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2011.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 63-105 and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than June 15, 2011.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Hire One Act, passed in 2011 HB 297, repealed Section 63-3029E, Idaho Code, and amended Section 63-3029F, Idaho Code, to revise the income tax credit allowed for qualifying new employees. The new provisions provide that the State Tax Commission will determine what "qualifying employer-provided health care benefits" means. Rule 756 is being promulgated to inform employers of the requirements to qualify for the income tax credit since it applies to new employees hired on or after April 15, 2011. The rule defines employer-provided health care benefits, using as the definition of health care benefits the definition of major medical expense coverage found in IDAPA 18.01.30, "Individual Disability and Group Supplemental Disability Insurance Minimum Standards Rule," Section 018, and basing the definition of "employer-provided" on the national averages of the employer share of premium costs.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate because it confers a benefit.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were of a simple nature.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Janice Boyd at (208) 334-7544.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 22, 2011.

DATED this 13th day of May 2011.

Janice Boyd, Tax Policy Specialist
Idaho State Tax Commission
800 Park Blvd., Plaza IV
P.O. Box 36, Boise, ID 83722-0410
(208) 334-7544

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 35-0101-1101

754. -- ~~750~~. (RESERVED).

756. HIRE ONE ACT CREDIT FOR QUALIFYING NEW EMPLOYEES -- EMPLOYER-PROVIDED HEALTH CARE BENEFITS (RULE 756).

Section 63-3029F, Idaho Code, as in effect for taxable years beginning in or after 2011 and before 2014. (1-1-11)T

01. Employer-Provided. An individual's employer must pay the following percentages of the cost of an employee's premium for health care benefits as defined in Subsection 756.02 of this rule: (1-1-11)T

a. At least eighty percent (80%) of the cost of the employee's premium if such employee had single coverage. (1-1-11)T

b. At least seventy percent (70%) of the cost of the employee's premium if such employee had family coverage. (1-1-11)T

02. Health Care Benefits. Coverage offered through a group health plan for employees that includes hospital, medical and surgical expense coverage set forth as follows: (1-1-11)T

a. An accident and sickness insurance policy that provides hospital, medical and surgical expense coverage, to an aggregate maximum of not less than five hundred thousand dollars (\$500,000); (1-1-11)T

b. Coinurance percentage per year per covered person not to exceed fifty percent (50%) of covered charges, provided that the coinsurance out-of-pocket maximum combined with any deductibles does not exceed four percent (4%) of the aggregate maximum limit under the policy for each covered person; (1-1-11)T

c. A deductible stated on a per person, per family, per illness, per benefit period, or per year basis, or a combination of these bases not to exceed four percent (4%) of the aggregate maximum limit under the policy for each covered person for at least: (1-1-11)T

i. Daily hospital room and board expenses subject only to limitations based on average daily cost of the semiprivate room rate in the area where the insured resides; (1-1-11)T

ii. Miscellaneous hospital services; (1-1-11)T

iii. Surgical services; (1-1-11)T

iv. Anesthesia services; (1-1-11)T

v. In-hospital medical services; and (1-1-11)T

vi. Out-of-hospital care, consisting of physicians' services rendered on an ambulatory basis where coverage is not provided elsewhere in the policy for diagnosis and treatment of sickness or injury, diagnostic x-ray,

laboratory services, radiation therapy, and hemodialysis ordered by a physician. (1-1-11)T

d. Additional benefits. Health care benefits must also provide not fewer than three (3) of the following additional benefits: (1-1-11)T

i. In-hospital private duty registered nurse services; (1-1-11)T

ii. Convalescent nursing home care; (1-1-11)T

iii. Diagnosis and treatment by a radiologist or physiotherapist; (1-1-11)T

iv. Rental of special medical equipment, as defined by the insurer in the policy; (1-1-11)T

v. Artificial limbs or eyes, casts, splints, trusses or braces; (1-1-11)T

vi. Treatment for functional nervous disorders, and mental and emotional disorders; or (1-1-11)T

vii. Out-of-hospital prescription drugs and medications. (1-1-11)T

03. **Non-Qualifying Health Care Benefits.** Health care benefits do not include limited benefit policies or certificates of insurance for specific disease, hospital confinement indemnity, accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance, student health benefits-only coverage issued as a supplement to liability insurance, worker's compensation or similar insurance, automobile medical payment insurance or nonrenewable short-term coverage issued for a period of twelve (12) months or less. (1-1-11)T

757. -- 759. (RESERVED).

IDAPA 35 - STATE TAX COMMISSION

35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-1101

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2011.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 63-105A, Idaho Code, and Section 63-802, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than January 15, 2011.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

House Bill 13 did not specify when the exemption for new capital investment would be effective, and clarification of the amount of the investment to be included in the county's new construction roll under Section 63-802, Idaho Code, is needed. This new rule provides that the exemption may be granted after a notification containing the description of the project and the project qualifying period is received by the county. The rule also clarifies that the property eligible for taxation may be included on the new construction roll.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(2)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Compliance with deadlines in amendments to governing law or federal programs.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were of simple nature.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Alan Dornfest at (208) 334-7544.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 22, 2011.

DATED this 13th day of May 2011.

Alan Dornfest
Tax Policy Supervisor
State Tax Commission
P.O. Box 36, Boise, ID 83722-0410
(208) 334-7544

THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE AND THE
PROPOSED RULE TEXT FOR DOCKET NO. 35-0103-1101

- 630.** ~~(RESERVED)~~ **TAX EXEMPTION FOR NEW CAPITAL INVESTMENTS (RULE 630).** (1-1-11)T
Section 63-4502, Idaho Code. (1-1-11)T
- 01. Notification of New Capital Investment.** (1-1-11)T
- a.** Prior to receiving the benefit of the tax exemption, the taxpayer shall notify the county in which the project site is located that the taxpayer expects to meet the criteria of the New Capital Investments Tax exemption. Notification shall be accomplished by submitting a written declaration or notification with the county assessor and the board of county commissioners containing the following information: (1-1-11)T
- i.** The name and address of the taxpayer; (1-1-11)T
- ii.** A description of the new capital investment project; (1-1-11)T
- iii.** The assessor's parcel number(s) identifying the location of the project site; (1-1-11)T
- iv.** The date that the qualifying period began; (1-1-11)T
- v.** A statement that the taxpayer will make a qualified new capital investment of at least one billion dollars (\$1,000,000,000) within the qualifying period, which shall be specified. (1-1-11)T
- b.** The notification required hereunder may be submitted by the taxpayer to the county assessor and the board of county commissioners at any time after the qualifying period begins. However, if the notification is submitted after May 15 in a given year a taxpayer may receive the benefit of the exemption only for tax years following the year in which the notification is filed. (1-1-11)T
- 02. Property of the Taxpayer.** Property of a taxpayer includes all real or personal property that is owned by or leased to the taxpayer under an agreement that makes the taxpayer responsible for the payment of any property taxes on the property. (1-1-11)T
- 03. New Construction.** Property taxable under Section 63-4502, Idaho Code and that qualifies for listing on the new construction roll as described by Section 63-301(A)3, Idaho Code, should be listed on the new construction roll. (1-1-11)T
- 04. Failure to Make the Qualifying New Capital Investment.** If the taxpayer fails to make the qualifying new capital investment during the qualifying period, the property shall lose the exemption granted by this section beginning with the tax year immediately following the conclusion of the qualifying period. (1-1-11)T
- 05. Cross Reference.** For an explanation of the treatment of new construction relating to Sections 63-802 and 63-301A, Idaho Code, see Rule 802 of these rules. (1-1-11)T

IDAPA 35 - STATE TAX COMMISSION
35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0103-1102
NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2011.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 63-105A, Idaho Code, and Section 63-802, Idaho Code.

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

Rule 804 is being amended to provide clarification and advise county officials how to value the "base assessment roll" as of January 1, 2011, in accordance with Section 6 of House Bill 95aa which amends Section 50-2903(4), Idaho Code, effective January 1, 2011.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(2)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Compliance with deadlines in amendments to governing law or federal programs.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Alan Dornfest at (208) 334-7544.

DATED this 13th day of May, 2011.

Alan Dornfest
Tax Policy Supervisor
State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7544

THE FOLLOWING IS THE TEMPORARY RULE TEXT OF DOCKET NO. 35-0103-1102

804. TAX LEVY -- CERTIFICATION -- URBAN RENEWAL DISTRICTS (RULE 804). (5-8-09)
Section 50-2908, 63-803, and 63-811, Idaho Code.

01. Definitions. (4-5-00)

a. "Urban renewal district." An urban renewal district, as referred to in Section 63-215, Idaho Code, shall mean an urban renewal area formed pursuant to an urban renewal plan adopted in accordance with Section 50-2008, Idaho Code. Urban renewal districts are not taxing districts. (4-5-00)

b. "Revenue allocation area (RAA)." A revenue allocation area (RAA) as referred to in Section 50-2908, Idaho Code, shall be the area defined in Section 50-2903, Idaho Code, in which base and increment values are

to be determined. Revenue allocation areas (RAAs) are not taxing districts. (4-5-00)

c. “Current base value.” The current base value of each parcel in a taxing district or unit shall be the value of that parcel on the current base assessment roll as defined under Section 50-2903, Idaho Code. Current base value does not include value found on the occupancy roll. (4-5-00)

d. “Initial base value.” The initial base value for each parcel is the sum of the taxable value of each category of property in the parcel for the year the RAA is established. (4-5-00)

e. “Increment value.” The increment value is the difference between the current equalized value of each parcel of taxable property in the RAA and that parcel’s current base value, provided such difference is a positive value. (4-5-00)

02. Establishing and Adjusting Base and Increment Values. (4-5-00)

a. Establishing initial base value. If a parcel’s legal description has changed prior to computing initial base year value, the value that best reflects the prior year’s taxable value of the parcel’s current legal description must be determined and will constitute the initial base year value for such parcel. The initial base value includes the taxable value, as of the effective date of the ordinance adopting the urban renewal plan, of all otherwise taxable property, as defined in Section 50-2903, Idaho Code. Initial base value does not include value found on the occupancy roll. (4-5-00)

b. Adjustments to base value - general value changes. Adjustments to base values will be calculated on a parcel by parcel basis, each parcel being a unit and the total value of the unit being used in the calculation of any adjustment. Base values are to be adjusted downward when the current taxable value of any parcel in the RAA is less than the most recent base value for such parcel. In the case of parcels containing some categories of property which increase in value and some which decrease, the base value for the parcel will only decrease provided the sum of the changes in category values results in a decrease in total parcel value. Any adjustments shall be made by category and may result in increases or decreases to base values for given categories of property for any parcel. Adjustments to base values for any real, personal, or operating property shall establish new base values from which future adjustments may be made. In the following examples the parcel’s initial base value is one hundred thousand dollars (\$100,000), including Category 21 value of twenty thousand dollars (\$20,000) and Category 42 value of eighty thousand dollars (\$80,000). (4-5-00)

i. Case 1: Offsetting decreases and increases in value. One (1) year later the parcel has a one thousand dollar (\$1,000) decrease in value in Category 21 and a one thousand dollar (\$1,000) increase in Category 42 value. There is no change in the base value for the parcel. (4-5-00)

ii. Case 2: Partially offsetting decreases and increases in value. One (1) year later the parcel has a three thousand dollars (\$3,000) decrease in value in Category 21 and a one thousand dollars (\$1,000) increase in Category 42 value. The base value decreases two thousand dollars (\$2,000) to ninety-eight thousand dollars (\$98,000). (4-5-00)

iii. Case 3: Future increase in value following decreases. One (1) year after the parcel in Case 2 has a base value reduced to ninety-eight thousand dollars (\$98,000), the value of the parcel increases by five thousand dollars (\$5,000) which is the net of category changes. The base value remains at ninety-eight thousand dollars (\$98,000). (4-5-00)

c. Adjustments to base value - splits and combinations. Before other adjustments can be made, the most recent base value must be adjusted to reflect changes in each parcel’s legal description. This adjustment shall be calculated as described in the following subsections. (4-5-00)

i. When a parcel has been split, the most recent base year value is transferred to the new parcels, making sure that the new total equals the most recent base year value. (4-5-00)

ii. When a parcel has been combined with another parcel, the most recent base year values are added together. (4-5-00)

iii. When a parcel has been split and combined with another parcel in the same year, the value of the split shall be calculated as set forth in Subsection 804.02.c.i. and then the value of the combination will be calculated as set forth in Subsection 804.02.c.ii. (4-5-00)

d. Adjustments to base values when exempt parcels become taxable. Base values shall be adjusted as described in the following subsections. (4-5-00)

i. Fully exempt parcels at time of RAA establishment. When a parcel that was exempt at the time the RAA was established becomes taxable, the base value is to be adjusted upwards to reflect the estimated value of the formerly exempt parcel at the time the RAA was established. (4-5-00)

ii. Partially exempt parcels losing the speculative value exemption. When a partially exempt parcel with a speculative value exemption that applies to farmland within the RAA becomes fully taxable, the base value of the RAA shall be adjusted upwards by the difference between the taxable value that would have been assessed had the parcel been fully taxable in the year the RAA was established of the parcel for the year in which the exemption is lost and the taxable value of the parcel included in the base value of the RAA. For example, assume a parcel of farmland within an RAA had a taxable value of five hundred dollars (\$500) in the year the RAA base value was established. Assume also that if this parcel had not been actively devoted to agriculture at that time, the taxable value would have been fifteen hundred dollars (\$1500). After five (5) years, this parcel is no longer used for farming, loses its partial exemption, and becomes reclassified as industrial land with a value of ten thousand dollars (\$10,000) a speculative value exemption of two thousand dollars (\$2,000) at that time. Two (2) years later the parcel is reclassified as industrial land, loses the speculative value exemption, and has a current taxable value of fifty thousand dollars (\$50,000). The base value within the RAA would be adjusted upwards by one forty-nine thousand five hundred dollars (\$149,050), the difference between fifteen hundred fifty thousand dollars (\$150,000) and five hundred (\$500). The preceding example applies only in cases of loss of the speculative value exemption that applies to land actively devoted to agriculture and does not apply to timberland. Site improvements, such as roads and utilities, that become taxable after the loss of the speculative value exemption are not to be added to the base value. For example, if, in addition to the fifty thousand dollars (\$50,000) current taxable value of the undeveloped land, site improvements valued at twenty-five thousand dollars (\$25,000) are added, the amount reflected in the base value remains fifty thousand dollars (\$50,000), and the additional twenty-five thousand dollars (\$25,000) is added to the increment value. In addition, this example applies only to land that loses the speculative value exemption as a result of changes occurring in 2010 or later and first affecting taxable values in 2011 or later. Parcels that lost speculative value exemptions prior to 2010 had base value adjustments as described in Subsection 804.02.d.iii. of this rule. (4-5-00)(1-1-11)T

iii. Partially exempt parcels other than those losing the speculative value exemption. When a partially exempt parcel, other than one subject to the speculative value exemption that applies to farmland, within the RAA becomes fully taxable, the base value of the RAA shall be adjusted upwards by the difference between the value that would have been assessed had the parcel been fully taxable in the year the RAA was established and the taxable value of the parcel included in the base value of the RAA. For example, assume a residential parcel within an RAA had a market value of one hundred thousand dollars (\$100,000), a homeowner's exemption of fifty thousand dollars (\$50,000), and a taxable value of fifty thousand dollars (\$50,000) in the year the RAA base value was established. After five (5) years, this parcel is no longer used for owner-occupied residential purposes and loses its partial exemption. At that time the parcel has a taxable value of one hundred eighty thousand dollars (\$180,000). The base value within the RAA would be adjusted upwards by fifty thousand dollars (\$50,000) to one hundred thousand (\$100,000) to reflect the loss of the homeowner's exemption, but not any other value increases. (1-1-11)T

iv. Change of exempt status. When a parcel that is taxable and included in the base value at the time the RAA is established subsequently becomes exempt, the base value is reduced by the original value of the parcel included in the base value. If this parcel subsequently becomes taxable, the base value is to be adjusted upward by the same amount that was originally subtracted. For example, assume a land parcel had a base value of twenty thousand dollars (\$20,000). Three (3) years later, an improvement valued at one hundred thousand dollars (\$100,000) was added. The land at this later date had a value of thirty thousand dollars (\$30,000). Both land and improvements were purchased by an exempt entity. The base would be reduced by twenty thousand dollars (\$20,000). Five (5) years later, the land and improvement becomes taxable. The base value is to be adjusted upwards by twenty thousand dollars (\$20,000). (4-5-00)

e. Adjustments to base values when property is removed. Base values are to be adjusted downward for real, personal, and operating property removed from the RAA. Property shall be considered removed only under the conditions described in the following subsections. (4-5-00)

i. For real property, all of the improvement is physically removed from the RAA, provided that there is no replacement of said improvement during the year the original improvement was removed. If said improvement is replaced during the year of removal, the reduction in base value will be calculated by subtracting the value of the new improvement from the current base value of the original improvement, provided that such reduction is not less than zero (0). (4-5-00)

ii. For personal property, all of the personal property associated with one (1) parcel is physically removed from the RAA. (4-5-00)

iii. For operating property, any of the property under a given ownership is removed from the RAA. (4-5-00)

f. Adjustments to increment values. Decreases in total parcel value below the initial base value decrease the base value for the parcel. This leads to greater increment value if the parcel increases in value in future years. For example, if a parcel with a initial base value of one hundred thousand dollars (\$100,000) decreases in value to ninety-five thousand dollars (\$95,000), but later increases to ninety-eight thousand dollars (\$98,000), an increment value of three thousand dollars (\$3,000) is generated. If the same parcel increases in value to one hundred two thousand dollars (\$102,000) after the decrease to ninety-five thousand dollars (\$95,000), the increment value would be seven thousand dollars (\$7,000). (4-5-00)

g. Apportioning operating property values. For operating property, the original base value shall be apportioned to the RAA on the same basis as is used to apportion operating property to taxing districts and units. The operating property base value shall be adjusted as required under Section 50-2903, Idaho Code. (4-5-00)

03. Levy Computation for Taxing Districts Encompassing RAAs Within Urban Renewal Districts. Beginning in 2008, levies shall be computed in one (1) of two (2) ways as follows: (5-8-09)

a. For taxing district or taxing unit funds other than those meeting the criteria listed in Subsection 804.05 of this rule, the property tax levy shall be computed by dividing the dollar amount certified for the property tax portion of the budget of the fund by the market value for assessment purposes of all taxable property within the taxing district or unit, including the value of each parcel on the current base assessment roll (base value), but excluding the increment value. For example, if the taxable value of property within a taxing district or unit is one hundred million dollars (\$100,000,000) but fifteen million dollars (\$15,000,000) of that value is increment value, the levy of the taxing district must be computed by dividing the property tax portion of the district's or unit's budget by eighty-five million dollars (\$85,000,000). (5-8-09)

b. For taxing district or taxing unit funds meeting the criteria listed in Subsection 804.05 of this rule, the property tax levy shall be computed by dividing the dollar amount certified for the property tax portion of the budget of the fund by the market value for assessment purposes of all taxable property within the taxing district or unit, including the increment value. Given the values in the example in Paragraph 804.03.a. of this rule, the levy would be computed by dividing the property tax portion of the fund by one hundred million dollars (\$100,000,000). (5-8-09)

04. Modification of an Urban Renewal Plan. When an authorized municipality passes an ordinance modifying an urban renewal plan containing a revenue allocation financing provision, the current value of property in the RAA shall be determined as if the modification had not occurred. All modifications to urban renewal areas and RAAs must comply with the provisions of Rule 225 of these rules. (4-5-00)

a. Modification by consolidation of RAAs. If such modification involves combination or consolidation of two (2) or more RAAs, the base value shall be determined by adding together independently determined current base values for each of the areas to be combined or consolidated. The current taxable value of property in an area not previously included in any RAA shall be added to determine the total current base value for

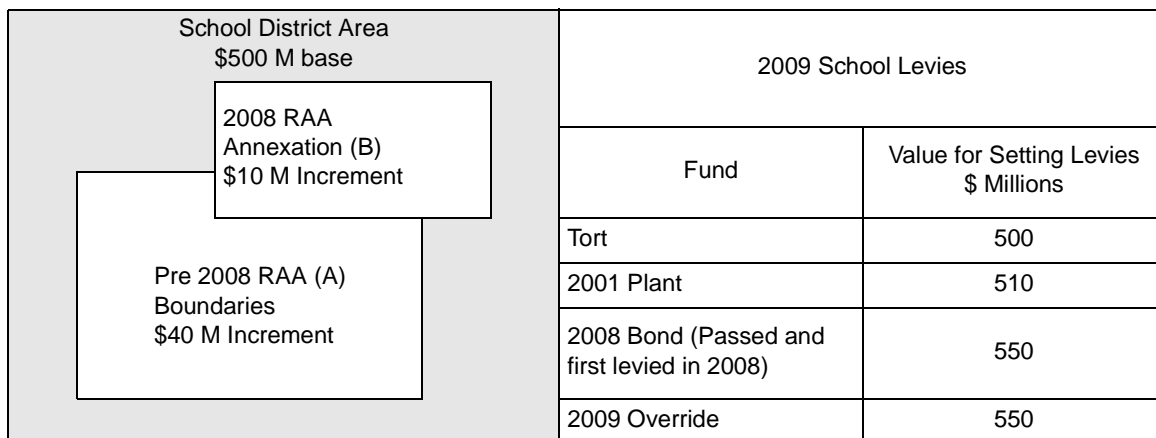
the consolidated RAA. (4-5-00)

b. Modification by annexation. (5-8-09)

i. If an RAA is modified by annexation, the current taxable value of property in the area annexed shall be added to the most current base value determined for the RAA prior to the annexation. (5-8-09)

ii. For levies described in Paragraphs 804.05.b., c., or d. of this rule approved prior to December 31, 2007, and included within the boundaries of a revenue allocation area by a change in the boundaries of either the revenue allocation area or the area subject to the levy by the taxing district or unit fund after December 31, 2007, the property tax levy shall be computed by dividing the dollar amount certified for the property tax portion of the budget of the fund by the market value for assessment purposes of all taxable property within the taxing district or unit, including the increment value. The example below shows the value to be used for setting levies for various funds within an urban renewal district "A" that annexes area "B" within a school district. Area (B) was annexed after December 31, 2007. Therefore, the Area (B) increment was added back to the base for all funds shown except the tort fund. The Area (A) increment value was added back to the base for the bond and override funds which were certified or passed after December 31, 2007.

2009 Value Table	School District (base only)	\$500 Million
	RAA (A) increment	\$40 Million
	RAA annex (B) increment	\$10 Million



(5-8-09)

05. Criteria for Determining Whether Levies for Funds Are to Be Computed Using Base Value or Market Value for Assessment Purposes. Beginning in 2008, levies to be certified for taxing district or unit funds meeting the following criteria or used for any of the following purposes will be computed as described in Paragraph 804.03.b. of this rule. (5-8-09)

a. Refunds or credits pursuant to Section 63-1305, Idaho Code, and any school district judgment pursuant to Section 33-802(1), Idaho Code, provided the refunds, credits, or judgments were pursuant to actions taken no earlier than January 1, 2008; (5-8-09)

b. Voter approved overrides of the limits provided in Section 63-802, Idaho Code, provided such overrides are for a period not to exceed two (2) years and were passed after December 31, 2007, or earlier as provided in the criteria found in Paragraph 804.05.e.; (5-8-09)

c. Voter approved bonds and plant facilities reserve funds passed after December 31, 2007, or earlier

as provided in the criteria found in Paragraph 804.05.e.; (5-8-09)

d. Voter approved school or charter school district temporary supplemental maintenance and operation levies passed after December 31, 2007; or (3-29-10)

e. Levies described in Paragraphs 804.05.b., c., or d. approved prior to December 31, 2007, and included within the boundaries of a revenue allocation area by a change in the boundaries of either the revenue allocation area or the area subject to the levy by the taxing district or unit fund after December 31, 2007; (3-29-10)

f. Levies authorized by Section 33-317A, Idaho Code, known as the cooperative service agency school plant facility levy. (3-29-10)

06. Cross Reference. The county auditor shall certify the full market value by taxing district as specified in Rule 995 of these rules. (4-2-08)

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT
39.02.72 - RULES GOVERNING ADMINISTRATIVE LICENSE SUSPENSIONS
DOCKET NO. 39-0272-1101

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is May 1, 2011.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 18-8002 and 18-8002A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than June 15, 2011.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking: House Bill 61, 2011, brought the Administrative License Suspension (ALS) program in Sections 18-8002 and 18-8002A, Idaho Code, into compliance with a 2010 Idaho Court of Appeals ruling regarding the seizure of the license and the issuance of a temporary permit to an out-of-state licensed driver who refuses to submit to, or submits to and fails, evidentiary testing for the presence of alcohol or drugs, in violation of Section 18-8004, Idaho Code. The bill removes the requirement to seize any license and issue a temporary permit whether the driver is licensed in-state or out-of-state. The ALS procedure will be less complex and more efficient for law enforcement officers and the department to administer. It will also allow the driver (whether licensed in-state or out-of-state) whose license is otherwise valid and current, to proceed with a photo ID in their possession that remains valid and current until a starting suspension date.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Compliance with House Bill 61, effective May 1, 2011.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: This rulemaking does not impose any new or increased fee.

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 has no fiscal impact on the general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the action was required to comply with changes to statute in House Bill 61, effective May 1, 2011.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: There are no materials being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Ed Pemble, Driver Services Manager, 332-7830.

Anyone may submit written comments regarding the proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before June 22, 2011.

DATED this 12th day of June, 2011.

Linda L. Emry, Rules Coordinator
Office of Governmental Affairs
Idaho Transportation Department

3311 West State Street
P O Box 7129, Boise ID 83707-1129
Phone – 208-334-8810 / FAX – 208-332-4107

**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE AND THE
PROPOSED RULE TEXT FOR DOCKET NO. 39-0272-1101**

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter.

(5-1-11)T

005. OFFICE -- OFFICE HOURS -- MAILING AND STREET ADDRESS -- PHONE NUMBERS.

01. Street and Mailing Address. The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of P O Box 7129, Boise ID 83707-1129.

(5-1-11)T

02. Office Hours. Daily office hours are 8:00 a.m. to 5:00 p.m. except Saturday, Sunday and state holidays.

(5-1-11)T

03. Telephone And Fax Numbers. The central office may be contacted during office hours by phone at 208-334-8000 or by fax at 208-334-8739.

(5-1-11)T

006. PUBLIC RECORDS ACT COMPLIANCE.

All records associated with this chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code.

(5-1-11)T

0047. -- 009. (RESERVED).

010. DEFINITIONS.

01. Petitioner. A person who has been served with a Notice of Suspension pursuant to Section 18-8002A, Idaho Code.

(10-1-94)

~~**02. Temporary Permit.** A permit to operate a motor vehicle for a period of time not to exceed thirty (30) days from the date of issuance.~~

~~(10-1-94)~~

032. Received by the Department. A document that has been:

(10-1-94)

a. Personally delivered to the Department's Driver Services Section at 3311 W. State Street, Boise, Idaho; or

(10-1-94)

b. Delivered by mail and addressed to P.O. Box 7129, Boise, ID 83707-1129; or

(10-1-94)

c. Transmitted by facsimile machine to telephone number (208) ~~334-8739~~ 332-4124.

~~(10-1-94)~~(5-1-11)T

d. Sent by e-mail to driverrecords@itd.idaho.gov.

(5-1-11)T

043. Business Days. All days of the week except Saturday, Sunday, and legal holidays as defined by Section 73-108, Idaho Code.

(10-1-94)

054. Certified Copy. A reproduction of an original record that has been certified by a custodian of such

record to be a true and accurate copy. (10-1-94)

065. Duplicate Original. A counterpart produced by the same impression as the original, or from the same matrix. (3-19-99)

076. Evidentiary Test. An analysis of blood, breath, or urine to determine the presence of alcohol, drugs, or other intoxicating substances. (10-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

101. HEARING NOTICES.

01. Notification. Upon timely receipt of hearing requests, the Department shall notify petitioners of the time and date of the hearing as soon as practicable, but no later than seven (7) days prior to the hearing. Hearing notices shall be mailed or e-mailed to the address provided in the hearing requests, or if no address was provided, notices shall be mailed to the most current address contained in the petitioner's driver's license records.

~~(3-19-99)~~(5-1-11)T

02. Hearings Conducted by Telephone. Hearings shall be conducted by telephone unless the hearing officer shall determine that the petitioner or other participant would be denied the opportunity to participate in the entire hearing if held by telephone. Face to face hearings shall be held in Ada County (or other locations within the state as may be determined by the Department). (3-19-99)

03. Hearing Date. Hearings shall be conducted within twenty (20) days of receipt of the hearing request. However, the Hearing Officer may extend the hearing date for ~~an additional one (1) ten (10) days~~ period upon a showing of good cause. Such extension shall not stay the suspension ~~nor extend the expiration date of the thirty (30) day temporary permit.~~ (10-1-94)(5-1-11)T

102. -- 199. (RESERVED).

200. DOCUMENT SUBMISSION.

01. Forwarding Documents to the Department. Upon service of a Notice of Suspension, a law enforcement agency shall, in accordance with Section 18-8002A, Idaho Code, forward the following documents to the Department within five (5) business days: (3-19-99)

a. Notice of Suspension ~~and Temporary Permit. A temporary permit shall not be issued by a peace officer when the drivers license is not surrendered, when the drivers license surrendered is not valid, when the driver holds a drivers license from another jurisdiction, or when the driver is operating a commercial vehicle at the time of the stop. No permit will be issued to operate a commercial vehicle.~~ (3-19-99)(5-1-11)T

b. The sworn statement of the officer incorporating any arrest or incident reports relevant to the arrest and evidentiary testing. (10-1-94)

c. A certified copy or duplicate original of the test results or log of test results if the officer has directed an evidentiary test of the petitioner's breath. (3-19-99)

~~**d.** The operational checklist for the administration of breath tests, if used. (10-1-94)~~

~~**e.** The petitioner's driver's license, if the petitioner is an Idaho licensed driver. (10-1-94)~~

02. Compliance. The documents shall be considered forwarded in a timely manner if they are postmarked within five (5) business days of the date of service of the Notice of Suspension or are accompanied by a certificate, certifying the documents were deposited with: (3-19-99)

- a. The United States mail or overnight delivery service; or (10-1-94)
- b. Hand delivered, within five (5) business days of the date of service of the suspension notice. (3-19-99)

03. Blood and Urine Tests. If an evidentiary test of blood or urine was administered rather than a breath test, the Notice of Suspension shall not be served until the results of the test are obtained. In such cases, the peace officer may forward the sworn statement and accompanying reports to the Department and the Department shall have the responsibility of serving the Notice of Suspension, if necessary. (10-1-94)

201. -- 299. (RESERVED).

300. SUBPOENAS.

01. Request. The Hearing Officer assigned to the matter may, upon written request, issue subpoenas requiring the attendance of witnesses or the production of documentary or tangible evidence at a hearing. (10-1-94)

02. Serving Subpoenas. Parties requesting subpoenas shall be responsible for having the subpoenas served. Witnesses shall not be compelled to attend and testify at hearings unless served with subpoenas at least ~~seventy-two~~ one hundred and twenty (72120) hours prior to the time of hearing. ~~(10-1-94)~~(5-1-11)T

03. Proof of Service. Parties responsible for service of the subpoena shall provide proof of service of the subpoena prior to the scheduled hearing. (5-1-11)T

(BREAK IN CONTINUITY OF SECTIONS)

500. RECORDS OF PROCEEDINGS.

01. Required Records. The Hearing Officer shall make a record of hearing proceedings. This record shall consist of: (10-1-94)

- a. An ~~tape~~ audio recording of the hearing, except in instances where the Hearing Officer authorizes a different method of reporting the hearing. ~~(10-1-94)~~(5-1-11)T
- b. Exhibits and other items of evidentiary nature. (10-1-94)

02. Requesting Copies. Any party may make a written request for a copy of the ~~tape~~ audio recording of the hearing from the Department. The requesting party shall reimburse the Department for the actual cost of providing the copy. ~~(10-1-94)~~(5-1-11)T

501. -- 599. (RESERVED).

600. FINAL ORDER REQUEST FOR RECONSIDERATION.

The Hearing Officer shall make Findings of Fact, Conclusions of Law and Order either sustaining or vacating the license suspension in question. The Findings of Fact, Conclusions of Law and Order shall be the final order of the Department. A request for reconsideration must be made within fourteen (14) days of the issuance of the Findings of Fact, Conclusions of Law and Order. The request for reconsideration shall contain a request to submit new evidence if the party wishes the hearing officer to consider any new evidence. (3-19-99)

01. Issuing ~~Before Suspension Expiration Date~~ Facts and Findings. The Hearing Officer shall issue the Findings of Fact, Conclusions of Law and Order ~~prior to the expiration of the thirty (30) day temporary permit, but failure to do so shall not be grounds for staying or vacating the suspension~~ following the hearing. ~~(10-1-94)~~(5-1-11)T

02. Mailing Final Order. The Findings of Fact, Conclusions of Law and Order is issued when a copy is deposited in the United States Mail addressed to the petitioner or the petitioner's attorney or e-mailed to the petitioner or the petitioner's attorney. (10-1-94)(5-1-11)T

601. -- 699. (RESERVED).

700. FAILURE TO APPEAR.

01. Proposed Order of Default. Should the petitioner fail to appear at the scheduled hearing, either in person or through an attorney, the Hearing Officer shall promptly issue a notice of proposed order of default. This notice is deemed served when mailed or e-mailed to the petitioner or petitioner's attorney at the address shown in the request for hearing, or if no address was provided, the notice shall be mailed to the most current address contained in the petitioner's driver's license records. (10-1-94)(5-1-11)T

02. Filing Petition. The petitioner may, within seven (7) days of service of the notice of proposed order of default, file a petition requesting that the order of default not be entered and stating the grounds for such a request. If the Hearing Officer grants the petitioner's request, the hearing shall be promptly rescheduled. Granting the petitioner's request shall not stay or vacate the suspension. (10-1-94)(5-1-11)T

03. Denied Petitions. If the Hearing Officer denies the petitioner's request that the default order not be entered, the Hearing Officer shall make a determination to sustain or vacate the suspension based upon the documentary record submitted by the Department. (10-1-94)

04. Attending a Hearing. A petitioner or witness shall be deemed to have appeared if present within fifteen (15) minutes after the time the Hearing Officer is ready to begin the hearing. In the case of a telephone hearing, the petitioner or witness shall be deemed to have appeared if contacted by telephone on the second attempt to do so within a fifteen (15) minute period from the commencement of the hearing. (3-19-99)

701. -- 799. (RESERVED).

800. FORMS.

The Department shall develop appropriate forms to be used throughout the state including, but not limited to, forms for Notice of Suspension, ~~temporary driving permit~~, and officer's sworn statement. Each law enforcement agency shall use the forms supplied by the Department in carrying out the requirements of Section 18-8002A, Idaho Code, and this Rule. However, the sworn statement may be in the form of a law enforcement agency's affidavit of probable cause or equivalent document, so long as it contains the elements required by Section 18-8002A, Idaho Code. (4-5-00)(5-1-11)T

~~801. -- 899. (RESERVED).~~

~~900. COMMERCIAL DRIVERS.~~

~~If a person is stopped while driving or in actual physical control of a commercial motor vehicle (as defined by Section 49-123(2)(c)) and is given an evidentiary test indicating an alcohol concentration of four hundredths (.04) through seven hundredths (.07) in violation of Section 18-8004b, Idaho Code, the notice of suspension served shall state, in addition to the information required by Section 18-8002A, Idaho Code, that: (3-19-99)~~

~~01. Class A, B, and C Licenses. Only Class A, B, and C driving privileges shall be suspended, unless the driver is under twenty-one (21) years then all driving privileges shall be suspended; and (10-1-94)~~

~~02. Restricted Privileges. A restricted driving permit shall not be issued by the Department for the operation of commercial vehicles during the term of the suspension. (10-1-94)~~

~~9801. -- 999. (RESERVED).~~

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-1001

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The temporary rule is effective July 1, 2011.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226(1), Idaho Code, notice is hereby given that the Board of Environmental Quality has adopted a temporary rule and the Department of Environmental Quality is commencing proposed rulemaking. This action is authorized by Sections 39-105 and 39-107, Idaho Code, and House Bill 40 (to be codified at Section 39-114, Idaho Code).

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

July 7, 2011, 3:30 pm

**Department of Environmental Quality
Conference Room B
1410 N. Hilton, Boise, Idaho**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

DESCRIPTIVE SUMMARY: The new crop residue burning rules have been in effect since 2008. Upon completion of the second year of burning under the new rules, it became apparent that some smaller crop residue burns could and should be regulated under the rules differently than those large scale high fuel content burns. This temporary/proposed rule sets out provisions for obtaining spot burn, baled agricultural residue burn, and propane flaming permits.

Farmers desiring to burn crop residue, members of the regulated community who may be subject to Idaho's air quality rules as well as special interest groups, Idaho State Department of Agriculture, tribes, public officials, and members of the public who have an interest in the regulation of air emissions from sources in Idaho may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2011 for adoption of a pending rule. The pending rule is expected to become final and effective upon adjournment of the 2012 legislative session if adopted by the Board and approved by the Legislature.

DEQ will submit the final rule to the United States Environmental Protection Agency to be included in the State Implementation Plan as required by Section 110 of the Clean Air Act.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in that the rule confers a benefit. Adoption of a temporary rule enables farmers with small crop residue burns to burn within a streamlined process under certain conditions.

Adoption of Section 624 does not in itself authorize the open burning of crop residue in Idaho. Before burning under Section 624 can be conducted, several actions must take place, including development of a revised State Implementation Plan (SIP) and approval of the SIP by the U.S. Environmental Protection Agency (EPA). Prior to EPA SIP approval, those desiring to conduct spot burns, baled agricultural residue burns, or propane flaming must obtain a permit by rule in accordance with Sections 618 through 623. Contact DEQ before burning.

IDAHO CODE SECTION 39-107D STATEMENT: This rule does not regulate an activity not regulated by the

federal government, nor is it broader in scope or more stringent than federal regulations.

NEGOTIATED RULEMAKING: The text of the rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Section 67-5220, Idaho Code, and IDAPA 58.01.23.810-815. On [June 2, 2010, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 10-6, page 64](#), and a preliminary draft rule was made available for public review. Meetings were held on June 30, August 10, and September 23, 2010. Several members of the public participated in this negotiated rulemaking process by attending the meetings and by submitting written comments. A record of the negotiated rule drafts, written public comments received, and documents distributed during the negotiated rulemaking process is available at http://www.deq.idaho.gov/rules/air/58_0101_1001_temporary_proposed.cfm.

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

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

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the negotiated rulemaking, contact Mary Anderson at (208)373-0202, mary.anderson@deq.idaho.gov.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before July 7, 2011.

DATED this 26th day of April, 2011.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton/Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE AND THE
PROPOSED RULE TEXT FOR DOCKET NO. 58-0101-1001**

617. CROP RESIDUE DISPOSAL.

The open burning of crop residue on fields where the crops were grown is an allowable form of open burning if conducted in accordance with Section 39-114, Idaho Code, and Sections 618 through 623~~4~~ of these rules.

~~(5-8-09)~~(7-1-11)T

618. PERMIT BY RULE.

01. General Requirements. All persons shall be deemed to have a permit by rule if they comply with all the provisions of Sections 618 through 623~~4~~. No person shall conduct an open burn of crop residue without obtaining the applicable permit by rule. Those persons applying for a spot burn, baled agricultural residue burn, or propane flaming permit shall comply with the provisions in Section 624. The permit by rule does not relieve the

applicant from obtaining all other required permits and approvals required by other state and local fire agencies or permitting authorities. ~~(5-8-09)~~(7-1-11)T

02. Forms. The Department shall provide the appropriate forms to complete the permit by rule. Forms may be available at the Department offices or on the Department [website](#). (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

620. REGISTRATION FEE.

01. Payment of Fee. The permit by rule registration fee set out in Section 39-114, Idaho Code, shall be paid in its entirety at least seven (7) days prior to the proposed burn date. See also Subsection 624.02.a. for registration and fee requirements for burning under a spot and baled agricultural residue burn permit. The permit by rule registration form and fee should be sent to:

Crop Residue Burning Registration Fees
Fiscal Office
Idaho Department of Environmental Quality
1410 N. Hilton, Boise, ID 83706-1255

~~(5-8-09)~~(7-1-11)T

02. Effect of Payment. Payment of the registration fee does not imply authorization or approval to burn. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

622. GENERAL PROVISIONS.

01. Burn Provisions. All persons in Idaho intending to dispose of crop residue through burning shall abide by the following provisions: (5-8-09)

a. Burning Prohibitions. Burning of crop residue shall not be conducted on weekends, federal or state holidays, or after sunset or before sunrise; (5-8-09)

b. Designated Burn Day. Burning of crop residue shall not be conducted unless the Department has designated that day a burn day and the permittee has received individual approval specifying the conditions under which the burn may be conducted; (5-8-09)

c. Portable Form of Communication. The person conducting the burning must have on their possession a portable form of communication such as a cellular phone or radio of compatible frequency with the Department in order to receive burn approval information or information that might require measures to withhold additional material such that the fire burns down; (5-8-09)

d. Location of Field Burning. Open burning of crop residue shall be conducted in the field where it was generated; (5-8-09)

e. Limitations on Burning. When required by the conditions of the notice of approval to burn, the permittee burning in proximity to institutions with sensitive populations shall immediately extinguish the fire or withhold additional material such that the fire burns down, unless the Department determines that the burn will not have an adverse impact on such institutions; (5-8-09)

f. Training Session. All persons intending to burn crop residue shall attend a crop residue burning training session provided by the Idaho Department of Environmental Quality or the Idaho State Department of

Agriculture and shall attend a crop residue disposal refresher training session every five (5) years; (5-8-09)

g. Air Stagnation or Degraded Air Quality. All field burning shall be prohibited when the Department issues an air quality forecast and caution, alert, warning or emergency as identified in Section 552 of these rules; (5-8-09)

h. Allowable Forms of Open Burning. The use of reburn machines, propane flammers, or other portable devices to ignite or reignite a field for the purposes of crop residue burning shall be considered an allowable form of open burning. Tires and other restricted material described in Subsection 603.01, of this rule, are not allowed for ignition of fields; (5-8-09)

i. Additional Burn Permits. All persons intending to burn crop residue shall obtain any additional applicable permits from federal, state or local fire control authorities prior to receiving approval from the Department to burn crop residue; and (5-8-09)

j. Reporting to the Department. All persons burning crop residue shall report to the Department the date burning was conducted, the actual number and location of acres burned, and other information as required by the Department. The Department may restrict further burning by a permittee until completed burns are reported. (5-8-09)

k. Specific Conditions. The open burning of crop residue shall be conducted in accordance with the specific conditions in the permittee's permit by rule. (7-1-11)T

02. Annual Report. The Department shall develop an annual report that shall include, at a minimum, an analysis of the causes of each exceedance of a limitation in Section 621 of this rule, if any, and an assessment of the circumstances associated with any reported endangerment to human health associated with a burn. The report shall include any proposed revisions to these rules or the Crop Residue Operating Guide deemed necessary to prevent future exceedances. (5-8-09)

03. Advisory Committee. The Department will assemble an advisory committee consisting of representatives from environmental organizations, farming organizations, health organizations, tribal organizations, the Idaho State Department of Agriculture, the Idaho Department of Environmental Quality, and others to discuss open burning of crop residue issues. (5-8-09)

623. PUBLIC NOTIFICATION.

01. Designation of Burn Days. The Director or his designee shall designate for a given county or airshed within a county burn or no-burn days. (5-8-09)

02. Posting on Website. The Department shall post daily on its website (www.deq.idaho.gov): (5-8-09)(7-1-11)T

a. Whether a given day is a burn or no-burn day; (5-8-09)

b. The location and number of acres permitted to be burned; (5-8-09)

c. Meteorological conditions and any real time ambient air quality monitoring data; and (5-8-09)

d. A toll-free number to receive requests for information (1-800-345-1007). (5-8-09)(7-1-11)T

03. E-Mail Update Service. The Department shall provide an opportunity for interested persons to sign up to receive automatic e-mail updates for information regarding the open burning of crop residue. (5-8-09)

624. ~~(RESERVED)~~ SPOT BURN, BALED AGRICULTURAL RESIDUE BURN, AND PROPANE FLAMING PERMITS.

Note: Adoption of Section 624 does not in itself authorize the open burning of crop residue in Idaho. Before

burning under Section 624 can be conducted, several actions must take place, including development of a revised State Implementation Plan (SIP) and approval of the SIP by the U.S. Environmental Protection Agency (EPA). Prior to EPA SIP approval, those desiring to conduct spot burns, baled agricultural residue burns, or propane flaming must obtain a permit by rule in accordance with Sections 618 through 623. Contact DEQ before burning. (7-1-11)T

01. Applicability. (7-1-11)T

a. Spot Burn. A spot burn includes no more than one (1) acre of evenly distributed crop residue or two (2) tons of piled crop residue. The open burning of weed patches, spots of heavy residue, equipment plugs and dumps, pivot corners of fields, and pastures may constitute a spot burn. Spot burn does not include the open burning of wind rows. (7-1-11)T

b. Baled Agricultural Residue Burn. An open burn used to dispose of broken, mildewed, diseased, or otherwise pest-ridden bales still in the field where they were generated. (7-1-11)T

c. Propane Flaming. The use of flame-generating equipment to briefly apply flame and/or heat to the topsoil of a cultivated field of pre-emerged or plowed-under crop residue with less than five hundred fifty (550) pounds of burnable, non-green residue per acre in order to control diseases, insects, pests, and weed emergence. (7-1-11)T

02. Spot and Baled Agricultural Residue Burn Permit. (7-1-11)T

a. Registration and Fee Requirements. Any person applying for a spot and baled agricultural residue burn permit under Section 624 shall provide the registration information listed in Subsections 619.01 and 619.02 and pay a nonrefundable fee of twenty dollars (\$20) to the Department (see Section 620) at least fourteen (14) days prior to the date the applicant proposes to conduct the first burn of the calendar year. (7-1-11)T

b. Term and Acreage. A spot and baled agricultural residue burn permit is valid for the calendar year in which it is issued and is good for a cumulative total of no more than ten (10) acres of spots and/or equivalent piled or baled agricultural residue during the year and no more than one (1) acre of spots and/or equivalent piled or baled agricultural residue per day. Two (2) tons of piled or baled agricultural residue is assumed to be equivalent to one (1) acre. (7-1-11)T

03. Propane Flaming Permit. Persons conducting propane flaming as defined under Subsection 624.01.c. shall be deemed to have a permit by rule if they comply with the applicable provisions in Subsections 624.04 and 624.05. (7-1-11)T

04. General Provisions. All persons intending to burn under Section 624 shall comply with the provisions of Subsections 622.01.c., 622.01.d., 622.01.f., through 622.01.i., and 622.01.k. in addition to the following: (7-1-11)T

a. The permittee is responsible to ensure that adequate measures are taken so the burn does not create a hazard for travel on a public roadway. (7-1-11)T

b. Burning is not allowed if the proposed burn location is within three (3) miles of an institution with a sensitive population and the surface wind speed is greater than twelve (12) miles per hour or if the smoke is adversely impacting or is expected to adversely impact an institution with a sensitive population. (7-1-11)T

c. Designated Burn Day. Burning shall not be conducted unless the Department has designated that day a burn day, which for purposes of Section 624 may include weekends and holidays, and the permittee burns within the burn window provided on the Department's website at www.deq.idaho.gov. Spot and baled agriculture residue burns shall not smolder and create smoke outside of the designated time period burning is allowed. (7-1-11)T

05. Recordkeeping. Permittees shall record the date, time frame, type of burn, type of crop, and amount burned on the date of the burn. Records of such burns shall be retained for two (2) years and made available to the Department upon request. (7-1-11)T

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-1101

NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY AND PENDING RULE

EFFECTIVE DATE: The temporary rule is effective April 26, 2011 and remains in effect until the conclusion of the 2012 legislative session unless rescinded by the agency. This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2012 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Sixty-first Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that the Board has adopted a temporary and pending rule. This action is authorized by Sections 39-105 and 39-107, Idaho Code. This rulemaking updates citations to the federal regulations incorporated by reference as mandated by the U.S. Environmental Protection Agency for approval of the state's Title V Operating Permit Program pursuant to 40 CFR Part 70 and fulfilling the requirements of a fully approved state implementation plan under Section 110 of the Clean Air Act.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting this rule is set forth in the initial proposal published in the [Idaho Administrative Bulletin, January 5, 2011, Vol. 11-1, pages 202 through 205](#). After consideration of public comments, the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at http://www.deq.idaho.gov/rules/air/58_0101_1101_temporary_pending.cfm or by contacting the undersigned.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of this rule is necessary in order to comply with deadlines in federal law. It is necessary to incorporate by reference the final rule for Prevention of Significant Deterioration (PSD) for Particulate Matter Less than 2.5 Micrometers (PM2.5 Rule) as a temporary rule as it is needed to fully implement essential elements of the PSD program for new sources and modifications to existing sources with PM2.5 emissions.

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

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Michael Simon at (208) 373-0212 or michael.simon@deq.idaho.gov.

Dated this 26th day of April, 2011.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

DOCKET NO. 58-0101-1101 - ADOPTION OF PENDING RULE

No substantive changes have been made to the pending rule.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin,
Volume 11-1, January 5, 2011, pages 202 through 205.

This rule has been adopted as a pending rule by the Agency and is now awaiting
review and approval by the 2012 Idaho State Legislature for final adoption.

**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE AND THE
PENDING RULE TEXT FOR DOCKET NO. 58-0101-1101**

107. INCORPORATIONS BY REFERENCE.

01. General. Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 107.03 shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term “documents” includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-1-94)

02. Availability of Referenced Material. Copies of the documents incorporated by reference into these rules are available at the following locations: (5-1-94)

- a.** All federal publications: [U.S. Government Printing Office](#); and (3-20-04)
- b.** All documents herein incorporated by reference: (7-1-97)
 - i.** Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255 at (208) 373-0502. (7-1-97)
 - ii.** State Law Library, 451 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0051, (208) 334-3316. (7-1-97)

03. Documents Incorporated by Reference. The following documents are incorporated by reference into these rules: (5-1-94)

a. Requirements for Preparation, Adoption, and Submittal of Implementation Plans and Appendix W to Part 51--Guideline on Air Quality Models. 40 CFR Part 51 revised as of July 1, 2009. The following portions of 40 CFR Part 51 are expressly excluded from any incorporation by reference into these rules: (3-29-10)

- i.** All sections included in 40 CFR Part 51, Subpart P, Protection of Visibility, except that 40 CFR 51.301, 51.304(a), 51.307, and 51.308 are incorporated by reference into these rules; and (3-30-07)
- ii.** Appendix Y to Part 51, Guidelines for BART Determinations Under the Regional Haze Rule. (3-30-07)

b. National Primary and Secondary Ambient Air Quality Standards, 40 CFR Part 50, revised as of July 1, 2009. (3-29-10)

c. Requirements for Preparation, Adoption, and Submittal of Implementation Plans, Protection of Visibility, 40 CFR 51.301, 51.304(a), 51.307, and 51.308, revised as of July 1, 2009. (3-29-10)

d. Approval and Promulgation of Implementation Plans, 40 CFR Part 52 revised as of July 1, 2009. (3-29-10)

2009. **e.** Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR Part 53, revised as of July 1, (3-29-10)
- f.** Ambient Air Quality Surveillance, Quality Assurance Requirements for Prevention of Significant Deterioration (PSD Air Monitoring), 40 CFR Part 58, Appendix B, revised as of July 1, 2009. (3-29-10)
- g.** Standards of Performance for New Stationary Sources, 40 CFR Part 60, revised as of July 1, 2009. (3-29-10)
2009. **h.** National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, revised as of July 1, (3-29-10)
- i.** National Emission Standards for Hazardous Air Pollutants for Source Categories, 40 CFR Part 63, revised as of July 1, 2009. (3-29-10)
- j.** Compliance Assurance Monitoring, 40 CFR Part 64, revised as of July 1, 2009. (3-29-10)
- k.** Permits, 40 CFR Part 72, revised as of July 1, 2009. (3-29-10)
- l.** Sulfur Dioxide Allowance System, 40 CFR Part 73, revised as of July 1, 2009. (3-29-10)
- m.** Protection of Stratospheric Ozone, 40 CFR Part 82, revised as of July 1, 2009. (3-29-10)
- n.** Clean Air Act, 42 U.S.C. Sections 7401 through 7671g (1997). (3-19-99)
- o.** Determining Conformity of Federal Actions to State or Federal Implementation Plans: Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the [Federal Transit Laws](#), 40 CFR Part 93, Subpart A, Sections 93.100 through 93.129, revised as of July 1, 2009, except that Sections 93.102(c), 93.104(d), 93.104(e)(2), 93.105, 93.109(c)-(f), 93.118(e), 93.119(f)(3), 93.120(a)(2), 93.121(a)(1), and 93.124(b) are expressly omitted from the incorporation by reference. (3-29-10)
- p.** The final rule for Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units, 70 Fed. Reg. 28,606 (May 18, 2005), corrected at 70 Fed. Reg. 51,266 the final rule for Standards of Performance for Electric Utility Steam Generating Units, Industrial-Commercial-Institutional Steam Generating Units, and Small Industrial-Commercial-Institutional Steam Generating Units, only as it applies to coal fired electric steam generating units as defined in 40 CFR 60.24, 71 Fed. Reg. 9865 (February 27, 2006); Revision of December 2000 Clean Air Act Section 112(n) Finding Regarding Electric Utility Steam Generating Units; and Standards of Performance for New and Existing Electric Utility Steam Generating Units: Reconsideration, 71 Fed. Reg. 33,388 (June 9, 2006) are expressly excluded from any incorporation by reference into these rules. (3-30-07)
- q.** [The final rule for Prevention of Significant Deterioration \(PSD\) for Particulate Matter Less than 2.5 Micrometers \(PM_{2.5}\)—Increments, Significant Impact Levels \(SILs\) and Significant Monitoring Concentration \(SMC\), 75 Fed. Reg. 64,864 through 64,907 \(October 20, 2010\) to be codified at 40 CFR Part 51 \(Requirements for Preparation, Adoption, and Submittal of Implementation Plans\) and 40 CRF Part 52 \(Approval and Promulgation of Implementation Plans\). This final rule is effective on December 20, 2010.](#) (4-26-11)T

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-1102

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The temporary rule is effective April 26, 2011.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226(1), Idaho Code, notice is hereby given that the Board of Environmental Quality has adopted a temporary rule and the Department of Environmental Quality is commencing proposed rulemaking. This action is authorized by Sections 39-105 and 39-107, Idaho Code.

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

July 7, 2011, 3:30 pm

**Department of Environmental Quality
Conference Room B
1410 N. Hilton, Boise, Idaho**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to repeal IDAPA 58.01.01, Section 199, Electric Generating Unit Construction Prohibition, and IDAPA 58.01.01, Subsection 107.03.o., which specifically excludes the Federal Register publications regarding coal fired utilities from incorporation by reference into the Rules for the Control of Air Pollution in Idaho, IDAPA 58.01.01.

In November 2006, DEQ was required by the federal Clean Air Mercury Rule (CAMR) to submit a plan to EPA that (1) ensured the state would meet its Annual Coal Fired Electric Utility Steam Generating Unit (EGU) Mercury (H_g) budget for the appropriate periods; and (2) required EGUs to comply with various monitoring, recordkeeping and reporting provisions. As part of the plan, DEQ proposed the adoption of a rule to opt out of, or not participate in, the federal cap and trade program for H_g emissions from EGUs, codified at 40 CFR Part 60, Subpart HHHH (Subsection 107.03.o). Additionally, to meet the state of Idaho's zero budget, DEQ proposed a rule that prohibits the construction of any EGU with H_g emissions (Section 199). These rules were adopted by the Board of Environmental Quality in 2006 and approved by the Idaho Legislature in 2007. The D.C. Circuit Court of Appeals vacated the CAMR in *New Jersey v. EPA*, 517 F.3d 574 (D.C. Circuit 2008).

DEQ initiated this rulemaking following legislative approval of air quality rules designed to limit and control mercury emissions from certain facilities (Pending Rule Docket No. 58-0101-0904). The pending rule docket was adopted by the Board of Environmental Quality in October 2010 and approved by the 2011 Idaho Legislature.

Members of the regulated community who may be subject to Idaho's air quality rules as well as special interest groups, public officials, or members of the public who have an interest in the regulation of air emissions from sources in Idaho may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2011 for adoption of a pending rule. The pending rule is expected to become final and effective upon adjournment of the 2012 legislative session if adopted by the Board and approved by the Legislature.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in that the rule confers a benefit. Temporary adoption of this rule confers a benefit to the state of Idaho in that construction of electric generating units would no longer be prohibited.

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

NEGOTIATED RULEMAKING: Due to the nature of this rulemaking, negotiations were not held.

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

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

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the negotiated rulemaking, contact Martin Bauer at (208)373-0440, martin.bauer@deq.idaho.gov.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before July 7, 2011.

DATED this 26th day of April, 2011.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton/Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE AND THE
PROPOSED RULE TEXT FOR DOCKET NO. 58-0101-1102**

107. INCORPORATIONS BY REFERENCE.

01. General. Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 107.03 shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term “documents” includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-1-94)

02. Availability of Referenced Material. Copies of the documents incorporated by reference into these rules are available at the following locations: (5-1-94)

- a.** All federal publications: [U.S. Government Printing Office](#); and (4-7-11)
- b.** All documents herein incorporated by reference: (7-1-97)
 - i.** Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255 at (208) 373-0502. (7-1-97)

- ii. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0051, (208) 334-3316. (7-1-97)

03. Documents Incorporated by Reference. The following documents are incorporated by reference into these rules: (5-1-94)

a. Requirements for Preparation, Adoption, and Submittal of Implementation Plans, 40 CFR Part 51 revised as of July 1, 2010. The following portions of 40 CFR Part 51 are expressly excluded from any incorporation by reference into these rules: (4-7-11)

- i. All sections included in 40 CFR Part 51, Subpart P, Protection of Visibility, except that 40 CFR 51.301, 51.304(a), 51.307, and 51.308 are incorporated by reference into these rules; and (3-30-07)

- ii. Appendix Y to Part 51, Guidelines for BART Determinations Under the Regional Haze Rule. (3-30-07)

b. National Primary and Secondary Ambient Air Quality Standards, 40 CFR Part 50, revised as of July 1, 2010. (4-7-11)

c. Approval and Promulgation of Implementation Plans, 40 CFR Part 52 revised as of July 1, 2010. (4-7-11)

d. Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR Part 53, revised as of July 1, 2010. (4-7-11)

e. Ambient Air Quality Surveillance, 40 CFR Part 58, revised as of July 1, 2010. (4-7-11)

f. Standards of Performance for New Stationary Sources, 40 CFR Part 60, revised as of July 1, 2010. (4-7-11)

g. National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, revised as of July 1, 2010. (4-7-11)

h. National Emission Standards for Hazardous Air Pollutants for Source Categories, 40 CFR Part 63, revised as of July 1, 2010. (4-7-11)

i. Compliance Assurance Monitoring, 40 CFR Part 64, revised as of July 1, 2010. (4-7-11)

j. Permits, 40 CFR Part 72, revised as of July 1, 2010. (4-7-11)

k. Sulfur Dioxide Allowance System, 40 CFR Part 73, revised as of July 1, 2010. (4-7-11)

l. Protection of Stratospheric Ozone, 40 CFR Part 82, revised as of July 1, 2010. (4-7-11)

m. Clean Air Act, 42 U.S.C. Sections 7401 through 7671g (1997). (3-19-99)

n. Determining Conformity of Federal Actions to State or Federal Implementation Plans: Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws, 40 CFR Part 93, Subpart A, Sections 93.100 through 93.129, revised as of July 1, 2010, except that Sections 93.102(c), 93.104(d), 93.104(e)(2), 93.105, 93.109(c)-(f), 93.118(e), 93.119(f)(3), 93.120(a)(2), 93.121(a)(1), and 93.124(b) are expressly omitted from the incorporation by reference. (4-7-11)

~~**o.** *The final rule for Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units, 70 Fed. Reg. 28,606 (May 18, 2005), corrected at 70 Fed. Reg. 51,266 the final rule for Standards of Performance for Electric Utility Steam Generating Units, Industrial-Commercial-Institutional Steam*~~

~~Generating Units, and Small Industrial-Commercial-Institutional Steam-Generating Units, only as it applies to coal fired electric steam generating units as defined in 40 CFR 60.24, 71 Fed. Reg. 9865 (February 27, 2006); Revision of December 2000 Clean Air Act Section 112(n) Finding Regarding Electric Utility Steam-Generating Units; and Standards of Performance for New and Existing Electric Utility Steam-Generating Units: Reconsideration, 71 Fed. Reg. 33,388 (June 9, 2006) are expressly excluded from any incorporation by reference into these rules. (3-30-07)~~

~~p.~~ The final rule for Primary National Ambient Air Quality Standards for Sulfur Dioxide, 75 Fed. Reg. 35,520 through 35,603 (June 22, 2010) to be codified at 40 CFR Part 50 (National Primary and Secondary Ambient Air Quality Standards), 40 CFR Part 53 (Ambient Air Monitoring Reference and Equivalent Methods), and 40 CFR Part 58 (Ambient Air Quality Surveillance). This final rule is effective on August 23, 2010. (4-7-11)

~~q.~~ The final rule for Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, 75 Fed. Reg. 31,514 through 31,608 (June 3, 2010) to be codified at 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans), 40 CRF Part 52 (Approval and Promulgation of Implementation Plans), and 40 CFR Part 70 (State Operating Permit Programs). This final rule is effective on August 2, 2010. (4-7-11)

(BREAK IN CONTINUITY OF SECTIONS)

182. -- 198~~9~~. (RESERVED).

~~**199. ELECTRIC GENERATING UNIT CONSTRUCTION PROHIBITION.**~~

~~No owner or operator shall construct or operate an Electric Generating Unit (EGU), as defined in 40 CFR 60.24, with a potential to emit mercury (Hg) emissions. (3-30-07)~~

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 - WATER QUALITY STANDARDS

DOCKET NO. 58-0102-1102

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, Idaho Code, and IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality," Sections 810 through 815, notice is hereby given that this agency intends to promulgate a rule and desires public participation before publishing a proposed rule. This rulemaking action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

METHOD OF PARTICIPATION: Those interested in participating in the negotiated rulemaking process are encouraged to attend the following meeting. For those who cannot participate by attending the meeting, information for submitting written comments is provided at the end of this notice.

MEETING SCHEDULE: The negotiated rulemaking meeting will be held as follows. Additional meetings may be scheduled if necessary. For information regarding participation by telephone or scheduling of additional meetings, contact the undersigned. Requests to participate by telephone must be made by June 17, 2011.

June 21, 2011, 10 a.m. to 12 noon Mountain Time

Department of Environmental Quality
Conference Room A
1410 N. Hilton, Boise, Idaho

PRELIMINARY DRAFT: By June 1, 2011, a preliminary draft of the rule can be obtained at http://www.deq.idaho.gov/rules/water/58_0102_1102_negotiated.cfm or by contacting Paula Wilson at Paula.Wilson@deq.idaho.gov, (208)373-0418.

DESCRIPTIVE SUMMARY: DEQ proposes to revise its Water Quality Standards, IDAPA 58.01.02, to include a site-specific temperature criterion for the Snake River to protect fall spawning of Chinook salmon from Hell's Canyon Dam to the Salmon River. This site-specific criterion would be a change from the current criterion of a maximum weekly maximum of 13° C from October 23rd through April 15th to a site-specific criterion of a maximum weekly maximum of 14.5° C from Oct 23rd through October 30th and a maximum weekly maximum of 13° C from October 31st through April 15th. The proposed rule change recognizes the declining thermal regime in the Snake River during the fall spawning season and that higher temperatures at the outset of the spawning season are both protective and supportive of the fall Chinook salmon spawning and incubation occurring in the Snake River during this time. This proposed rule change recognizes that a need to change the site-specific temperature criterion in the Snake River between the Hell's Canyon Dam and the confluence with the Salmon River exists. The current site-specific criterion of 13° C between October 23rd and April 15th is not regularly met during the first week of the fall spawning season and yet salmonid spawning and incubation is at the highest levels of the last two decades. The proposed rule changes the temperature criteria to an intermediate criterion of 14.5°C for eight days and then reduced to 13°C for the balance of the fall and early spring.

The text of the rule will be drafted by DEQ in conjunction with a negotiating committee made up of persons having an interest in the development of this rule. All who fish and recreate in the Snake River, Idaho Power Company who operates the Hell's Canyon Dam, and Native American tribes may be interested in participating in this rulemaking.

Upon conclusion of negotiations, DEQ intends to publish a proposed rule for public comment in the summer of 2011 and then present the final proposal to the Idaho Board of Environmental Quality for adoption of a pending rule in the fall of 2011. If adopted by the Board, the pending rule will be reviewed by the 2012 Idaho Legislature.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: assistance on questions concerning this rulemaking, contact Don Essig at don.essig@deq.idaho.gov, (208)373-0119.

For those who cannot participate by attending the scheduled meeting, written comments may be submitted by mail,

fax or e-mail at the address below. Written comments on the preliminary draft rule must be received by June 24, 2011. For information regarding submission of written comments on subsequent drafts of the negotiated rule, to receive copies of submitted written comments, and to receive the most recent version of the draft negotiated rule, contact the undersigned.

Dated this 4th day of May, 2011.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
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IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.04 - RULES FOR ADMINISTRATION OF WASTEWATER TREATMENT FACILITY GRANTS

DOCKET NO. 58-0104-1001

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The temporary rule is effective April 26, 2011.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226(1), Idaho Code, notice is hereby given that the Board of Environmental Quality has adopted a temporary rule and the Department of Environmental Quality is commencing proposed rulemaking. This rulemaking action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before June 15, 2011. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to revise the priority rating criteria for the wastewater planning grants to closely match the Clean Water State Revolving Fund (SRF) loan criteria, address the need to reduce the obligation to conduct an environmental study in those cases in which a grant recipient will not immediately pursue federal aid for construction, and update the cost eligibility criteria to achieve consistency. The change to make the environmental study optional will reduce costs for grant recipients in their preparation of facility planning studies by making the environmental study aspect of facility planning optional. Additionally, this rulemaking will bring the Wastewater Planning Grant Program into closer alignment with related DEQ programs (the Clean Water SRF Program and the Drinking Water Planning Grant Program).

This temporary/proposed rule includes the following:

- 1) Priority rating criteria for the wastewater planning grants have been revised to closely match the Clean Water SRF loan criteria.
- 2) The requirement to produce an environmental study as part of a planning document has been made optional.
- 3) Cost eligibility criteria have been updated to achieve consistency.
- 4) This rule also includes revisions that are typographical and nonsubstantive in nature (e.g., revisions made for consistency with other sections in this rule chapter and other DEQ rules).

Prospective grant and loan recipients, consulting engineers, grant and loan administrators, and other funding agencies may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2011 for adoption of a pending rule. The pending rule is expected to become final and effective upon adjournment of the 2012 legislative session if adopted by the Board and approved by the Legislature.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in that the rule confers a benefit. Adoption of this temporary rule confers a benefit to the citizens of the state of Idaho in that it reduces costs for grant recipients and makes the program more efficient.

IDAHO CODE SECTION 39-107D STATEMENT: There is no federal law or regulation comparable to IDAPA 58.01.04, "Rules for Administration of Wastewater Treatment Facility Grants." Therefore, the proposed rule does regulate an activity not regulated by the federal government but is not broader in scope or more stringent than federal law.

NEGOTIATED RULEMAKING: The text of the rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Section 67-5220, Idaho Code, and IDAPA 58.01.23.810-815. On October 6, 2010, the Notice of Negotiated Rulemaking was published in the [Idaho Administrative Bulletin, Vol. 10-](#)

10, pages 613 through 614, and a preliminary draft rule was made available for public review. A meeting was held on October 26, 2010. Members of the public participated in this negotiated rulemaking process by attending the meeting and by submitting written comments. A record of the negotiated rule drafts, written public comments received, and documents distributed during the negotiated rulemaking process is available at http://www.deq.idaho.gov/rules/wastewater_grants/58_0104_1001_temporary_proposed.cfm.

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

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

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the negotiated rulemaking, contact Tim Wendland at (208)373-0439 or tim.wendland@deq.idaho.gov.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before June 29, 2011.

DATED this 26th day of April, 2011.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418
Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE AND THE
PROPOSED RULE TEXT FOR DOCKET NO. 58-0104-1001**

001. TITLE AND SCOPE.

01. Title. These rules will be known and cited as Idaho Department of Environmental Quality Rules, IDAPA 58.01.04, "Rules for Administration of Wastewater Treatment Facility Grants." (5-3-03)

02. Scope. The provisions of these rules will establish administrative procedures and requirements for establishing, implementing and administering a state grant program for providing financial assistance to qualifying entities to prepare ~~an engineering report or facility plan~~ a wastewater treatment facility planning document.
(4-2-08)(4-26-11)T

(BREAK IN CONTINUITY OF SECTIONS)

007. DEFINITIONS.

For the purpose of the rules contained in this chapter, the following definitions apply: (12-31-91)

- 01. Applicant.** Any qualifying entity making application for wastewater treatment facility grant funds. (5-3-03)
- 02. Board.** The Idaho Board of Environmental Quality. (4-2-08)
- 03. 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. (4-2-08)
- 04. 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. (3-15-85)
- 05. Department.** The Idaho Department of Environmental Quality. (1-3-78)
- 06. Director.** The Director of the Idaho Department of Environmental Quality or the Director's designee. (4-2-08)
- 07. Domestic Wastewater.** Wastewater derived from public or private residences, business buildings or institutions and similar establishments and which contains water and human body wastes, specifically excreta and urine, along with such products designed to come in contact with excreta and urine in the practice of personal hygiene. (3-15-85)
- 08. Eligible Costs.** Costs which are necessary for planning, and/or designing wastewater treatment facilities. To be eligible, costs must also be reasonable and not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 041. (4-2-08)
- ~~**09. Engineering Report.** A report that addresses specific portions of the system(s) as they are being contemplated for design. These reports address specific purpose and scope, design requirements, a comparison of wastewater treatment facility alternative solutions and identify the cost effective and environmentally sound alternative. Engineering reports are generally project specific as opposed to an overall system-wide plan such as a master plan or a facility plan. An engineering report shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare an engineering report may be found in the Handbook. (4-2-08)~~
- 10. Environmental Impact Statement (EIS).** A document prepared by the applicant when the Department determines that the proposed wastewater project will 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 Handbook may be used as guidance when preparing the EIS. (4-2-08)
- ~~**11. Environmental Information Document (EID).** Any written environmental assessment prepared by ~~an~~ the applicant ~~or consultant~~ describing the environmental impacts of a proposed wastewater construction project. This document will be of sufficient scope to enable the ~~responsible official~~ Department to assess the environmental impacts of the proposed project and ultimately determine if an environmental impact statement (EIS) is warranted. (4-2-08)(4-26-11)T~~
- ~~**12. Facility Plan.** A plan that describes the overall system, including the collection system, the treatment system, and the disposal system. It is a comprehensive planning document for the existing infrastructure and includes the plan for the future of the systems, including upgrades and additions. The plan also includes a systematic evaluation of feasible alternatives considering demographic, topographic, hydrologic and institutional~~

~~characteristics of a project area to demonstrate that the selected alternative is cost effective and environmentally sound. A facility plan is sometimes referred to as a master plan or facilities planning study and is an overall system-wide plan as opposed to a project specific plan. A facility plan shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare a facility plan may be found in the Handbook.~~ (4-2-08)

~~131.~~ **Finding of No Significant Impact (FONSI).** A document prepared by the Department ~~briefly~~ presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement (EIS) will not be prepared. It shall include the environmental information document or a summary of it and shall note any other environmental documents related to it. (4-2-08)(4-26-11)T

~~12.~~ **Grant Recipient.** An applicant who has been awarded a grant. (4-26-11)T

~~143.~~ **Handbook.** "Wastewater Facilities Loan Handbook of Procedures." (5-3-03)

~~154.~~ **Ineligible Costs.** Costs which are ~~described in Subsection 041.05~~ not eligible for funding pursuant to these rules. (4-2-08)(4-26-11)T

~~165.~~ **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. (3-15-85)

~~176.~~ **National Pollutant Discharge Elimination System.** Point source permitting program established pursuant to Section 402 of the federal Clean Water Act (33 U.S.C. Section 1342). (5-3-03)

~~187.~~ **Nondomestic Wastewater.** Wastewaters originating primarily from industrial or commercial processes which carry little or no pollutants of human origin. (1-1-82)

~~198.~~ **O & M Operation and Maintenance Manual.** A guidance and training manual delineating the optimum operation and maintenance of the wastewater treatment facility or its components. (10-6-88)(4-26-11)T

~~2019.~~ **Person.** An individual, corporation, company, association, partnership, state agency, municipality, or federal agency (and includes officers, employees, and agents of any corporation, company, association, state agency, municipality, or federal agency). (4-2-08)

~~20.~~ **Planning Document.** A document which describes the condition of a public wastewater 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 grant funds are provided in Section 030 of these rules and in the Handbook. (4-26-11)T

~~21.~~ **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. This term 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. (5-3-03)

~~22.~~ **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. (3-15-85)

~~23.~~ **Priority List.** A list of proposed projects rated by severity as described in Section 020. (5-3-03)

~~24.~~ **Qualifying Entity.** Any county, city, special service district, nonprofit corporation, or other governmental entity, or a combination thereof, having authority to collect, treat or dispose of wastewater. (4-2-08)

25. **Rehabilitation.** The repair or replacement of limited segments of interceptor or collector sewers. (1-3-78)
26. **Reserve Capacity.** That portion of the treatment works that is designed and incorporated in the constructed facilities to handle future sewage flows and loadings. (1-1-82)
27. **Sewer Use Ordinance/Sewer Use Resolution.** An ordinance or resolution which 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. (4-2-08)
28. **State.** The state of Idaho. (3-15-85)
29. **Suspension.** An action by the Director to suspend a grant contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (10-6-88)
- ~~30.~~ **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. (4-26-11)T
- ~~301.~~ **Termination.** An action by the Director to permanently terminate a grant contract prior to project completion for a specific cause. Terminated contracts will not be reinstated. (10-6-88)
- ~~342.~~ **Treatment Plant.** That portion of the wastewater treatment facility whose primary purpose is to remove pollutants from domestic and nondomestic wastewater. (3-15-85)
- ~~323.~~ **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 wastewater treatment facility. (4-2-08)
- ~~34.~~ **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. (3-15-85)
- ~~345.~~ **Wastewater Treatment Facility.** Any facility, including land, equipment, furnishings and appurtenances thereof, 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 and land disposal systems. (10-6-88)

008. -- 019. (RESERVED).

020. PRIORITY RATING SYSTEM.

Projects are identified for placement on priority lists by surveying eligible entities directly on an annual basis. Information is also received from the Department and consulting engineers. Grant funds are awarded to projects based on priority ratings. Projects are rated by the Department on a standard priority rating form using public health, sustainability, and water quality criteria. (~~4-2-08~~)(4-26-11)T

01. **Purpose.** A priority rating system shall be utilized by the Department to annually allot available funds to water quality projects determined eligible for funding assistance in accordance with these rules. (~~5-3-03~~)(4-26-11)T

02. **Priority Rating.** The priority rating system shall be based on a weighted numerical points system ~~wherein each succeeding prevention, control or abatement need is weighted less heavily than the preceding need.~~ Priority criteria, ~~listed herein in descending numerical weight,~~ shall contain the following points:

~~(3-15-85)~~(4-26-11)T

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 fifty (150) points.
~~(4-2-08)~~(4-26-11)T

b. ~~Documented public health hazard identified by a District Health Department or the Department—fifteen (15) points.~~ Regulatory compliance issues (e.g., noncompliance and resulting legal actions relating to infrastructure deficiencies at a wastewater facility) – up to one hundred (100) points.
~~(4-2-08)~~(4-26-11)T

c. Special resource water protection needs documented by the Department for waters identified in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, “Water Quality Standards” – fifteen (15) points. 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.
~~(4-2-08)~~(4-26-11)T

d. ~~Potential public health hazard and/or water quality impact.~~ 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.
~~(1-1-87)~~(4-26-11)T

i. ~~Potential public health hazard which is suspected but may not be documented by District Boards of Health or the Department three (3) or five (5) or seven (7) points.~~
~~(3-15-85)~~

ii. ~~Potential water quality impacts other than public health which may affect the intended use of surface or groundwaters as identified in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, “Water Quality Standards” – three (3) or five (5) or seven (7) points.~~
~~(3-15-85)~~

e. ~~The points in Subsections 020.02.d.i. and 020.02.d.ii. shall be selected based on the proportion of the population in contact with the pollutant, or the quantity of wastewater discharged in relation to the volume of the receiving water, or the relation of the pollutant quantity to other pollutant sources.~~ Preventing impacts to uses (nonpoint source pollution projects) – up to one hundred (100) points.
~~(12-31-91)~~(4-26-11)T

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.
(4-26-11)T

g. Affordability (current system user charges exceed state affordability guidelines) -- ten (10) points.
(4-26-11)T

03. Rating Forms. Rating criteria for Subsection 020.02 is set forth in a rating form that is available in the Handbook.
(4-26-11)T

034. Priority List. A list shall be developed annually from projects rated according to Subsection 020.02. Such list shall be submitted for public review and comment, and shall thereafter be submitted to the Board for approval.
~~(5-3-03)~~(4-26-11)T

04a. 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 basis for or the need for the planning project, a reevaluation of that priority rating will be conducted.
~~(3-15-85)~~(4-26-11)T

05b. Priority Target Date. A qualifying entity whose project is on the approved list An eligible applicant whose project is on the approved priority list, and for which funding is available, will be contacted by the Department and a target date for submission of a completed grant application will be established.
~~(5-3-03)~~(4-26-11)T

06c. Project Bypass. A project that does not or will not meet the project target date or a Department

schedule that allows for timely utilization of grant funds may be bypassed, substituting in its place the next highest ranking project(s) that are ready to proceed. A ~~an~~ qualifying entity eligible applicant that is bypassed will be notified in writing of the reasons for being bypassed. ~~(4-2-08)~~(4-26-11)T

05. Amendment of Priority List. The Director may amend the Priority List as set forth in Section 081 of these rules. (4-26-11)T

021. -- 029. (RESERVED).

030. PROJECT SCOPE AND FUNDING.

Grant funds awarded under this program will be used entirely to prepare ~~an engineering report or facility plan which identifies a wastewater treatment facility planning document.~~ The planning document will identify the cost effective and environmentally sound ~~wastewater system~~ alternative to achieve or maintain compliance with IDAPA 58.01.16, "Wastewater Rules," and the federal Clean Water Act, 33 U.S.C. Sections ~~1251~~ 1381 et seq. ~~and which is approvable~~. The planning document must be approved by the Department. ~~(4-2-08)~~(4-26-11)T

01. Engineering Report or Facility Planning Document. ~~(4-2-08)~~(4-26-11)T

a. A planning document shall include all items required by IDAPA 58.01.16, "Wastewater Rules," Subsection 411.03 or 410.04. Should the grant recipient proceed to construction using federal funds (e.g., a state revolving fund loan), then the items listed in Subsection 030.01.b. of these rules shall be required prior to construction. (4-26-11)T

b. A planning document that is prepared anticipating the use of federal funds shall include an environmental review that will require the Department approval of both a draft and final planning document. (4-26-11)T

~~a.i.~~ The engineering report or facility plan shall include, as a minimum, draft planning document shall include all items required by 58.01.16 "Wastewater Rules," Subsection 411.03 or 410.04, as well as the following: ~~(4-2-08)~~(4-26-11)T

~~i.~~(1) Description of existing conditions for the proposed project area; (4-2-08)

~~ii.~~(2) Description of future conditions for the proposed project area; (4-2-08)

~~iii.~~(3) Development and initial screening of alternatives; and ~~(4-2-08)~~(4-26-11)T

(4) Development of an environmental review specified by the Department as described in Section 042. (4-26-11)T

ii. The final planning document shall include all items required of the draft planning document as well as the following: (4-26-11)T

~~iv.~~(1) Final screening of principal alternatives and plan adoption; (4-2-08)

~~v.~~(2) Selected plan description and implementation arrangements; and ~~(4-2-08)~~(4-26-11)T

~~vi.~~(3) Relevant engineering data supporting the final alternative; ~~and~~. ~~(4-2-08)~~(4-26-11)T

~~vii.~~ Level of environmental review specified by the Department as described in Section 042. (4-2-08)

iii. The grant 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 grant recipient shall provide written notice of the public comment period and hold at least one (1) public meeting within the jurisdiction of the grant recipient during the public comment period. At the public meeting, the draft planning document shall be presented by the grant 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 may be prepared. (4-26-11)T

c. The draft and final planning document shall bear the imprint of an Idaho licensed professional engineer's seal that is both signed and dated by the engineer. (4-26-11)T

~~b.d.~~ The ~~engineering report or facility plan~~ draft and final planning documents must be reviewed and approved by the Department. (4-2-08)(4-26-11)T

~~ee.~~ The planning period shall be twenty (20) years for all facilities except for conveyance systems which may be forty (40) years. (4-2-08)

~~d. At least one (1) public hearing shall be held within the jurisdiction of the grantee and shall be conducted in accordance with state law. The cost effective and environmentally sound alternative selected shall be based in part on public comments received from intended users affected by the proposed project.~~ (4-2-08)

02. Limitation on Funding Assistance. The maximum grant funding provided in a state planning grant award shall not exceed fifty percent (50%) of the total eligible costs for grants awarded. (4-2-08)

~~031. LIMITATION ON PRE-GRANT ENGINEERING REVIEWS. Pre grant 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 Subsection 050.05.d.~~ (5-3-03)

~~032~~**1. -- 039. (RESERVED).**

040. REVIEW AND EVALUATION OF GRANT APPLICATIONS.

01. Submission of Application. Those eligible systems which received high priority ranking shall be invited to submit an application. The applicant shall submit to the Department, a completed application in a form as prescribed by the Department. (5-3-03)

02. Application Requirements. Applications shall contain the following documentation as applicable: (5-3-03)

a. An authorizing resolution passed by a majority of the governing body authorizing an elected official or officer of the qualifying entity to commit funding; and (5-3-03)

b. Contracts for engineering services 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. (5-3-03)

c. ~~Engineering Report or Facility~~ Planning Document. Plan of study describing the work tasks to be performed in the ~~Engineering report or facility~~ planning document, a schedule for completion of the work tasks and an estimate of ~~man~~ staff hours and costs to complete the work tasks. (4-2-08)(4-26-11)T

d. Design: (4-2-08)

i. ~~Engineering report or facility~~ Planning document; and (4-2-08)(4-26-11)T

ii. Intermunicipal service agreements between all qualifying entities within the scope of the project, if applicable. (4-2-08)

e. Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum: (5-3-03)

i. Be procured through the selection guidelines and procedures prescribed under Section 67-2320, Idaho Code; and (5-3-03)

ii. Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; and (5-3-03)

iii. Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and (5-3-03)

iv. Be covered by professional liability insurance in accordance with Subsection 050.05.d. A certification of liability insurance shall be included in the application. (5-3-03)

f. 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. (5-3-03)

g. 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 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. (4-2-08)

h. A statement regarding how the non-grant portion of the project will be funded. (5-3-03)

03. Determination of Completeness of Application. Applications will be reviewed to determine whether they contain all of the information required by Subsection 040.02. (5-3-03)

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. (5-3-03)

05. Reapplication for Grant. The action of disapproving, recalling or terminating a grant in no way precludes or limits the former applicant from reapplying for another grant when project deficiencies are resolved and project readiness is secured, provided the applicant remains on the approved priority list. (10-6-88)

041. DETERMINATION OF ELIGIBILITY OF COSTS.

The Department shall review the application, including any contracts required to be submitted with the application, to determine whether the costs are eligible costs for funding. (5-3-03)

01. Eligible Costs. Eligible costs are those determined by the Department to be: (5-3-03)

a. Necessary ~~for planning or designing wastewater treatment facilities~~ costs; ~~(4-2-08)~~(4-26-11)T

b. Reasonable costs; and ~~(5-3-03)~~(4-26-11)T

c. Costs that are not ineligible as described in Subsection 041.05. (4-2-08)

02. Necessary Costs. The Department shall 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, the ~~facility plan or engineering report~~ **planning document** for design of wastewater treatment facilities, and any other relevant information in the application that describes the scope of the project to be funded. ~~(4-2-08)~~(4-26-11)T

03. Reasonable Costs. Costs shall 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 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. (4-2-08)

04. Examples of Costs That May Be Eligible. Examples of costs that may be eligible, if determined necessary, reasonable and not ineligible costs include: (5-3-03)

a. Costs of salaries, benefits, and expendable material the qualified entity incurs in the project except ordinary operating expenses such as salaries and expenses of a mayor, city council members or a city attorney; (4-2-08)

b. Contracts for professional and consulting services; (4-2-08)

c. Planning directly related to the water pollution control projects; (5-3-03)

d. Sewer system evaluations; (5-3-03)

e. Financial and management capability analysis; (5-3-03)

f. Preparation of construction drawings, specifications, estimates, and construction contract documents; (5-3-03)

g. Public participation for alternative selection; (5-3-03)

h. Development of user charge and financial management systems; (5-3-03)

i. Development of sewer use ordinance or resolution; (4-2-08)

j. Staffing plans and budget development; (5-3-03)

k. Certain direct and other costs as determined eligible by the Department; (5-3-03)

~~**l.** Costs of assessing and defending contractor claims determined unmeritorious by the Department;~~
~~(5-3-03)~~

~~**m.** Costs of complying with the federal Clean Water Act, 33 U.S.C Sections 1251 et seq., loan requirements applied to specific projects; and~~ (4-2-08)

~~**n.** Site acquisition services which could include legal fees, appraisals and surveys for land associated with the cost-effective alternative in the report and *for land* for purchase *through future State Revolving Fund loan funding from a willing seller.*~~ (4-2-08)(4-26-11)T

05. Ineligible Project Costs. Costs which are ineligible for funding include, but are not limited to: (5-3-03)

a. Basin or area wide planning not directly related to the project; (5-3-03)

b. Personal injury compensation or damages arising out of the project; (5-3-03)

c. Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; (5-3-03)

d. Costs outside the scope of the approved project; (5-3-03)

e. Ordinary operating expenses such as salaries and expenses of a mayor, city council members, city attorney, or district personnel costs and acquiring project funding; and (4-2-08)

f. Cost of refinancing existing indebtedness. (5-3-03)

g. Costs incurred prior to award of the grant unless specifically approved in writing as eligible pre-award costs by the Department. (4-26-11)T

06. Notification Regarding Eligible Costs. Prior to providing a grant offer, the Department shall notify the applicant that 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 shall also provide notification to the engineer. The applicant may provide the Department additional information in response to the notice. (5-3-03)

07. Eligible Costs and the Grant Offer. The grant offer shall reflect those costs determined by the Department to be eligible costs. The grant offer, however, may include estimates of some eligible costs that have not yet been set. Actual eligible costs may differ from such estimated costs set forth in the grant offer. In addition, grant disbursements may be increased or decreased if eligible costs are modified as provided in Section 060. (4-2-08)

042. ENVIRONMENTAL REVIEW.

01. Environmental Documentation. The ~~applicant shall~~ grant recipient may complete an environmental review as part of and in conjunction with ~~an engineering report or a facility plan~~ a planning document. Guidance on how to complete an environmental review may be found in Chapter 5 of the Handbook. ~~The applicant shall consult with~~ If the grant recipient prepares an environmental review, then the Department shall be consulted at an early stage in the preparation of the ~~engineering report or facility~~ planning document to determine the required level of environmental review. Based on review of existing information and assessment of environmental impacts, the ~~applicant shall~~ grant recipient may complete one (1) of the following, ~~per the Department's instruction:~~ (4-2-08)(4-26-11)T

a. Submit a request for Categorical Exclusion (CE) with supporting backup documentation as specified by the Department; (4-2-08)

b. Prepare an Environmental Information Document (EID) in a format specified by the Department; (4-2-08)

c. Prepare an Environmental Impact Statement (EIS) in a format specified by the Department. (4-2-08)

02. Categorical Exclusion. If the ~~applicant~~ grant recipient requests a CE, the Department shall review the request and, based upon the supporting documentation, take one (1) of the following actions: (4-2-08)(4-26-11)T

a. Determine if an action is consistent with categories eligible for exclusion whereupon the Department shall issue a notice of CE from further substantive environmental review. Once the CE is granted for the selected alternative, the Department shall publish a notice of CE in a local newspaper, following which the ~~engineering report or facility~~ planning document can be approved; or (4-2-08)(4-26-11)T

b. Determine if the action is not consistent with categories eligible for exclusion and that issuance of a CE is not appropriate. If issuance of a CE is not appropriate, the Department shall notify the ~~applicant~~ grant recipient of the need to prepare an EID. (4-2-08)(4-26-11)T

03. Environmental Information Document Requirements. When an EID is required, the ~~applicant~~ grant recipient shall prepare the EID in accordance with the following Department procedures: (4-2-08)(4-26-11)T

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. (4-2-08)

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. (4-2-08)

c. The Department shall 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). (4-2-08)

04. Final Finding of No Significant Impact. The Department shall publish the draft FONSI in a newspaper of general circulation in the geographical area of the proposed project and shall 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 shall become final. The Department shall assess the effectiveness and feasibility of mitigation measures identified in the FONSI and EID prior to the issuance of the final FONSI and approval of the ~~engineering report or facility~~ planning document. ~~(4-2-08)~~(4-26-11)T

05. Environmental Impact Statement (EIS) Requirements. If an EIS is required, the applicant grant recipient shall: ~~(4-2-08)~~(4-26-11)T

a. Contact all affected state agencies, and other interested parties, to determine the required scope of the document; (4-2-08)

b. Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment; (4-2-08)

c. Conduct a public hearing meeting which may be held in conjunction with ~~an engineering report or facility plan hearing~~ a planning document meeting; and ~~(4-2-08)~~(4-26-11)T

d. Prepare and submit a final EIS incorporating all agency and public input for Department review and approval. (4-2-08)

06. Final EIS. Upon completion of the EIS by the applicant grant recipient and approval by the Department of all requirements listed in Subsection 042.05, the Department shall issue a record of decision, documenting the mitigative measures which shall be required of the applicant grant recipient. The ~~engineering report or facility~~ planning document can be completed once the final EIS has been approved by the Department. ~~(4-2-08)~~(4-26-11)T

07. Use of Environmental Reviews Conducted by Other Agencies. If an 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 notification process of the other agency. (4-2-08)

08. Validity of Review. Environmental reviews, once completed by the Department, are valid for five (5) years from the date of completion. If a grant application is received for a project with an environmental review which is more than five (5) years old, the Department shall reevaluate the project, environmental conditions, and public comments and shall: ~~(5-3-03)~~(4-26-11)T

a. Reaffirm the earlier decision; or (5-3-03)

b. Require supplemental information to the earlier Environmental Impact Statement, Environmental Information Document, or request for Categorical Exclusion. Based upon a review of the updated document, the Department shall issue and distribute a revised notice of Categorical Exclusion, finding of no significant impact, or record of decision. (5-3-03)

043. -- 049. (RESERVED).

050. GRANT OFFER AND ACCEPTANCE.

01. Grant Offer. Grant offers will be delivered to successful applicants by representatives of the Department or by registered mail. (3-15-85)

02. Acceptance of Grant Offer. Applicants have sixty (60) days in which to officially accept the grant offer on prescribed forms furnished by the State. The sixty (60) day acceptance period commences from the date indicated on the grant offer notice. If the applicant does not accept the grant offer within the sixty (60) day period the grant funds may be offered to the next project of priority. (4-2-08)

03. Acceptance Executed as a Contract Agreement. Upon signature by the Director or the Director's designee as the grantor, and upon signature by the authorized representative of the qualifying entity, as the *grantee grant recipient*, the grant offer shall become a grant contract agreement. The disbursement of funds pursuant to an agreement is subject to a finding by the Director that the *grantee grant recipient* has complied with all agreement conditions and has prudently managed the project. The Director may, as a condition of payment, require that a *grantee grant recipient* vigorously pursue any claims it has against third parties who will be paid in whole or in part, directly or indirectly, with grant funds or transfer its claim against such third parties to the Department. Grant contract agreements shall be interpreted according to the law of grants in aid. No third party shall acquire any rights against the State or its employees from a grant contract agreement. ~~(3-15-85)~~(4-26-11)T

04. Estimate of Reasonable Cost. Each grant project contract will include the eligible cost of the project. Some eligible costs may be estimated and the grant payments may be increased or decreased as provided in Section 060. (5-3-03)

05. Terms of Agreement. The grant offer shall contain terms of agreement as prescribed by the Department including, but not limited to: (3-15-85)

a. Terms consistent with ~~this chapter~~ *these rules* and consistent with the ~~Step covered by~~ *scope of the grant offer project*; and ~~(12-31-91)~~(4-26-11)T

b. Special clauses as determined necessary by the Department for the successful investigation, design, and management of the project; and (4-2-08)

c. Terms consistent with applicable state and federal laws pertaining to ~~engineering reports or facility plans~~ *planning documents*, and design; and ~~(4-2-08)~~(4-26-11)T

d. Requirement for the prime engineering firm(s) retained for engineering services to carry professional liability insurance to protect the public from the engineer's negligent acts and errors of omission of a professional nature. The total aggregate of the engineer's professional liability 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 steps, whether or not such services or steps are state funded, until the certification of project performance is accepted by the Department. (4-2-08)

e. The project documents shall be in accordance with the current edition of Idaho Standards for Public Works Construction (ISPWC) unless the *grantee grant recipient* otherwise has approved and adopted acceptable public works construction standards approved by the Department. ~~(4-2-08)~~(4-26-11)T

051. -- 059. (RESERVED).

060. PAYMENTS.

01. Payments for State Grants. Requests for payment will be submitted to the Department on a form provided by the Department. The Department will pay for those costs that are determined to be eligible. (5-3-03)

02. Limitations on Advance Payments. Advanced payment will not be made on a project unless a written request from the *grantee grant recipient* for a waiver is approved by the Board. ~~(10-6-88)~~(4-26-11)T

03. Grant Increases. Grant amendment increase requests as a result of an increase in eligible project costs will be considered, provided funds are available. Documentation and justification supporting the unavoidable need for a grant increase must be submitted to the Department for approval prior to incurring any costs above the approved eligible cost ceiling. (3-15-85)

04. Increases for Bid Underestimates. Increases for bid underestimates may be considered for grant increase; however, errors of omission or engineering consultant errors will not be considered. (10-6-88)

05. Grant Decreases. If the actual eligible cost is determined to be lower than the estimated eligible

cost the grant amount will be reduced proportionately.

(3-15-85)

06. Final Project Review to Determine Actual Eligible Costs. The Department may conduct a final project review to determine the actual eligible costs. The financial records of the ~~grantee~~ grant recipient may be reviewed by the Department. ~~(4-2-08)~~(4-26-11)T

07. Final Payment. The final payment consisting of five percent (5%) of the total state grant will not be made until the ~~project review has been completed or deferred, or after final approval of the engineering, or completion of the environmental review process~~ requirements contained in the grant agreement have been satisfied. ~~(4-2-08)~~(4-26-11)T

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.12 - RULES FOR ADMINISTRATION OF WATER POLLUTION CONTROL LOANS

DOCKET NO. 58-0112-1001

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This rulemaking action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before June 15, 2011. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to make the necessary revisions for consistency with the recent changes to the Clean Water State Revolving Fund (SRF). Recent changes to the federal statutes (Pub. L. No. 111-88, 123 Stat. 2904 (2009)) governing the Clean Water SRF require that DEQ update and revise the state Rules for Administration of Water Pollution Control Loans. Federal law now requires that DEQ consider system sustainability practices as a measure of fitness for municipalities and districts to receive a loan. Federal law also requires that a certain amount of each year's federal Clean Water Act grant be provided in the form of a subsidy. In addition, this rulemaking will bring Idaho's Clean Water SRF Program into closer alignment with other related DEQ programs (the Drinking Water SRF Program and the Wastewater Planning Grant Program).

This proposed rule includes the following:

- 1) Priority rating criteria have been revised to incorporate points for sustainability.
- 2) The step-by-step process to arrive at a loan subsidy has been revised so that interest rates and loan repayment periods will be used in a more flexible manner.
- 3) The priority list rating and cost eligibility criteria have been updated to achieve consistency with other DEQ rules.
- 4) This proposed rule also includes revisions that are typographical and nonsubstantive in nature (e.g., revisions made for consistency with other sections in this rule chapter and other DEQ rules).

Prospective loan recipients, consulting engineers, grant administrators, and other funding agencies may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2011 for adoption of a pending rule. The pending rule is expected to become final and effective upon adjournment of the 2012 legislative session if adopted by the Board and approved by the Legislature.

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

NEGOTIATED RULEMAKING: The text of the rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Section 67-5220, Idaho Code, and IDAPA 58.01.23, "Rules of Administrative Procedure before the Board of Environmental Quality," Sections 810 through 815. On October 6, 2010, the Notice of Negotiated Rulemaking was published in the [Idaho Administrative Bulletin, Vol. 10-10, pages 613 through 614](#), and a preliminary draft rule was made available for public review. A meeting was held on October 28, 2010. Members of the public participated in this negotiated rulemaking process by attending the meeting and by submitting written comments. A record of the negotiated rule drafts, written public comments received, and documents distributed during the negotiated rulemaking process is available at http://www.deq.idaho.gov/rules/wastewater_loans/58_0112_1001_proposed.cfm.

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

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

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the negotiated rulemaking, contact Tim Wendland at (208)373-0439 or tim.wendland@deq.idaho.gov.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before June 29, 2011.

DATED this 26th day of April, 2011.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton/Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
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**THE FOLLOWING IS THE TEXT OF THE PROPOSED RULE
FOR DOCKET NO. 58-0112-1001**

001. TITLE AND SCOPE.

01. Title. These rules will be known and cited as Idaho Department of Environmental Quality Rules, IDAPA 58.01.12, "Rules for Administration of Water Pollution Control Loans." (3-30-01)

02. Scope. The provisions of these rules will establish administrative procedures and requirements for establishing, implementing and administering a state loan program for providing financial assistance to eligible applicants of water pollution control projects. The U.S. Environmental Protection Agency provides annual capitalization grants to the state of Idaho for this program. 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.).

~~(5-8-09)~~()

(BREAK IN CONTINUITY OF SECTIONS)

007. DEFINITIONS.

For the purpose of the rules contained in this chapter, the following definitions apply: (12-31-91)

01. Applicant. A municipality or nonpoint source project sponsor which has the ability to establish and maintain a loan repayment source. Individuals and for-profit corporations are not eligible. (5-8-09)

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. (3-30-01)

03. Board. The Idaho Board of Environmental Quality. (5-8-09)

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. (5-8-09)

05. Close or Closing. The date on which the borrower loan recipient issues and physically delivers to the Department the bond or note evidencing the loan to the borrower loan recipient, specifically determining the principal, interest and fee amounts that shall be repaid and the schedule for payment. ~~(3-19-07)~~(____)

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. (1-1-89)

07. Construction. The erection, building, acquisition, alteration, reconstruction, improvement or extension of wastewater treatment facilities, including preliminary planning to determine the economic and engineering feasibility of wastewater treatment facilities, 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 facilities; the inspection and supervision of the construction; ~~and for projects funded with federal moneys the costs incurred during the one (1) year project certification period~~ and start-up of the associated facilities. ~~(1-1-89)~~(____)

08. Department. The Idaho Department of Environmental Quality. (1-1-89)

09. Director. The Director of the Idaho Department of Environmental Quality or his/her designee. (5-3-03)

10. Disadvantaged Community. The service area of a wastewater treatment facility that meets affordability criteria established by the Department of Environmental Quality after public review and comment. (____)

11. Disadvantaged Loans. Loans made to a disadvantaged community. (____)

102. Eligible Costs. Costs which are necessary for planning, designing and/or constructing 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. (5-3-03)

~~**11. Engineering Report.** A report prepared to address a specific portion of the system or facility for which modifications are being designed. These reports address specific purpose and scope, design requirements, and evaluate feasible treatment, storage, or collection alternatives for the system to identify the cost effective and environmentally sound alternative. Engineering reports are generally project specific as opposed to an overall system wide plan such as a master plan or a facility plan. An engineering report shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare an engineering report may be found in the Handbook.~~ ~~(5-8-09)~~

123. Environmental Impact Statement (EIS). A document prepared by the applicant, ~~under the Department's direction~~, 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 Handbook may be used as guidance when preparing the EIS. ~~(5-8-09)~~(____)

134. Environmental Information Document (EID). Any written environmental assessment prepared by the applicant, ~~under the Department's direction~~, describing the environmental impacts of a proposed wastewater

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. (5-8-09)()

~~14. **Facility Plan.** A plan that describes the overall system, including collection, treatment processes and facilities, and waste disposal. It is a comprehensive planning document for the existing infrastructure and includes the plan for the future of the system/facility, including upgrades and additions. The plan also includes a systematic evaluation of feasible alternatives considering demographic, topographic, hydrographic, and institutional characteristics of a project area to demonstrate that the selected alternative is cost effective and environmentally sound. A facility plan is sometimes referred to as a master plan or facilities planning study and is an overall system-wide plan as opposed to a project specific plan. A facility plan shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare a facility plan may be found in the Handbook.~~ (5-8-09)

15. **Financial Management System.** Uniform method of recording, summarizing and analyzing financial information about the water pollution control loan applicant. (3-30-01)

16. **Finding of No Significant Impact (FONSI).** A document prepared by the Department *briefly* 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. (5-8-09)()

17. **Handbook.** "Wastewater Facilities Loan Handbook of Procedures." (5-8-09)

18. **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. (3-30-01)

19. **Ineligible Costs.** Costs which are *described in Section 041.05* not eligible for funding pursuant to these rules. (5-3-03)()

20. **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. (1-1-89)

~~21. **Loan Recipient.** An applicant who has been awarded a loan.~~ ()

~~22. **National Pollutant Discharge Elimination System.** Point source permitting program established pursuant to Section 402 of the federal Clean Water Act (33 U.S.C. Section 1342).~~ (3-30-01)

~~23. **Nondomestic Wastewater.** Wastewaters originating primarily from industrial or commercial processes which carry little or no pollutants of human origin.~~ (5-3-03)

~~24. **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.~~ (5-8-09)

~~25. **Nonpoint Source Project Sponsor.** Any applicant for water pollution control loan funds for a nonpoint source pollution project.~~ (5-8-09)

~~26. **O & M Operation and Maintenance Manual.** For wastewater treatment facilities, a guidance and training manual outlining the optimum operation and maintenance of the wastewater treatment facility or its 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.~~ (3-30-01)()

~~27. **Planning Document.** A document which describes the condition of a public wastewater 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 Handbook. ()

268. Plan of Operation. A schedule of specific actions and completion dates for construction, start-up and operation of the wastewater treatment facility or for implementation of water pollution control projects. (5-3-03)

279. 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. (5-8-09)

2830. 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. (1-1-89)

2931. Priority List. An integrated list of proposed wastewater treatment facility and nonpoint source pollution control projects rated as described in Section 020. (5-3-03)

302. Rehabilitation. The repair or replacement of limited segments of interceptor or collector sewers. (5-3-03)

343. Reserve Capacity. That portion of the treatment works that is designed and incorporated in the constructed facilities to handle future sewage flows and loadings. (1-1-89)

324. Sewer Use Ordinance/Sewer Use Resolution. An ordinance or resolution which 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. (5-8-09)

335. State. The state of Idaho. (12-31-91)

346. Supplemental Grants. A state funded grant awarded in conjunction with a loan from the water pollution control loan account. ~~(5-8-09)~~()

357. Suspension. An action by the Director to suspend a loan contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (1-1-89)

368. ~~Unified Watershed Assessment.~~ ~~Federal watershed assessment that encompasses the State list of impaired waters.~~ 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. ~~(3-30-01)~~()

379. 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. (1-1-89)

3840. 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. (3-30-01)

3941. 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. (1-1-89)

402. 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. (1-1-89)

413. 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. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

020. INTEGRATED PRIORITY RATING SYSTEM.

Projects are identified for placement on priority lists by surveying eligible entities directly on an annual basis. Information is also received from the Department and consulting engineers. Limited loan funds are awarded to projects based on priority ratings. Projects are rated by the Department on a standard priority rating form using public health, sustainability, and water quality criteria. (5-3-03)()

01. Purpose. An integrated priority rating system shall be utilized by the Department to annually allot available funds to water quality projects determined eligible for funding assistance under the water pollution control loan program in accordance with these rules. (5-3-03)

02. Priority Rating. The priority rating system shall be based on a weighted numerical points system ~~wherein each succeeding prevention, compliance, control or abatement need is weighted less heavily than the preceding need.~~ Priority criteria ~~listed herein in descending numerical weight,~~ shall contain the following points ~~(with a maximum allowable point total of one hundred and fifty (150)):~~ (5-8-09)()

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. (5-8-09)

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. (5-8-09)()

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. (5-8-09)()

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. (5-8-09)()

e. Preventing impacts to uses (nonpoint source pollution projects) -- up to one hundred (100) points. (5-8-09)()

f. ~~Secondary incentives (e.g. readiness to proceed, financial ability)~~ 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. (5-8-09)()

g. Affordability (current system user charges exceed state affordability guidelines) -- ten (10) points. ()

03. ~~Department Guidelines. Secondary ranking under each factor in Subsection 020.02 will be established by Department guidelines, which will be approved and advertised each year. The additional ranking will include but not be limited to the following: nexus/benefit to the municipality; project water quality effectiveness; readiness to proceed; cost effectiveness; etc.~~ Rating Forms. Rating criteria for Subsection 020.02 is set forth in a rating form that is available in the Handbook. (5-8-09)()

04. Integrated Priority List. A list shall be developed annually from projects rated according to Subsection 020.02 ~~and 020.03~~. Such list shall be submitted for public review and comment, and shall thereafter be submitted to the Board for approval. (5-3-03)()

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. (1-1-89)

b. Priority Target Date. An eligible applicant whose project is on the approved priority list, and for which funding is available, will be contacted by the Department and a target date for submission of a completed loan application will be established. (5-3-03)

c. Project Bypass. A project that does not or will not meet the project target date or a 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 project eligible applicant that is bypassed will be notified in writing of the reasons for being bypassed. (3-30-01)()

05. Amendment of Integrated Priority List. The Director may amend the Integrated Priority List as set forth in Section 995 of these rules. (5-8-09)

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 an annual user rate for wastewater service for residential customers which exceeds one and one-half percent (1½%) of the applicant community's median household income. 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. Consistent with achieving user rates of one and one-half percent (1½%) of the applicant community's median household income, 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 equal to one and one-half percent (1½%) of median household income. 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 one and one-half percent (1½%) of median household income, the principal which causes the user charge to exceed one and one-half percent (1½%) may be reduced except the principal reduction cannot exceed fifty percent (50%) of the total loan. 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 one and one-half percent (1½%) of the applicant community's median household income. ()

02+2. 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 applicants loan recipients in the following manner: (5-8-09)()

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 (1-1-89)

02. Costs in Excess of Financial Ability. (3-30-01)

a. Applicants 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: (5-8-09)()

i. An annual cost 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 applicant's loan recipient's service area is not within the boundaries of a municipality, the applicant 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 (5-8-09)()

ii. The annual cost user rate includes all operating, maintenance, replacement and debt service costs, both for the existing system and for upgrades, ~~being financed with state revolving funds.~~ (5-8-09)()

b. If an applicant a loan recipient meets the requirement of Subsections 02+2.02.i. and 02+2.02.ii., a supplemental grant may be made for the amount of the project that causes the annual cost of 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. (5-8-09)()

03. Accrued Interest on Loans with Supplemental Grants. Interest will not be accrued during the design and construction phases on loan projects that also have a supplemental grant. (3-30-01)

02+3. -- 029. (RESERVED).

030. PROJECT SCOPE AND FUNDING.

Loan funds awarded under this program may be used to prepare a wastewater treatment facility planning document which identifies the cost effective and environmentally sound alternative to achieve or maintain compliance with 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: (3-30-01)

a. Consistent with and implements the Idaho Nonpoint Source Management Plan. (3-30-01)

b. Data is used to substantiate a nonpoint source pollutant problem or issue exists and is described or directly referenced. (3-30-01)

c. Completed project implementation plan or work plan. (3-30-01)

d. Project commitment documentation through demonstrated ability for loan repayment. (3-30-01)

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). (3-30-01)

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. (3-30-01)
- g.** The project demonstrates nexus/benefit to municipality through a letter of support from one (1) or more affected municipalities. (3-30-01)
- 02. Wastewater Treatment Facility Funding.** Projects may be funded in steps: (3-30-01)
- a.** Step 1. ~~Facility plan or engineering report~~ Planning document prepared in accordance with the Handbook. (5-8-09)(____)
- b.** Step 2. Design which includes the preparation of the detailed engineering plans and specifications necessary for the bidding and construction of the project. (1-1-89)
- c.** Step 3. Construction, which includes bidding and actual construction of the project. (1-1-89)
- d.** Step 4. A combination of Step 2 and Step 3. (1-1-89)
- 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. (1-1-89)
- f.** Cost Effective Requirement. Step 2, Step 3 or Step 4 loans ~~will~~ shall not be awarded until a final cost effective and environmentally sound alternative has been selected by the Step 1 ~~facility plan as~~ planning document and approved by the Department. ~~The cost effective alternative may be selected based on the comment received from at least one (1) public hearing attended by affected users within the jurisdiction of the eligible applicant and conducted in accordance with state law.~~ If the planning document has not been completed pursuant to IDAPA 58.01.04, "Rules for Administration of Wastewater Treatment Facility Grants," 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. (5-3-03)(____)
- g.** Funding For 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. (1-1-89)

(BREAK IN CONTINUITY OF SECTIONS)

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 Clean Water Act State Revolving Fund (CWSRF) effort. The Department may impose a loan fee on loans scheduled to close after January 4, 2006. The loan fee shall not exceed one percent (1%) of the unpaid balance of the loan at the time each loan payment is due. (5-8-09)

02. Determination of Loan Fee. The Department shall determine the amount of the loan fee on a yearly basis and shall ~~charge the same loan fee on all loans closed during any one fiscal year~~ assess a loan fee based

upon each loan recipient's total interest rate. The amount of the loan fee shall be included in the Intended Use Plan, as described by Section 606(c) of the Clean Water Act. In determining the amount of the loan fee, the Department shall consider: ~~(3-19-07)~~()

a. The Department's anticipated costs of administering the loan program for the upcoming fiscal year, including salaries and overhead; (3-19-07)

b. Any Department costs related to providing technical assistance for the loan program for the upcoming fiscal year; (5-8-09)

c. The amount of money generated from loan fees in previous fiscal years available for use in the upcoming fiscal year; and (3-19-07)

d. The anticipated demand for planning assistance to supplement regular appropriations and other related needs to support the CWSRF loan program. (5-8-09)

03. Effect on Loan Interest Rate. The loan interest rate, as described in Subsection 050.05, will be reduced by the corresponding percentage of the loan fee. (3-19-07)

04. Payment of Loan Fee. The loan fee shall be due and payable concurrently with scheduled loan principal and interest repayments over the repayment period. (3-19-07)

033. -- 039. (RESERVED).

040. LOAN APPLICATION AND REVIEW.

01. Submission of Application. Those eligible systems which received high priority ranking 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. (5-3-03)

02. Application Requirements. Applications shall contain the following documentation, as applicable: (5-3-03)

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; (5-8-09)

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; (5-8-09)

c. Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum: (5-3-03)

i. Be procured for design and/or services during construction or previously procured for planning services through the selection guidelines and procedures prescribed under Section 67-2320, Idaho Code; (5-8-09)

ii. Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; (5-8-09)

iii. Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and (5-3-03)

iv. Be covered by professional liability insurance in accordance with Subsection 050.05.d. of these rules. A certification of liability insurance shall be included in the application. (5-8-09)

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; (5-8-09)

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; (5-8-09)()

f. Step 1 -- Scope of work describing the work tasks to be performed in the ~~facility plan~~ preparation of the planning document if required in accordance with Subsection 030.02, a schedule for completion of the work tasks and an estimate of ~~man~~ staff hours and costs to complete the work tasks; (5-8-09)()

g. Step 2 -- Design, or Step 4 -- Design and Construction: (1-1-89)

i. ~~Facility plan or engineering report~~ Planning document, including a final environmental document and decision in accordance with Section 042; (5-8-09)()

ii. Financial and management capability analysis as provided in Subsection 010.01; and (12-31-91)

iii. Intermunicipal service agreements between all entities within the scope of the project, if applicable; (5-8-09)

h. Step 3 -- Construction: (1-1-89)

i. Documented evidence of all necessary easements and land acquisition; (5-8-09)

ii. Biddable plans and specifications of the approved wastewater treatment facility alternative; (5-8-09)

iii. A plan of operation and project schedule; (5-8-09)

iv. A user charge system, sewer use ordinance and financial management system; and (1-1-89)

v. A staffing plan and budget; (5-8-09)

i. Step 4 -- Design and Construction. Loan applicants must submit all documentation specified in Subsection 040.02.h. prior to advertising for bids on construction contracts; (5-8-09)

j. Nonpoint Source Implementation Funding: (5-8-09)

i. Information demonstrating that the project is consistent with and implements the Idaho Nonpoint Source Management Plan; (5-8-09)

ii. Data that substantiates a nonpoint source pollution problem or issue exists; (5-8-09)

iii. A project implementation plan or workplan; (5-8-09)

iv. Project commitment documentation that demonstrates the ability for loan repayment; (5-8-09)

v. Documentation that the project owner, manager or sponsoring agency will maintain the project for the life of the project; (5-8-09)

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 (5-8-09)

vii. A description of the nexus/benefit to a municipality and a letter of support from one (1) or more

affected municipalities. (5-3-03)

03. Determination of Completeness of Application. The Department shall review the application to determine whether it includes all of the information required by Subsection 040.02. (5-3-03)

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. (5-3-03)

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. (1-1-89)

041. DETERMINATION OF ELIGIBILITY OF COSTS.

The Department shall review the application, including any contracts required to be submitted with the application, to determine whether the costs are eligible costs for funding. (5-3-03)

01. Eligible Costs. Eligible costs are those determined by the Department to be: (5-3-03)

a. Necessary ~~for planning, designing and/or constructing wastewater treatment facilities or implementation of water pollution control projects~~ costs; (5-3-03)()

b. Reasonable costs; and (5-3-03)()

c. Costs that are not ineligible as described in Subsection 041.05. (5-3-03)

02. Necessary Costs. The Department shall 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, ~~the facility plan for design and construction of wastewater treatment facilities~~ 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. (5-3-03)()

03. Reasonable Costs. Costs shall 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. (5-8-09)

04. Examples of Costs That May Be Eligible. Examples of costs that may be eligible, if determined necessary, reasonable and not ineligible costs include: (5-3-03)

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; (5-8-09)

b. Costs under construction contracts bid and executed in compliance with state public works construction laws; (5-3-03)

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; (5-3-03)

d. Planning directly related to the water pollution control projects; (5-3-03)

e. Sewer system evaluations; (5-3-03)

f. Financial and management capability analysis; (5-3-03)

g. Preparation of construction drawings, specifications, estimates, and construction contract

- documents; (5-3-03)
- h. Landscaping; (5-3-03)
 - i. Removal and relocation or replacement of utilities for which the applicant is legally obligated to pay; (5-8-09)
 - j. Material acquired, consumed, or expended specifically for the project; (5-3-03)
 - k. A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations; (5-3-03)
 - l. Preparation of an operation and maintenance manual; (5-3-03)
 - m. Preparation of a plan of operation; (5-3-03)
 - n. Start-up services; (5-3-03)
 - o. Project identification signs; (5-3-03)
 - p. Public participation for alternative selection; (5-3-03)
 - q. Development of user charge and financial management systems; (5-3-03)
 - r. Development of sewer use ordinance; (5-3-03)
 - s. Staffing plans and budget development; (5-3-03)
 - t. Certain direct and other costs as determined eligible by the Department; (5-3-03)
 - ~~u. Costs of assessing and defending contractor claims determined unmeritorious by the Department; (5-3-03)~~
 - ~~v. Costs of complying with the Federal Water Pollution Control Act (P.L. 92-500) as amended, 33 USC Section 1251 et seq., loan requirements applied to specific projects; and (5-3-03)~~
 - ~~w. Site acquisition costs, including sewer right of way, sewage treatment plant site, wastewater land application sites and sludge disposal areas. Land purchase shall be from a willing seller. (5-3-03)()~~
- 05. Ineligible Project Costs.** Costs which are ineligible for funding include, but are not limited to: (5-3-03)
- a. Basin or area wide planning not directly related to the project; (5-3-03)
 - b. Bonus payments not legally required for completion of construction before a contractual completion date; (5-3-03)
 - c. Personal injury compensation or damages arising out of the project; (5-3-03)
 - d. Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; (5-3-03)
 - e. Costs outside the scope of the approved project; (5-3-03)
 - f. Ordinary operating expenses of local government, such as salaries and expenses of mayors, city council members, attorneys, commissioners, board members, or managers; (5-8-09)

- g. Construction of privately owned wastewater treatment facilities; (5-3-03)
- h. Cost of land in excess of that needed for the proposed project; (5-3-03)
- i. Cost of refinancing existing indebtedness; ~~and~~ (5-8-09)()
- j. Reserve funds; ~~and~~ (5-8-09)()
- k. 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 shall 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 shall also provide notification to the engineer. The applicant may provide the Department additional information in response to the notice. (5-3-03)

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. (5-3-03)

042. ENVIRONMENTAL REVIEW.

Guidance on how to complete an environmental review may be found in Chapter 5 of the Handbook. (5-8-09)

01. Environmental Documentation. Projects may be a nonpoint source activity or a wastewater treatment facility or other point source facility. Guidance on how to complete an environmental review may be found in Chapter 5 of the Handbook. For eligible ~~non~~point source projects funded solely with non-federal funds (i.e. State Revolving Loan Fund repayments), see Subsection 042.10. For eligible point source projects, the ~~applicant~~ loan recipient shall complete an environmental review as part of and in conjunction with ~~an engineering report or facility plan~~ a planning document. Projects funded exclusively as nonpoint or estuary management projects may not be required to complete an environmental review. The ~~applicant~~ 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 ~~applicant~~ loan recipient shall complete one (1) of the following per the Department's instruction: (5-8-09)()

a. Submit a request for Categorical Exclusion (CE) with supporting backup documentation as specified by the Department; (5-8-09)

or
b. Prepare an Environmental Information Document (EID) in a format specified by the Department; (5-8-09)

c. Prepare an Environmental Impact Statement (EIS) in a format specified by the Department. (5-8-09)

02. Categorical Exclusions. If ~~an applicant~~ the loan recipient requests a CE, the Department shall review the request and, based upon the supporting documentation, take one (1) of the following actions: (5-8-09)()

a. Determine if the action is consistent with categories eligible for exclusion whereupon the Department shall 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 ~~engineering report or facility planning document~~ can be approved and the loan award can proceed; or (5-8-09)()

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 shall notify the ~~applicant~~ loan recipient to prepare an

EID. (5-8-09)()

03. Environmental Information Document Requirements. When an EID is required, the applicant loan recipient shall prepare the EID in accordance with the following Department procedures: (5-8-09)()

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; (5-8-09)

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 (5-8-09)

c. The Department shall review the draft EID and either request additional information about one (1) or more potential impacts, or shall draft a “finding of no significant impact” (FONSI). (5-8-09)

04. Final Finding of No Significant Impact. The Department shall publish the draft FONSI in a local newspaper in the geographical area of the proposed project and shall 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 shall become final. The Department shall 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 preliminary engineering report or facility planning document. (5-8-09)()

05. Environmental Impact Statement (EIS) Requirements. If an (EIS) is required, the applicant loan recipient shall: (5-8-09)()

a. Consult with all affected federal and state agencies, and other interested parties, to determine the required scope of the document; (5-8-09)

b. Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment; (5-8-09)

c. Conduct a public hearing meeting which may be in conjunction with an engineering report or facility plan hearing a planning document meeting; and (5-8-09)()

d. Prepare and submit a final EIS incorporating all agency and public input for Department review and approval. (5-8-09)

06. Final Environmental Impact Statement (EIS). Upon completion of the EIS by the applicant loan recipient and approval by the Department of all requirements listed in Subsection 042.05, the Department shall issue a record of decision, documenting the mitigation measures which shall be required of the applicant loan recipient. The loan agreement can be completed once the final EIS has been approved by the Department. (5-8-09)()

07. Partitioning the Environmental Review. Under certain circumstances, the building of a component/partition of a drinking water wastewater system may be justified in advance of all environment review requirements for the remainder of the system. The Department shall approve partitioning the environment review in accordance with established procedures. (5-8-09)()

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. (5-8-09)

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 shall reevaluate the project, environmental conditions and public views and shall: (5-8-09)()

- a. Reaffirm the earlier decision; or (1-1-89)
- b. Require supplemental information to the earlier EIS, EID, or request for CE. Based upon a review of the updated document, the Department shall issue and distribute a revised notice of CE, FONSI, or record of decision. (5-8-09)

10. Exemption From Review. Loan projects ~~funded solely with CWSRF repayment monies or with state monies~~ 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. (5-8-09)()

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. (1-1-89)

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. (1-1-89)

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 a 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. (5-3-03)

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. (5-3-03)

05. Terms of Loan Offers. The loan offer shall contain such terms as are prescribed by the Department including, but not limited to: (1-1-89)

a. Terms consistent with these rules, the project step to be funded under the loan offer, and Title 39, Chapter 36, Idaho Code; (5-8-09)

b. Special clauses as determined necessary by the Department for the successful investigation, design, construction and management of the project; (5-8-09)

c. Terms consistent with applicable state and federal laws pertaining to engineering reports 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 requirements for projects funded with loan moneys of federal origin; (5-8-09)()

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 of 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; (5-8-09)()

e. The project shall be bid, contracted and constructed according to the current edition of Idaho Standards for Public Works Construction unless the applicant loan recipient has approved and adopted acceptable public works construction standards approved by the Department; (5-8-09)()

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; (5-8-09)

g. The loan fee pursuant to Section 032; (5-8-09)

h. All loans must be fully amortized within a period not to exceed ~~twenty~~ thirty (230) years after project completion, ~~unless the project qualifies for extended financing (Section 603(d)(2) of the Clean Water Act (33 U.S.C. 1383(d)(2))~~. The loan contract will contain a schedule of loan repayments stating the due dates and the amount due. The ~~borrower~~ loan recipient may elect for either a schedule of semi-annual or annual repayments at the time the loan is finalized; and (5-8-09)()

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. (5-3-03)

051. ACCOUNTING AND AUDITING PROCEDURES.

~~Applicants receiving~~ Loans recipients must maintain project accounts in accordance with generally accepted accounting principles. Eligible nonpoint source water pollution control implementation funding project sponsors may be audited on an annual basis according to government auditing standards issued by the U.S. General Accounting Office. (5-8-09)()

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. (3-30-01)

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. (1-1-89)

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. (1-1-89)

04. Project Review to Determine Final Eligible Costs. A project review by the Department or a Department designee will determine the final eligible costs. (3-30-01)

05. Final Disbursement. The final loan disbursement ~~will~~ 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. (3-30-01)()

(BREAK IN CONTINUITY OF SECTIONS)

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

01. Conditions for Waiver. The Director may amend the Integrated Priority List and grant a waiver from the requirements of these rules on a case-by-case basis upon full demonstration by the loan ~~applicant~~ recipient requesting the waiver that the following conditions exist. See also Subsection 020.05 of these rules. (5-8-09)()

- ~~01~~**a.** **Health Hazard.** A significant public health hazard exists; (5-8-09)
- ~~02~~**b.** **Water Contamination.** A significant water contamination problem exists; (5-8-09)
- ~~03~~**c.** **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 ~~(5-8-09)~~()
- ~~04~~**d.** **Affordability Criteria Exceeded.** The project will exceed affordability criteria adopted by the Department in the event the waiver is not granted; ~~or~~ ~~(1-1-89)~~()
- ~~05~~**2.** **Availability of Federal Funds.** The waiver will not affect the availability of federal funds for the project where such funding is required by the ~~applicant~~ loan recipient requesting the waiver. ~~(5-8-09)~~()

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.20 - RULES FOR ADMINISTRATION OF DRINKING WATER LOAN PROGRAM

DOCKET NO. 58-0120-1001

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This rulemaking action is authorized by Chapters 1 and 76, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before June 15, 2011. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to make the necessary revisions for consistency with the recent changes to the Drinking Water State Revolving Fund (SRF). Recent changes to the federal statutes (Pub. L. No. 111-88, 123 Stat. 2904 (2009)) governing the Drinking Water SRF require that DEQ update and revise the state Rules for the Administration of Drinking Water Loan Program. Federal law now requires that DEQ consider system sustainability practices as a measure of fitness for municipalities and districts to receive a loan. Federal law also requires that a certain amount of each year's federal Safe Drinking Water Act grant be provided in the form of a subsidy. In addition, this rulemaking will bring Idaho's Drinking Water SRF Program into closer alignment with other related DEQ programs (the Clean Water SRF Program and the Drinking Water Planning Grant Program).

This proposed rule includes the following:

- 1) Priority rating criteria have been revised to incorporate points for sustainability.
- 2) The step-by-step process to arrive at a loan subsidy has been revised so that interest rates and loan repayment periods will be used in a more flexible manner.
- 3) The priority list rating and cost eligibility criteria have been updated to achieve consistency with other DEQ rules.
- 4) This proposed rule also includes revisions that are typographical and nonsubstantive in nature (e.g., revisions made for consistency with other sections in this rule chapter and other DEQ rules).

Prospective loan recipients, consulting engineers, grant administrators, and other funding agencies may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2011 for adoption of a pending rule. The pending rule is expected to become final and effective upon adjournment of the 2012 legislative session if adopted by the Board and approved by the Legislature.

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

NEGOTIATED RULEMAKING: The text of the rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Section 67-5220, Idaho Code, and IDAPA 58.01.23.810-815. On October 6, 2010, the Notice of Negotiated Rulemaking was published in the [Idaho Administrative Bulletin, Vol. 10-10, pages 613 through 614](#), and a preliminary draft rule was made available for public review. A meeting was held on October 28, 2010. Members of the public participated in this negotiated rulemaking process by attending the meeting. A record of the negotiated rule drafts and documents distributed during the negotiated rulemaking process is available at http://www.deq.idaho.gov/rules/drinking_water_loans/58_0120_1001_proposed.cfm.

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

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

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the negotiated rulemaking, contact Tim Wendland at (208)373-0439 or tim.wendland@deq.idaho.gov.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before June 29, 2011.

DATED this 26th day of April, 2011.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton/Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
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**THE FOLLOWING IS THE TEXT OF THE PROPOSED RULE
FOR DOCKET NO. 58-0120-1001**

001. TITLE AND SCOPE.

01. Title. These rules shall be known and cited as Rules of the Idaho Department of Environmental Quality, IDAPA 58.01.20, "Rules for Administration of Drinking Water Loan Program." (5-3-03)

02. Scope. The provisions of these rules shall establish administrative procedures and requirements for establishing, implementing, and administering a state loan program to provide financial assistance to qualifying entities of public water system facilities. The U.S. Environmental Protection Agency provides annual capitalization grants to the state of Idaho for this program. Financial assistance projects must be in conformance with the requirements of the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.). (~~3-23-98~~)()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

For the purpose of the rules contained in this chapter, the following definitions apply: (3-23-98)

01. Applicant. Any qualifying entity making application for Drinking Water loan funds. (5-3-03)

02. Board. The Idaho Board of Environmental Quality. (4-2-08)

03. 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. (4-2-08)

- 04. Close or Closing.** The date on which the borrower loan recipient issues and physically delivers to the Department the bond or note evidencing the loan to the borrower loan recipient, specifically determining the principal, interest and fee amounts that shall be repaid and the schedule for payment. (4-7-11)()
- 05. Community Water System.** A public drinking water system that: (5-3-03)
- a.** Serves at least fifteen (15) service connections used by year round residents of the area served by the system; or (3-23-98)
- b.** Regularly serves at least twenty-five (25) year-round residents. (3-23-98)
- 06. Construction.** The building, erection, acquisition, alteration, reconstruction, improvement, or extension of public drinking water system facilities, including preliminary planning to determine the economic and engineering feasibility of public drinking water system facilities, the engineering, architectural, legal, fiscal, and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures, other action necessary in the construction of public water system facilities, the inspection and supervision of the construction, and start-up of the associated facilities. (5-3-03)
- 07. Contaminant.** Any physical, chemical, biological, or radiological substance or matter in water. (5-3-03)
- 08. Department.** The Idaho Department of Environmental Quality. (3-23-98)
- 09. Director.** The Director of the Idaho Department of Environmental Quality or the Director's designee. (4-2-08)
- 10. Disadvantaged Community.** The service area of a public water system that meets affordability criteria established by the Department of Environmental Quality after public review and comment. (3-23-98)
- 11. Disadvantaged Loans.** Loans made to a disadvantaged community. (3-23-98)
- 12. Distribution System.** Any combination of pipes, tanks, pumps, and other equipment which delivers water from the source(s), and/or 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. (5-3-03)()
- 13. Eligible Costs.** Costs which are necessary for planning, designing, and/or constructing public water system facilities. To be eligible, costs must also be reasonable and not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 041. (5-3-03)
- 14. Eligible Systems.** Public and private community water systems and nonprofit noncommunity water systems. (3-23-98)
- ~~**15. Engineering Report.** A report prepared to address a specific portion of the system or facility for which modifications are being designed. These reports address specific purpose and scope, design requirements, and evaluate feasible treatment, storage, or distribution alternatives for the public drinking water system to identify the cost effective and environmentally sound alternative. Engineering reports are generally project specific as opposed to an overall system wide plan such as a master plan or a facility plan. An engineering report shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare an engineering report may be found in the Handbook. (4-2-08)~~
- 16. Environmental Impact Statement (EIS).** A document prepared by the applicant when the Department determines that the proposed drinking water construction project will 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 Handbook may be used as guidance when preparing an EIS. (4-2-08)

176. Environmental Information Document (EID). Any written environmental assessment prepared by ~~an~~ the applicant ~~or consultant~~ describing the environmental impacts of a proposed drinking water construction project. This document will be of sufficient scope to enable the ~~responsible official~~ Department to assess the environmental impacts of the proposed project and ultimately determine if an environmental impact statement (EIS) is warranted. (4-2-08)()

~~**18. Facility Plan.** A plan that describes the overall system, including sources of water, treatment processes and facilities, pumping stations and distribution piping, finished water storage, and waste disposal. It is a comprehensive planning document for the existing infrastructure and includes the plan for the future of the system/facility, including upgrades and additions. The plan also includes a systematic evaluation of feasible alternatives considering demographic, topographic, hydrologic and institutional characteristics of a project area to demonstrate that the selected alternative is cost effective and environmentally sound. A facility plan is sometimes referred to as a master plan or facilities planning study and is an overall system wide plan as opposed to a project specific plan. A facility plan shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare a facility plan may be found in the Handbook.~~ (4-2-08)

197. Financial Management System. Uniform method of recording, summarizing, and analyzing financial information about the public water system facility. (3-23-98)

2018. Finding Of No Significant Impact (FONSI). A document prepared by the Department ~~briefly~~ presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement (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. (4-2-08)()

219. Handbook. "Drinking Water Loan Handbook of Procedures." (5-3-03)

220. Ineligible Costs. Costs which are ~~described in Subsection 041.05~~ not eligible for funding pursuant to these rules. (5-3-03)()

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

~~**232. Managerial Capability.** The capabilities of the qualified entity to support the proper financial management and technical operation of the system.~~ (5-3-03)

243. Maximum Contaminant Level (MCL). The maximum permissible level of a contaminant in water which is delivered to any user of a public water system. (5-3-03)

~~**254. Noncommunity Water System.** A public water system that is not a community water system.~~ (3-23-98)

~~**265. Nonprofit Noncommunity Water System.** A public water system that is not a community water system and is governed by Section 501 of the U. S. Internal Revenue Code and includes but is not limited to: state agencies, municipalities, and nonprofit organizations such as churches and schools.~~ (3-23-98)

276. Nontransient Noncommunity Water System. A public water system that is not a community water system and that regularly serves at least 25 (twenty-five) of the same persons over six (6) months per year. (3-23-98)

287. O & M Operation and Maintenance Manual. Operation and Maintenance Manual is a guidance and training manual outlining the optimum operation and maintenance of the public water system facility or its components. (3-23-98)()

298. Person. An individual, corporation, company, association, partnership, state agency, municipality, or federal agency (and includes officers, employees, and agents of any corporation, company, association, state agency, municipality, or federal agency). (3-23-98)

29. Planning Document. A document which describes the condition of a public 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 Handbook. ()

30. Plan of Operation. A schedule of specific actions and completion dates for construction, start-up, and operation of the public water system facility. (5-3-03)

31. Priority List. 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 300f et seq.), population affected, and need on a household basis for protection of Idaho's public drinking water. (5-3-03)

32. 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." (4-2-08)

33. Qualifying Entity. Any county, city, special service district, nonprofit or investor-owned corporation, or other governmental entity, or a combination thereof, which owns or operates a public water system or irrigation system and which establishes and maintains a dedicated loan repayment source. (4-2-08)

34. Rehabilitation. The repair or replacement of segments of drinking water facilities. (5-3-03)

35. Reserve Capacity. That portion of the system in the planned facilities to handle future drinking water demand. (5-3-03)

36. State. The state of Idaho. (3-23-98)

37. Supplier or Provider of Water. Any person who owns and/or operates a public water system. (3-23-98)

38. Suspension. An action by the Director to suspend a loan contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (3-23-98)

39. 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. ()

~~39~~**40. Technical Capability.** The ability of the public drinking water system to comply with existing and expected drinking water rules. (5-3-03)

~~40~~**1. Termination.** An action by the Director to permanently terminate a loan contract prior to project completion for a specific cause. Terminated contracts shall not be reinstated. (3-23-98)

~~41. Unreasonable Risks to Health (URTH).~~ *Refers to a level of contamination that presents an "unreasonable risk to health" and is determined on a contaminant by contaminant basis by the U.S. Environmental Protection Agency.* (5-3-03)

42. 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, which provides sufficient reserves and/or revenues for debt retirement, operation and maintenance, and replacement of the public water system. (4-2-08)

43. Water System Protection Ordinance. An ordinance adopted pursuant to Chapter 32, Title 42, Idaho Code, or other applicable law which 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 which provides for fees for service from users or classes of users. (3-23-98)

44. Water Treatment Plant. That portion of the public drinking water system whose primary purpose is to remove contaminants. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

020. PRIORITY RATING SYSTEM.

Projects are identified for placement on priority lists by surveying eligible entities directly on an annual basis. Information is also received from the Department and consulting engineers. Loan funds are awarded to projects based on priority ratings. Projects are rated by the Department on a standard priority rating form using public health criteria, sustainability criteria, water quality criteria, and condition of the existing system. (4-2-08)()

01. Purpose. A priority rating system shall be utilized by the Department to annually allot available funds to projects determined eligible for funding assistance under the Drinking Water Loan Program in accordance with these rules. Projects considered for priority rating shall first be evaluated by Department regional staff. (5-3-03)

02. Priority Rating. The priority rating system shall be based on a weighted numerical points system. Priority criteria shall contain the following points: (3-23-98)()

~~**a.** Public Health Emergency. Shall be certified by the Idaho Board of Environmental Quality or by a District Board of Health. Such emergencies shall be related to a waterborne outbreak, contamination levels at or above Unreasonable Risks to Health (URTH), or a failed water source. (100 points) (4-2-08)~~

~~**ba.** Public Health Hazard. Identified and documented by the Department or by a District Health Department. Points shall be given based on the presence and severity of waterborne illnesses. (19 points) Any condition which creates, or may create, a danger to the consumer's health, which may include any one or more of the following, may be awarded a maximum of one hundred (100) points: (4-2-08)()~~

~~**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; or ()~~

~~**iv.** Documented significant deficiencies (e.g., documented in a sanitary survey) in the physical system that is causing the system to not reliably serve safe drinking water. ()~~

~~**e.** Water Quality Violations. Identified and verified by the Department. Points shall be given, based on maximum contaminant levels (MCLs) or based on treatment technique violations, for microbiological and chemical constituents. (71 points) (3-23-98)~~

~~**fb.** General Conditions of Existing Facilities. Points shall be given based on deficiencies with facilities (which would not constitute a public health hazard) for pumping, treating, and delivering drinking water. (up to sixty~~

(~~64~~) points)

(~~3-23-98~~)()

~~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.~~ Overall Urgency. Points shall be given to entities that need a new source of water to assure safety and adequate supply. (10 points) (~~3-23-98~~)

~~f.~~ Consent or Administrative Orders. Points shall be given if the system is operating under an order. (30 points) (~~3-23-98~~)

~~g.~~ 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) (~~3-23-98~~)()

~~h.~~ Affordability. Points shall be given when proposed current system user charges exceed state affordability guidelines. (ten (10) points) (~~3-23-98~~)()

~~03.~~ Rating Forms. Rating criteria for Subsection 020.02 is set forth in a rating form that is available in the Handbook. ()

~~034.~~ Priority List. A list shall be developed annually from projects rated according to Subsection 020.02. Such list shall be submitted for public review and comment, and shall thereafter be submitted to the Board for approval and adoption. (~~3-23-98~~)()

~~04a.~~ 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 shall be conducted. (3-23-98)

~~05b.~~ Priority Target Date. A qualifying entity, whose project is on the adopted priority list, and for which funding is available, shall be contacted by the Department and a target date for submission of a completed loan application shall be established. (3-23-98)

~~06c.~~ Project Bypass. A project that does not or shall not meet the project target date or a Department schedule that allows for timely utilization of loan funds may be bypassed, substituting in its place the next highest ranking project or projects that are ready to proceed. An project eligible applicant that is bypassed shall be notified in writing of the reasons for being bypassed. (~~3-23-98~~)()

~~05.~~ Amendment of Priority List. The Director may amend the Integrated 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: (3-23-98)

01. Qualifying for a Disadvantaged Loan. In order to qualify for a disadvantaged loan, a loan applicant must have an annual ~~cost of~~ user rater for drinking water service for residential customers which exceeds one and one-half percent (1½%) of the applicant community's median household income. (~~4-2-08~~)

~~a.~~ The annual ~~cost includes~~ user rate would be based on all operating, maintenance, replacement, and debt service costs (both for the existing system and for upgrades) ~~being financed with state revolving funds~~. 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. (4-2-08)(____)

b. For disadvantaged applicants for which the annual cost exceeds one and one-half percent (1½%) of the median household income, those applicants must agree to seek assistance from all other available state and federal agencies offering grants before loan terms can be adjusted. (4-2-08)

02. Adjustment of Loan Terms. ~~Loan terms may be adjusted in the following sequence:~~ DEQ will equally apportion funds available for principal forgiveness to all prospective disadvantaged loan recipients. Consistent with achieving user rates of one and one-half percent (1½%) of the applicant community's median household income, and where possible with available funds, loan terms may be adjusted in the following order: increasing the repayment period, decreasing the interest rate, and providing principal forgiveness. (5-3-03)(____)

a. Increasing Repayment Period. ~~First, t~~The length of the loan repayment may be extended in increments of years from twenty (20) years up to a maximum of thirty (30) years until the annual ~~cost~~ user rate equals one and one-half percent (1½%) of median household income. (4-2-08)(____)

b. Decreasing Interest Rate. If at a thirty (30) year repayment, the annual ~~cost~~ user rate still exceeds one and one-half percent (1½%) of the median household income, 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 ~~charge~~ user rate equal to one and one-half percent (1½%) of median household income. The interest rate may be reduced to as low as zero percent (0%). (4-2-08)(____)

c. ~~The interest rate may be reduced to as low as zero percent (0%).~~ Principal Forgiveness. If even at zero percent (0%) interest and a thirty (30) year repayment, the annual ~~charge~~ user rate per residential user still exceeds one and one-half percent (1½%) of median household income, the principal which causes the user charge to exceed one and one-half percent (1½%) may be reduced except the principal reduction cannot exceed ~~an amount greater than~~ fifty percent (50%) of the total loan. 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 one and one-half percent (1½%) of the applicant community's median household income. (4-2-08)(____)

022. -- 029. (RESERVED).

030. PROJECT SCOPE AND FUNDING.

Loan funds awarded under this program may be used to prepare ~~an engineering report or a facility plan~~ a drinking water facility planning document which identifies the cost effective and environmentally sound ~~drinking water system~~ alternative to achieve or maintain compliance with IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act, 42 U.S.C., Sections 300f et seq., and which is approvable by the Department. Loan funds may also be used for design and construction of the chosen alternative. (4-2-08)(____)

01. Project Step Funding. Projects may be funded in steps: (3-23-98)

a. Step 1. ~~Engineering report or facility p~~lanning document prepared by an Idaho licensed professional engineer who carries professional liability insurance in accordance with Subsection 050.05.d., and in a format prescribed by the Department; (4-2-08)(____)

b. Step 2. Design, which includes the preparation by an Idaho licensed professional engineer of the detailed engineering plans and specifications necessary for the bidding and construction of the project; (4-2-08)

c. Step 3. Construction, which includes bidding and actual construction of the project; or (3-23-98)

d. Step 4. A combination of Step 2 and Step 3. (3-23-98)

02. Combination Step Funding. Projects may be funded in any combination of the steps with 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 shall be amortized and a repayment schedule prepared by the Department. (3-23-98)

03. Requirements for Awarding a Loan. 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 ~~engineering report or facility planning document~~ and approved by the Department. If the ~~engineering report or facility planning document~~ has not been completed pursuant to IDAPA 58.01.22, "Rules for Administration of Planning Grants for Drinking Water Facilities," ~~at least one (1) public hearing must be held so that the affected users can submit comments before accepting the cost effective and environmentally sound selected alternative. The public hearing will be held within the jurisdiction of the qualifying entity and conducted in accordance with state law~~ 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. (4-2-08)()

04. Funding for 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. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

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 Drinking Water State Revolving Fund (DWSRF) effort. The Department may impose a loan fee on loans scheduled to close after December 2, 2009. The loan fee shall not exceed one percent (1%) of the unpaid balance of the loan at the time each loan payment is due. (4-7-11)

02. Determination of Loan Fee. The Department shall determine the amount of the loan fee on a yearly basis and shall ~~charge the same loan fee on all loans closed during any one fiscal year~~ assess a loan fee based upon each loan recipient's total interest rate. The amount of the loan fee shall be included in the Intended Use Plan, as described by Section 1452 of the Safe Drinking Water Act (42 U.S.C. Section 300j-12). In determining the amount of the loan fee, the Department shall consider: (4-7-11)()

a. The Department's anticipated costs of administering the loan program for the upcoming fiscal year, including salaries and overhead; (4-7-11)

b. Any Department costs related to providing technical assistance for the loan program for the upcoming fiscal year; (4-7-11)

c. The amount of money generated from loan fees in previous fiscal years available for use in the upcoming fiscal year; and (4-7-11)

d. The anticipated demand for planning assistance to supplement regular appropriations and other related needs to support the DWSRF loan program. (4-7-11)

03. Effect on Loan Interest Rate. The loan interest rate, as described in Subsection 050.05, will be reduced by the corresponding percentage of the loan fee. (4-7-11)

04. Payment of Loan Fee. The loan fee shall be due and payable concurrently with scheduled loan principal and interest repayments over the repayment period. (4-7-11)

033. -- 039. (RESERVED).

040. LOAN APPLICATION AND REVIEW.

01. Submission of Application. The applicant shall submit to the Department, a completed application on a form as prescribed by the Department. (3-23-98)

02. Application Requirements. Applications shall contain the following documentation, as applicable: (5-3-03)

a. A lawful resolution passed by the governing body authorizing an elected official or authorized individual of the qualifying entity to execute a loan contract and sign subsequent loan disbursement requests; and (5-3-03)

b. Contracts for engineering services 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; and (5-3-03)

c. Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum: (5-3-03)

i. ~~As applicable, Be~~ procured through the selection guidelines and procedures prescribed under Section 67-2320, Idaho Code; and (~~5-3-03~~)()

ii. Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; and (5-3-03)

iii. Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and (5-3-03)

iv. Be covered by professional liability insurance in accordance with Subsection 050.05.d. A certification of liability insurance shall be included in the application; and (5-3-03)

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; and (5-3-03)

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 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. (4-2-08)

f. In the case of a privately owned system, demonstrate that there is adequate security for the repayment of the loan. (3-23-98)

g. Step 1. Engineering Report or Facility Plan. Plan of study describing the work tasks to be performed in the ~~engineering report or facility plan~~ preparation of the planning document, a schedule for completion of the work tasks, and an estimate of ~~man~~ staff hours and costs to complete the work tasks. (~~4-2-08~~)()

h. Step 2. Design. (4-2-08)

i. ~~Engineering report or facility p~~lanning document including a final environmental document and

decision in accordance with Section 042;

(4-2-08)()

- ii. Financial, technical, and management capability analysis as provided in Subsection 011.01; (3-23-98)
- iii. Inter-organizational service agreements between all qualifying entities within the scope of the project, if applicable; and (4-2-08)
- i. Step 3. Construction. (4-2-08)
 - i. Documented evidence of all necessary easements and land acquisition. (5-3-03)
 - ii. Biddable plans and specifications of the approved public water system facility alternative; (3-23-98)
 - iii. A plan of operation and project schedule; (3-23-98)
 - iv. A ~~user charge system~~, water ~~use~~ system protection ordinance, and financial management system; and (3-23-98)()
 - v. A staffing plan and budget. (3-23-98)
- j. Step 4. Design and Construction. Loan applicants must submit all documentation specified in Subsection 040.02.d. prior to advertising for bids on construction contracts. (4-2-08)

03. Determination of Completeness of Application. The Department shall review the application to determine whether it includes all of the information required by Subsection 040.02. (5-3-03)

04. Notification of Incompleteness of Application. Written notification if an application is incomplete, including an explanation of missing documentation shall be sent to the applicant. The applicant may provide the missing documentation. (5-3-03)

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. (3-23-98)

041. DETERMINATION OF ELIGIBILITY OF COSTS.

The Department shall review the application, including any contracts required to be submitted with the application, to determine whether the costs are eligible costs for funding. (5-3-03)

01. Eligible Costs. Eligible costs are those determined by the Department to be: (5-3-03)

a. Necessary ~~for planning, designing and/or constructing drinking water systems~~ costs; (5-3-03)()

b. Reasonable costs; and (5-3-03)()

c. Costs that are not ineligible as described in Subsection 041.05. (5-3-03)

02. Necessary Costs. The Department shall 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, ~~the facility plan or engineering report for design and construction of drinking water systems~~ planning document, and any other relevant information in the application that describes the scope of the project to be funded. (4-2-08)()

03. Reasonable Costs. Costs shall 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 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. (4-2-08)

04. Examples of Costs That May Be Eligible. Examples of costs that may be eligible, if determined necessary, reasonable, and not ineligible costs include: (5-3-03)

a. Costs of salaries, benefits, and expendable material the qualified entity incurs in the project except ordinary operating expenses such as salaries and expenses of a mayor, city council members, board; or city, district, or board attorney; (4-2-08)

b. Costs under construction contracts bid and executed in compliance with state public works construction laws; (5-3-03)

c. Professional and consulting services utilizing a lump sum contract, an hourly rate contract, a time and materials contract or cost plus a fixed fee contract; (5-3-03)

d. Engineering directly related to the public water system facilities; (5-3-03)

e. Financial and management capability analysis if it ensures compliance; (5-3-03)

f. Preparation of construction drawings, specifications, estimates, and construction contract documents; (5-3-03)

g. Landscaping; (5-3-03)

h. Removal and relocation or replacement of utilities for which the qualifying entity is legally obligated to pay; (5-3-03)

i. Material acquired, consumed, or expended specifically for the project; (5-3-03)

j. A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations; (5-3-03)

k. Preparation of an operation and maintenance manual; (5-3-03)

l. Preparation of a plan of operation; (5-3-03)

m. Start-up services; (5-3-03)

n. Project identification signs; (5-3-03)

o. Public participation for alternative selection; (5-3-03)

p. Development of user charge and financial management systems; (5-3-03)

q. Development of water system protection and backflow prevention ordinance or rule; (5-3-03)

r. Initial staffing plans and budget development; (5-3-03)

~~**s.** Costs of assessing and defending contractor claims determined unmeritorious by the Department;~~ (5-3-03)

~~**s.** Site acquisition costs from a willing seller, including right of way and the site for public water system; and~~ (5-3-03)()

~~**t.** Certain direct and other costs as determined eligible by the Department.~~ (5-3-03)

- 05. Ineligible Project Costs.** Costs which are ineligible for funding include, but are not limited to: (5-3-03)
- a.** Basin or area wide planning not directly related to the project; (5-3-03)
 - b.** Bonus payments not legally required for completion of construction before a contractual completion date; (5-3-03)
 - c.** Personal injury compensation or damages arising out of the project; (5-3-03)
 - d.** Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; (5-3-03)
 - e.** Costs outside the scope of the approved project; (5-3-03)
 - f.** Ordinary operating expenses such as salaries and expenses of a mayor, city council members, board, or city, district or board attorney; (4-2-08)
 - g.** Cost of land in excess of that needed for the proposed project; (5-3-03)
 - h.** Cost of condemnations; ~~or~~ (5-3-03)()
 - i.** Engineering costs incurred without professional liability insurance; (5-3-03)()
 - j.** Reserve funds; ()
 - k.** Cost of refinancing existing indebtedness; and ()
 - l.** Costs incurred prior to the loan acceptance unless specifically approved in writing by the Department. ()

06. Notification Regarding Ineligible Costs. Prior to providing a loan offer, the Department shall 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 shall also provide notification to the engineer. The applicant may provide the Department additional information in response to the notice. (5-3-03)

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. (5-3-03)

042. ENVIRONMENTAL REVIEW.

01. Environmental Documentation. The ~~applicant~~ loan recipient shall complete an environmental review as part of and in conjunction with ~~an engineering report or facility plan~~ a planning document. Guidance on how to complete an environmental review may be found in Chapter 5 of the Handbook. The ~~applicant~~ 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 ~~applicant~~ loan recipient shall complete one (1) of the following per the Department's instruction: (4-2-08)()

- a.** Submit a request for Categorical Exclusion (CE) with supporting backup documentation as specified by the Department; (3-23-98)
 - b.** Prepare an Environmental Information Document (EID) in a format specified by the Department; (3-23-98)
- or

- c. Prepare an Environmental Impact Statement (EIS) in a format specified by the Department. (3-23-98)
- 02. Categorical Exclusions.** If the applicant loan recipient requests a CE, the Department shall review the request and, based upon the supporting documentation, take one (1) of the following actions: ~~(4-2-08)~~(____)
- a. Determine if the action is consistent with categories eligible for exclusion whereupon the Department shall 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 to inform the public of this action, following which the ~~engineering report or facility~~ planning document can be approved and the loan award can proceed. ~~(4-2-08)~~(____)
- 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 shall notify the applicant loan recipient to prepare an EID. ~~(4-2-08)~~(____)
- 03. Environmental Information Document Requirements.** When an EID is required, the applicant loan recipient shall prepare the EID in accordance with the following Department procedures: ~~(4-2-08)~~(____)
- 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. (3-23-98)
- 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. (3-23-98)
- c. The Department shall review the draft EID and either request additional information about one (1) or more potential impacts, or shall draft a “finding of no significant impact” (FONSI). (4-2-08)
- 04. Final Finding of No Significant Impact.** The Department shall publish the draft FONSI in a newspaper of general circulation in the geographical area of the proposed project and shall 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 shall become final. The Department shall 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 ~~engineering report or facility~~ planning document. ~~(4-2-08)~~(____)
- 05. Environmental Impact Statement (EIS) Requirements.** If an EIS is required, the applicant loan recipient shall: ~~(3-23-98)~~(____)
- a. Contact all affected state agencies, and other interested parties, to determine the required scope of the document; (3-23-98)
- b. Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment; (3-23-98)
- c. Conduct a public hearing meeting which may be in conjunction with ~~an engineering report or facility plan hearing~~ a planning document meeting; and ~~(4-2-08)~~(____)
- d. Prepare and submit a final EIS incorporating all agency and public input for Department review and approval. (3-23-98)
- 06. Final EIS.** Upon completion of the EIS by the applicant loan recipient and approval by the Department of all requirements listed in Subsection 042.05, the Department shall issue a record of decision, documenting the mitigative measures which shall be required of the applicant loan recipient. The loan agreement can be completed once the final EIS has Department approval. ~~(5-3-03)~~(____)

07. Partitioning the Environmental Review. Under certain circumstances, the building of a component/partition of a drinking water system may be justified in advance of all environment review requirements for the remainder of the system. The Department shall approve partitioning the environment review in accordance with established procedures. (3-23-98)

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. (4-2-08)

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 shall reevaluate the project, environmental conditions, and public views and shall: ~~(3-23-98)~~()

a. Reaffirm the earlier decision; or (3-23-98)

b. Require supplemental information to the earlier Environmental Impact Statement, Environmental Information Document, or request for Categorical Exclusion. Based upon a review of the updated document, the Department shall issue and distribute a revised notice of Categorical Exclusion, finding of no significant impact, or record of decision. (3-23-98)

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 shall be delivered to successful applicants by representatives of the Department or by registered mail. (3-23-98)

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 on the priority list. (3-23-98)

03. Acceptance Executed as a Contract Agreement. Upon signature by the Director or the Director's designee and upon signature by the authorized representative of the qualifying entity, the loan offer shall become a contract. Upon accepting a loan offer, a qualifying entity 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 shall 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. (4-2-08)

04. Estimate of Reasonable Cost. All loan contracts shall 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. (5-3-03)

05. Terms of Loan Offers. The loan offer shall contain such terms as are prescribed by the Department including, but not limited to: (3-23-98)

a. Terms consistent with these rules, the project step to be funded under the loan offer, and Chapter 76, Title 39, Idaho Code; (5-3-03)

b. Special clauses as determined necessary by the Department for the successful investigation, design,

construction, and management of the project; (3-23-98)

c. Terms consistent with applicable state and federal laws pertaining to ~~engineering reports or facility planning documents~~, design, and construction (including the Public Works Contractors License Act (Idaho Code Sections 54-1901 through 54-1924)); the Public Contracts Bond Act (Idaho Code Sections 54-1925 through 54-1930); and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.) requirements for projects funded with loan moneys of federal origin; (4-2-08)()

d. Requirement for the prime engineering firm(s), retained for engineering services, to carry professional liability insurance to protect the public from negligent acts of the engineer and errors ~~of and~~ omissions of a professional nature. The total aggregate of the professional liability of the engineer insurance shall be one hundred thousand dollars (\$100,000) or twice the amount of the fee of the engineer, whichever is greater. Professional liability insurance must cover all such services rendered for all project phases which are state funded; (4-2-08)()

e. The project shall be bid, contracted, and constructed according to the current edition of Idaho Standards for Public Works Construction and the Idaho Rules for Public Drinking Water Systems (IDAPA 58.01.08) unless the ~~qualifying entity~~ loan recipient has approved and adopted acceptable public works construction standards approved by the Department; (5-3-03)()

f. The loan interest rate for loans made during the state fiscal year beginning July 1 shall be established by the Director. The interest rate shall be a fixed rate in effect for the life of the loan. The rate may equal but shall not exceed the current market rate; (5-3-03)

g. The loan fee pursuant to Section 032; (4-7-11)

h. All loans, except disadvantaged loans, must be fully amortized within a period not to exceed twenty (20) years after project completion. Disadvantaged loans must be fully amortized within a period not to exceed thirty (30) years. The ~~borrower~~ loan recipient may elect for either a schedule of semi-annual repayments or annual repayments at the time the loan is finalized; and (3-23-98)()

i. Repayment default shall 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. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

060. DISBURSEMENTS.

01. Loan Disbursements. The loan contract shall include a schedule of estimated disbursements to be made to the ~~borrower~~ loan recipient. The schedule shall include the anticipated dates and amounts of disbursements. Requests to the Department for actual disbursement of loan proceeds shall be made by the loan recipient on forms provided by the Department. (3-23-98)()

02. Loan Increases. An increase in the loan amount as a result of an increase in eligible project costs shall 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. (3-23-98)

03. Loan Decreases. If the actual eligible cost is determined by the Department to be lower than the estimated eligible cost, the loan amount shall be reduced proportionately. (3-23-98)

04. Project Review to Determine Final Eligible Costs. A project review by the Department shall determine the final eligible costs. (3-23-98)

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.

(3-23-98)

(BREAK IN CONTINUITY OF SECTIONS)

995. WAIVERS.

01. Conditions for Waiver. Waiver from the requirements of these rules may be granted by the Department Director or the Director's designee, on a case-by-case basis, upon full demonstration by the ~~applicant~~ recipient requesting the waiver that the following conditions exist. See also Subsection 020.05 of these rules. ~~(4-2-08)~~()

01a. Health Hazard. A significant public health hazard exists; or ~~(3-23-98)~~()

02b. Affordability Criteria Exceeded. The project shall exceed affordability criteria adopted by the Department in the event the waiver is not granted; ~~or~~. ~~(3-23-98)~~()

032. Availability of Federal Funds. The waiver shall not affect the availability of federal funds for the project where such funding is required by the ~~entity~~ loan recipient requesting the waiver. ~~(3-23-98)~~()

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.22 - RULES FOR ADMINISTRATION OF PLANNING GRANTS FOR PUBLIC DRINKING WATER FACILITIES

DOCKET NO. 58-0122-1001

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The temporary rule is effective April 26, 2011.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226(1), Idaho Code, notice is hereby given that the Board of Environmental Quality has adopted a temporary rule and the Department of Environmental Quality is commencing proposed rulemaking. This rulemaking action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before June 15, 2011. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to revise the priority rating criteria for the drinking water planning grants to closely match the Drinking Water State Revolving Fund (SRF) loan criteria, address the need to reduce the obligation to conduct an environmental study in those cases in which a grant recipient will not immediately pursue federal aid for construction, and update the cost eligibility criteria to achieve consistency. The change to make the environmental study optional will reduce costs for grant recipients in their preparation of facility planning studies by making the environmental study aspect of facility planning optional. Additionally, this rulemaking will bring the Drinking Water Planning Grant Program into closer alignment with related DEQ programs (the Drinking Water SRF Program and the Wastewater Planning Grant Program).

This temporary/proposed rule includes the following:

- 1) Priority rating criteria for the drinking water planning grants have been revised to closely match the Drinking Water SRF loan criteria.
- 2) The requirement to produce an environmental study as part of a planning document has been made optional.
- 3) Cost eligibility criteria have been updated to achieve consistency.
- 4) This rule also includes revisions that are typographical and nonsubstantive in nature (e.g., revisions made for consistency with other sections in this rule chapter and other DEQ rules).

Prospective grant and loan recipients, consulting engineers, grant and loan administrators, and other funding agencies may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2011 for adoption of a pending rule. The pending rule is expected to become final and effective upon adjournment of the 2012 legislative session if adopted by the Board and approved by the Legislature.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in that the rule confers a benefit. Adoption of this temporary rule confers a benefit to the citizens of the state of Idaho in that it reduces costs for grant recipients and makes the program more efficient.

IDAHO CODE SECTION 39-107D STATEMENT: There is no federal law or regulation comparable to IDAPA 58.01.22, "Rules for Administration of Planning Grants for Public Drinking Water Facilities." Therefore, the proposed rule does regulate an activity not regulated by the federal government but is not broader in scope or more stringent than federal law.

NEGOTIATED RULEMAKING: The text of the rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Section 67-5220, Idaho Code, and IDAPA 58.01.23.810-815. On

October 6, 2010, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 10-10, pages 613 through 614, and a preliminary draft rule was made available for public review. A meeting was held on October 26, 2010. Members of the public participated in this negotiated rulemaking process by attending the meeting and by submitting written comments. A record of the negotiated rule drafts, written public comments received, and documents distributed during the negotiated rulemaking process is available at http://www.deq.idaho.gov/rules/drinking_water_grants/58_0122_1001_temporary_proposed.cfm.

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

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

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the negotiated rulemaking, contact Tim Wendland at (208)373-0439 or tim.wendland@deq.idaho.gov.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before June 29, 2011.

DATED this 26th day of April, 2011.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton/Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE AND
PROPOSED RULE TEXT FOR DOCKET NO. 58-0122-1001**

001. TITLE AND SCOPE.

01. Title. These rules will be known and cited as Rules of the Idaho Department of Environmental Quality, IDAPA 58.01.22, "Rules for Administration of Planning Grants for Drinking Water Facilities." (3-30-01)

02. Scope. The provisions of these rules will establish administrative procedures and requirements for establishing, implementing and administering a state grant program providing financial assistance to qualifying entities to prepare ~~an engineering report or facility plan~~ a drinking water facility planning document.
(4-2-08)(4-26-11)T

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

For the purpose of the rules contained in this chapter, the following definitions apply: (3-30-01)

- 01. Applicant.** Any qualifying entity making application for drinking water planning grant funds. (3-30-01)
- 02. Board.** The Idaho Board of Environmental Quality. (4-2-08)
- 03. 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. (4-2-08)
- 04. Community Water System.** A public drinking water system that: (3-30-01)
- a.** Serves at least fifteen (15) service connections used by year round residents of the area served by the system; or (3-30-01)
- b.** Regularly serves at least twenty-five (25) year-round residents. (3-30-01)
- 05. Contaminant.** Any physical, chemical, biological, or radiological substance or matter in water. (3-30-01)
- 06. Department.** The Idaho Department of Environmental Quality. (3-30-01)
- 07. Director.** The Director of the Idaho Department of Environmental Quality or the Director's designee. (4-2-08)
- 08. Distribution System.** Any combination of pipes, tanks, pumps, and other equipment which delivers water from the source(s), ~~and/or~~ 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.
(~~3-30-01~~)(4-26-11)T
- 09. Eligible Costs.** Costs which are necessary for planning public drinking water systems. To be eligible, costs must also be reasonable and not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 032. (5-3-03)
- ~~**10. Engineering Report.** A report prepared to address a specific portion of the system or facility for which modifications are being designed. These reports address specific purpose and scope, design requirements, and evaluate feasible treatment, storage, and/or distribution alternatives for the public drinking water system to identify the cost effective and environmentally sound alternative. Engineering reports are generally project specific as opposed to an overall system wide plan such as a master plan or a facility plan. An engineering report shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare an engineering report may be found in the Handbook. (4-2-08)~~
- 10. Environmental Impact Statement (EIS).** A document prepared by the applicant when the Department determines that the proposed drinking water project will 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 Handbook may be used as guidance when preparing the EIS. (4-2-08)
- 11. Environmental Information Document (EID).** Any written environmental assessment prepared by ~~an~~ the applicant ~~or consultant~~ describing the environmental impacts of a proposed drinking water construction project. This document will be of sufficient scope to enable the ~~responsible official~~ Department to assess the environmental impacts of the proposed project and ultimately determine if an environmental impact statement (EIS) is warranted.
(4-2-08)(4-26-11)T
- ~~**13. Facility Plan.** A plan that describes the overall system, including sources of water, treatment processes and facilities, pumping stations and distribution piping, finished water storage, and waste disposal. It is a~~

~~comprehensive planning document for the existing infrastructure and includes the plan for the future of the system/facility, including upgrades and additions. The plan also includes a systematic evaluation of feasible alternatives considering demographic, topographic, hydrologic and institutional characteristics of a project area to demonstrate that the selected alternative is cost effective and environmentally sound. A facility plan is sometimes referred to as a master plan or facilities planning study and is an overall system wide plan as opposed to a project specific plan. A facility plan shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare a facility plan may be found in the Handbook.~~

~~(4-2-08)~~

~~142.~~ **Financial Capability.** The ability to raise and manage funds to provide the necessary resources for proper operation. (3-30-01)

~~153.~~ **Finding of No Significant Impact (FONSI).** A document prepared by the Department ~~briefly~~ presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement (EIS) will not be prepared. It shall include the environmental information document or a summary of it and shall note any other environmental documents related to it. ~~(4-2-08)~~(4-26-11)T

~~14.~~ **Grant Recipient.** An applicant who has been awarded a grant. (4-26-11)T

~~165.~~ **Handbook.** "Drinking Water Loan Handbook of Procedures." (4-2-08)

~~176.~~ **Ineligible Costs.** Costs which are ~~described in Subsection 032.06~~ not eligible for funding pursuant to these rules. ~~(5-3-03)~~(4-26-11)T

~~187.~~ **Maximum Contaminant Level (MCL).** The maximum permissible level of a contaminant in water which is delivered to any user of a public drinking water system. (3-30-01)

~~198.~~ **Managerial Capability.** The capabilities of the qualified entity to support the proper financial management and technical operation of the system. (3-30-01)

~~2019.~~ **Noncommunity Water System.** A public water system that is not a community water system. (5-3-03)

~~240.~~ **Nonprofit Noncommunity Water System.** A public drinking water system that is not a community water system and is governed by Section 501 of the Internal Revenue Code and includes, but is not limited to, state agencies, municipalities and nonprofit organizations such as churches and schools. (5-3-03)

~~221.~~ **Nontransient Noncommunity Water System.** A public drinking water system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year. (4-2-08)

~~232.~~ **Person.** An individual, corporation, company, association, partnership, state agency, municipality, or federal agency (and includes officers, employees, and agents of any corporation, company, association, state agency, municipality, or federal agency). (5-3-03)

~~23.~~ **Planning Document.** A document which describes the condition of a public 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 grant funds are provided in Section 030 of these rules and in the Handbook. (4-26-11)T

~~24.~~ **Priority List.** A list of proposed projects rated by severity of a 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., Sections 300f et seq., population affected, the need on a household basis for protection of Idaho's public drinking water supplies, and as otherwise described in Section 020. (4-2-08)

25. 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." (4-2-08)

26. Qualifying Entity. Any county, city, special service district, nonprofit or investor-owned corporation, or other governmental entity, or a combination thereof, which owns or operates a public drinking water system or irrigation system. (4-2-08)

27. Rehabilitation. The repair or replacement of segments of drinking water facilities. (3-30-01)

28. Reserve Capacity. That portion of the system in the planned facilities to handle future drinking water demand. (3-30-01)

29. State. The state of Idaho. (3-30-01)

30. Suspension. An action by the Director to suspend a grant contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (3-30-01)

31. 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. (4-26-11)T

~~**31.2. Technical Capability.** The ability of the public drinking water system to comply with existing and expected drinking water rules. (3-30-01)~~

~~**32.3. Termination.** An action by the Director to permanently terminate a grant contract prior to project completion for a specific cause. Terminated contracts will not be reinstated. (3-30-01)~~

~~**33. 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 public drinking water system. (4-2-08)~~

~~**34. Unreasonable Risk to Health (URTH).** Refers to a level of contamination that presents an "unreasonable risk to health" and is determined on a contaminant by contaminant basis by the U.S. Environmental Protection Agency. (5-3-03)~~

~~**35.4. Water Treatment Plant.** That portion of the public drinking water system whose primary purpose is to remove contaminants. (3-30-01)~~

011. -- 019. (RESERVED).

020. PRIORITY RATING SYSTEM.

Projects are identified for placement on priority lists by surveying eligible entities directly on an annual basis. Information is also received from the Department and consulting engineers. Grant funds are awarded to projects based on priority ratings. Projects are rated by the Department on a standard priority rating form using public health, sustainability, and water quality criteria and condition of the existing system. (4-2-08)(4-26-11)T

01. Purpose. A priority rating system shall be utilized by the Department to annually allot available funds to projects determined eligible for funding assistance in accordance with these rules. (4-2-08)

02. Priority Rating. The priority rating system shall be based on a numerical point system. Priority criteria shall contain the following points: ~~(3-30-01)~~(4-26-11)T

~~a. Public Health Emergency. Shall be certified by the Idaho Board of Environmental Quality or by a District Board of Health. Such emergencies shall be related to a waterborne outbreak, chemical or radiological contamination levels above Unreasonable Risk to Health (URTH), or a failed water source — one hundred (100) points. (4-2-08)~~

~~ba. Public Health Hazard. Identified and documented by the Department or by a District Health Department. Points shall be given based on the presence and severity of waterborne illnesses — nineteen (19) points. Any condition which 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: (4-2-08)~~(4-26-11)T

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); (4-26-11)T

ii. Documented unresolved violations of pressure requirements; (4-26-11)T

iii. Documented reduction in source capacity that impacts the system's ability to reliably serve water; (4-26-11)T
or

iv. Documented significant deficiencies (e.g., documented in a sanitary survey) in the physical system that is causing the system to not be able to reliably serve safe drinking water. (4-26-11)T

~~e. Water Quality Violations. Identified and verified by the Department. Points shall be given, based on maximum contaminant levels (MCLs) or based on treatment technique violations, for microbiological and chemical constituents — seventy one (71) points. (3-30-01)~~

~~db. General Conditions of Existing Facilities. Points shall be given based on deficiencies with facilities (which would not constitute a public health hazard) for pumping, treating, storing, and delivering drinking water - up to sixty-one (61) points. (3-30-01)~~(4-26-11)T

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. (4-26-11)T

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. (4-26-11)T

~~e. Overall Urgency. Points shall be given to entities that need a new source of water to assure safety and adequate supply — ten (10) points. (3-30-01)~~

~~f. Consent or Administrative Orders. Points shall be given if the system is operating under an order — thirty (30) points. (3-30-01)~~

ge. Incentives. Bonus points shall be awarded to systems that promote source water protection, conservation, economy, proper operation maintenance, and monitoring - up to sixteen ten (160) points. (3-30-01)(4-26-11)T

hf. Affordability. Points shall be given when current system user charges exceed state affordability guidelines - ten (10) points. (3-30-01)

03. Rating Forms. Rating criteria for Subsection 020.02 is set forth in a rating form that is available in

the Handbook.

(4-26-11)T

~~03~~**4. Priority List.** A list shall be developed *annually* from projects rated according to the priority rating system. Such list shall be submitted for public review and comment, and shall thereafter be submitted to the Board for approval and adoption. ~~(3-30-01)~~(4-26-11)T

~~04~~**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. (3-30-01)

~~05~~**b. Priority Target Date.** ~~A qualifying entity whose project is on the approved list~~ An eligible applicant whose project is on the approved priority list, and for which funding is available, will be contacted by the Department and a target date for submission of a completed grant application will be established. ~~(4-2-08)~~(4-26-11)T

~~06~~**c. Project Bypass.** A project that does not or will not meet the project target date or a Department schedule that allows for timely utilization of grant funds may be bypassed, substituting in its place the next highest ranking project that is ready to proceed. ~~An qualifying entity~~ eligible applicant that is bypassed will be notified in writing of the reasons for being bypassed. ~~(3-30-01)~~(4-26-11)T

~~05.~~ **Amendment of Priority List.** The Director may amend the Priority List as set forth in Section 080 of these rules. (4-26-11)T

021. -- 029. (RESERVED).

030. PROJECT SCOPE AND FUNDING.

Grant funds awarded under this program will be used entirely to prepare ~~an engineering report or facility plan which identifies a drinking water facility planning document. The planning document will identify~~ the cost effective and environmentally sound ~~drinking water system~~ alternative to achieve or maintain compliance with IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act, 42 U.S.C. Sections 300f et seq., ~~and which is approvable~~ The planning document must be approved by the Department. ~~(4-2-08)~~(4-26-11)T

01. ~~Engineering Report or Facility Planning Document.~~ ~~(4-2-08)~~(4-26-11)T

a. A planning document shall include all items required by IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Subsection 503.03 or 502.04. Should the grant recipient proceed to construction using federal funds (e.g., a state revolving fund loan), then the items listed in Subsection 030.01.b. of these rules shall be required prior to construction. (4-26-11)T

b. A planning document that is prepared anticipating the use of federal funds shall include an environmental review that will require the Department approval of both a draft and final planning document. (4-26-11)T

~~a.i.~~ The ~~engineering report or facility plan shall be certified by an Idaho licensed professional engineer. The engineering report or facility plan shall include, as a minimum,~~ draft planning document shall include all items required by IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Subsection 502.04 or 503.03, as well as the following: ~~(4-2-08)~~(4-26-11)T

~~i.~~(1) Description of existing conditions for the proposed project area; (3-30-01)

~~ii.~~(2) Description of future conditions for the proposed project area; (3-30-01)

~~iii.~~(3) Development and initial screening of alternatives; (3-30-01)

(4) Development of an environmental review specified by the Department as described in Section 040. (4-26-11)T

ii. The final planning document shall include all items required of the draft planning document as well

as the following:

(4-26-11)T

~~iv.~~(1) Final screening of principal alternatives and plan adoption; (3-30-01)

~~v.~~(2) Selected plan description and implementation arrangements; and ~~(3-30-01)~~(4-26-11)T

~~vi.~~(3) Relevant engineering data supporting the final alternative; ~~and~~. ~~(3-30-01)~~(4-26-11)T

~~vii.~~ ~~Level of environmental review specified by the Department as described in Section 040.~~ (4-2-08)

iii. The grant 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 grant recipient shall provide written notice of the public comment period and hold at least one (1) public meeting within the jurisdiction of the grant recipient during the public comment period. At the public meeting, the draft planning document shall be presented by the grant 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 may be prepared. (4-26-11)T

c. The draft and final planning document shall bear the imprint of an Idaho licensed professional engineer's seal that is both signed and dated by the engineer. (4-26-11)T

bd. The ~~engineering report or facility plan~~ draft and final planning documents must be reviewed and approved by the Department. ~~(4-2-08)~~(4-26-11)T

ee. The planning period shall be twenty (20) years for all facilities except for distribution and transmission systems which may be forty (40) years. (4-2-08)

~~d.~~ ~~At least one (1) public hearing shall be held within the jurisdiction of the grantee and shall be conducted in accordance with state law. The cost effective and environmentally sound alternative selected shall be based in part on public comments received from intended users affected by the proposed project.~~ (4-2-08)

02. Limitation on Funding Assistance. The maximum grant funding provided in a state planning grant award shall not exceed fifty percent (50%) of the total eligible costs for grants awarded. (3-30-01)

~~031. LIMITATION ON PRE-GRANT ENGINEERING REVIEWS.~~

~~Pre grant 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 Subsection 050.05.d.~~ (5-3-03)

0321. REVIEW AND EVALUATION OF GRANT APPLICATIONS.

01. Submission of Application. Those eligible systems which received high priority ranking shall be invited to submit an application. The applicant shall submit to the Department, a completed application in a form prescribed by the Department. (3-30-01)

02. Application Requirements. Applications shall contain the following documentation, as applicable: (5-3-03)

a. An authorizing resolution passed by a majority of the governing body authorizing an elected official or officer of the qualifying entity to commit funding; and (5-3-03)

b. Contracts for engineering services 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 0332; and ~~(4-2-08)~~(4-26-11)T

c. A plan of study describing the work tasks to be performed in the ~~engineering report or facility planning document, a schedule for completion of the work tasks and an estimate of staff hours and costs to complete the work tasks;~~ and ~~(4-2-08)(4-26-11)T~~

d. Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum: (5-3-03)

i. Be procured through the selection guidelines and procedures prescribed under Section 67-2320, Idaho Code; and (5-3-03)

ii. Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; and (5-3-03)

iii. Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and (5-3-03)

iv. Be covered by professional liability insurance in accordance with Subsection 050.05.d. A certification of liability insurance shall be included in the application; and (5-3-03)

e. 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 03~~3~~²; and ~~(4-2-08)(4-26-11)T~~

f. 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 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; and (4-2-08)

g. A statement regarding how the non-grant portion of the project will be funded; and (5-3-03)

h. For incorporated nonprofit applicants only, Articles of Incorporation and/or Bylaws showing nonprofit and incorporated status according to Chapter 3, Title 30, Idaho Code. (3-30-01)

03. **Determination of Completeness of Application.** Applications will be reviewed to determine whether they contain all of the information required by Subsection 03~~2~~¹.02. ~~(5-3-03)(4-26-11)T~~

04. **Notification Regarding 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. (5-3-03)

05. **Reapplication for Grant.** The action of disapproving, recalling, or terminating a grant in no way precludes or limits the former applicant from reapplying for another grant when the project deficiencies are resolved and project readiness is secured. (5-3-03)

03~~2~~². DETERMINATION OF ELIGIBILITY OF COSTS.

The Department shall review the application, including any contracts required to be submitted with the application, to determine whether the costs are eligible costs for funding. (5-3-03)

01. **Eligible Costs.** Eligible costs are those determined by the Department to be: (5-3-03)

a. Necessary ~~for planning drinking water treatment facilities~~ costs; ~~(5-3-03)(4-26-11)T~~

b. Reasonable costs; and ~~(5-3-03)(4-26-11)T~~

c. Costs that are not ineligible as described in Subsection 03~~3~~².05. ~~(5-3-03)(4-26-11)T~~

02. Necessary Costs. The Department shall 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 the ~~engineering report or facility~~ planning document. ~~(4-2-08)~~(4-26-11)T

03. Reasonable Costs. Costs shall 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 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. (4-2-08)

04. Examples of Costs That May Be Eligible. Examples of costs that may be eligible, if determined necessary, reasonable and not ineligible costs include: (5-3-03)

a. Costs of salaries, benefits, and expendable material the qualified entity incurs in the project except ordinary expenses such as salaries and expenses of a mayor; city council members; board; or a city, district or board attorney; (4-2-08)

b. Professional and consulting services utilizing a lump-sum contract, specifying costs of individual tasks. (5-3-03)

c. Engineering costs pursuant to a lump-sum contract, specifying costs of individual tasks, directly related to the planning of public drinking water treatment, storage and distribution facilities including but not limited to the preparation of ~~an engineering report or facility~~ a planning document and environmental review report; ~~(4-2-08)~~(4-26-11)T

d. Financial, technical and management capability analysis; (5-3-03)

e. Public participation for alternative selection; (5-3-03)

f. Certain direct and other costs as determined eligible by the Department; and (5-3-03)

g. Site acquisition services which could include legal fees, appraisals and surveys for land associated with the cost-effective alternative in the report and ~~for land~~ for purchase ~~through future State Revolving Fund loan~~ funding from a willing seller. ~~(5-3-03)~~(4-26-11)T

05. Ineligible Project Costs. Costs which are ineligible for funding include, but are not limited to: (5-3-03)

a. Basin or area wide planning not directly related to the project; (5-3-03)

b. Personal injury compensation or damages arising out of the project; (5-3-03)

c. Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; (5-3-03)

d. Costs outside the scope of the approved project; (5-3-03)

e. Ordinary operating expenses such as salaries and expenses of a mayor, city council members, city attorney, district or association personnel costs, and acquiring project funding; (4-2-08)

f. Preparation of a grant application; (5-3-03)

g. All costs related to assessment, defense and settlement of disputes; (5-3-03)

h. Costs of supplying required permits or waivers; (5-3-03)

i. Costs incurred prior to award of the grant unless specifically approved in writing as eligible pre-award costs by the Department; (5-3-03)

j. Engineering costs incurred prior to approval of the engineering contract or those costs in excess of the contract ceiling unless preapproval has been given in writing by the Department; and (5-3-03)

~~k. Land acquisition costs and associated costs other than those listed as eligible in Subsection 032.05.g. (5-3-03)~~

06. Notification Regarding Ineligible Costs. Prior to providing a grant offer, the Department shall notify the applicant that 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 shall also provide notification to the engineer. The applicant may provide the Department additional information in response to the notice. (5-3-03)

07. Eligible Costs and the Grant Offer. The grant offer shall reflect those costs determined by the Department to be eligible costs. The grant offer, however, may include estimates of some eligible costs that have not yet been set. Actual eligible costs may differ from such estimated costs set forth in the grant offer. In addition, grant disbursements may be increased or decreased if eligible costs are modified. (4-2-08)

~~0343.~~ -- 039. (RESERVED).

040. ENVIRONMENTAL REVIEW.

01. Environmental Documentation. The ~~applicant shall~~ grant recipient may complete an environmental review as part of and in conjunction with ~~an engineering report or a facility~~ planning document. Guidance on how to complete an environmental review may be found in Chapter 5 of the Handbook. ~~The applicant shall consult with~~ If the grant recipient prepares an environmental review, then the Department shall be consulted at an early stage in the preparation of the ~~engineering report or facility~~ planning document to determine the required level of environmental review. Based on review of existing information and assessment of environmental impacts, the ~~applicant shall~~ grant recipient may complete one (1) of the following, ~~per the Department's instruction:~~ (4-2-08)(4-26-11)T

a. Submit a request for Categorical Exclusion (CE) with supporting backup documentation as specified by the Department; (4-2-08)

b. Prepare an Environmental Information Document (EID) in a format specified by the Department; (4-2-08)

or

c. Prepare an Environmental Impact Statement (EIS) in a format specified by the Department. (4-2-08)

02. Categorical Exclusions. If the ~~applicant~~ grant recipient requests a CE, the Department shall review the request and, based upon the supporting documentation, take one (1) of the following actions: (4-2-08)(4-26-11)T

a. Determine if an action is consistent with categories eligible for exclusion whereupon the Department shall issue a notice of CE from further substantive environmental review. Once the CE is granted for the selected alternative, the Department will publish a notice of CE in a local newspaper, following which the ~~engineering report or facility~~ planning document can be approved; or (4-2-08)(4-26-11)T

b. Determine if an action is not consistent with categories eligible for exclusion and that issuance of a CE is not appropriate. If issuance of a CE is not appropriate, the Department shall notify the ~~applicant~~ grant recipient of the need to prepare an EID. (4-2-08)(4-26-11)T

03. Environmental Information Document Requirements. When an EID is required, the ~~applicant~~ grant recipient shall prepare the EID in accordance with the following Department procedures: (4-2-08)(4-26-11)T

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. (4-2-08)

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. (4-2-08)

c. The Department shall review the draft EID and either request additional information about one (1) or more potential impacts, or shall draft a “finding of no significant impact” (FONSI). (4-2-08)

04. Final Finding of No Significant Impact. The Department shall publish the draft FONSI in a newspaper of general circulation in the geographical area of the proposed project and shall 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 shall become final. The Department shall 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 ~~engineering report or facility~~ planning document. ~~(4-2-08)~~(4-26-11)T

05. Environmental Impact Statement (EIS) Requirements. If an EIS is required, the ~~applicant grant~~ recipient shall: ~~(4-2-08)~~(4-26-11)T

a. Contact all affected state agencies, and other interested parties, to determine the required scope of the document; (4-2-08)

b. Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment; (4-2-08)

c. Conduct a public hearing meeting which may be held in conjunction with ~~an engineering report or facility plan hearing~~ a planning document meeting; and ~~(4-2-08)~~(4-26-11)T

d. Prepare and submit a final EIS incorporating all agency and public input for Department review and approval. (4-2-08)

06. Final EIS. Upon completion of the EIS by the ~~applicant grant~~ recipient and approval by the Department of all requirements listed in Subsection 040.05, the Department shall issue a record of decision, documenting the mitigative measures which shall be required of the ~~applicant grant recipient~~. The ~~engineering report or facility~~ planning document can be completed once the final EIS has been approved by the Department. ~~(4-2-08)~~(4-26-11)T

07. Use of Environmental Reviews Conducted by Other Agencies. If an 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 notification process of the other agency. (4-2-08)

08. Validity of Review. Environmental reviews, once completed by the Department, are valid for five (5) years from the date of completion. If a grant application is received for a project with an environmental review which is more than five (5) years old, the Department shall reevaluate the project, environmental conditions, and public comments and shall: ~~(3-30-01)~~(4-26-11)T

a. Reaffirm the earlier decision; or (3-30-01)

b. Require supplemental information to the earlier Environmental Impact Statement, Environmental Information Document, or request for Categorical Exclusion. Based upon a review of the updated document, the Department shall issue and distribute a revised notice of Categorical Exclusion, finding of no significant impact, or record of decision. (3-30-01)

041. -- 049. (RESERVED).

050. GRANT OFFER AND ACCEPTANCE.

01. Grant Offer. Grant offers will be delivered by certified mail to applicants who received high priority ranking, were invited to submit an application, and provided a complete application. (3-30-01)

02. Acceptance of Grant Offer. Applicants have sixty (60) days in which to officially accept the grant offer on prescribed forms furnished by the State. The sixty (60) day acceptance period commences from the date indicated on the grant offer notice. If the applicant does not accept the grant offer within the sixty (60) day period, the grant funds may be offered to the next project of priority. (3-30-01)

03. Acceptance Executed as a Contract Agreement. Upon signature by the Director or the Director's designee as the grantor, and upon signature by the authorized representative of the qualifying entity, as the *grantee grant recipient*, the grant offer shall become a grant contract agreement. The disbursement of funds pursuant to an agreement is subject to a finding by the Director that the *grantee grant recipient* has complied with all agreement conditions and has prudently managed the project. The Director may, as a condition of payment, require that a *grantee grant recipient* vigorously pursue any claims it has against third parties who will be paid in whole or in part, directly or indirectly, with grant funds or transfer its claim against such third parties to the Department. Grant contract agreements shall be interpreted according to the law of grants in aid. No third party shall acquire any rights against the State or its employees from a grant contract agreement. ~~(3-30-01)~~(4-26-11)T

04. Estimate of Reasonable Cost. Each grant project contract will include the eligible cost of conducting the planning study. Some eligible costs may be estimated and payments may be increased or decreased as provided in Section 060. (5-3-03)

05. Terms of Agreement. The grant offer shall contain terms of agreement as prescribed by the Department including, but not limited to special conditions as determined necessary by the Department for the successful planning of the project. (3-30-01)

a. Terms consistent with ~~this chapter~~ these rules and consistent with the scope of the grant project; ~~(5-3-03)~~(4-26-11)T

b. Special clauses as determined necessary by the Department for the successful investigation and management of the project; and (5-3-03)

c. Terms consistent with applicable state and federal laws pertaining to ~~engineering reports or facility planning documents;~~ engineering reports or facility planning documents; ~~(4-2-08)~~(4-26-11)T

d. Requirement for the prime engineering firm(s) retained for engineering services to carry professional liability insurance to protect the public from the engineer's negligent acts and errors of omission of a professional nature. The total aggregate of the engineer's professional liability 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 steps, whether or not such services or steps are state funded, until the certification of project performance is accepted by the Department. (4-2-08)

051. -- 059. (RESERVED).

060. PAYMENTS.

01. Eligibility Determination. Grant funds will only be provided for eligible costs as defined at Section 010 and determined in accordance with Section 03~~2~~. ~~(5-3-03)~~(4-26-11)T

02. Payments for State Grants. Requests for payment shall be submitted to the Department on a form provided by the Department. The Department shall pay for those costs that are determined to be eligible. (3-30-01)

03. Grant Increases. Grant amendment increase requests as a result of an increase in eligible project costs will be considered, provided funds are available. Documentation and justification supporting the unavoidable need for a grant increase must be submitted to the Department for approval prior to incurring any costs above the approved eligible cost ceiling. (3-30-01)

04. Grant Decreases. If the actual eligible cost is determined to be lower than the estimated eligible cost the grant amount will be reduced proportionately. (3-30-01)

05. Final Project Review to Determine Actual Eligible Costs. The Department may conduct a final project review to determine the actual eligible costs. The financial records of the ~~grantee~~ grant recipient may be reviewed by the Department. (~~4-2-08~~)(4-26-11)T

06. Final Payment. The final payment consisting of five percent (5%) of the total state grant will not be made until the ~~project review has been completed or deferred, or after final approval of the engineering, or completion of the environmental review process~~ requirements contained in the grant agreement have been satisfied. (~~4-2-08~~)(4-26-11)T

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.24 - STANDARDS AND PROCEDURES FOR APPLICATION OF RISK BASED CORRECTIVE ACTION AT PETROLEUM RELEASE SITES

DOCKET NO. 58-0124-1101

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, Idaho Code, and IDAPA 58.01.23, Rules of Administrative Procedure Before the Board of Environmental Quality, Sections 810 through 815, notice is hereby given that this agency intends to promulgate a rule and desires public participation before publishing a proposed rule. This rulemaking action is authorized by Chapters 1, 36, 44, 72 and 74, Title 39, Idaho Code.

METHOD OF PARTICIPATION: Those interested in participating in the negotiated rulemaking process are encouraged to attend the following meeting. For those who cannot participate by attending the meeting, information for submitting written comments is provided at the end of this notice.

MEETING SCHEDULE: The negotiated rulemaking meeting will be held as follows. Additional meetings may be scheduled if necessary. For information regarding participation by telephone or scheduling of additional meetings, contact the undersigned. Requests to participate by telephone must be made by June 20, 2011.

June 23, 2011, 8:30 a.m. to 12:30 p.m. Mountain Time

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

PRELIMINARY DRAFT: By June 1, 2011, a preliminary draft of the rule can be obtained at http://www.deq.idaho.gov/rules/risk/58_0124_1101_negotiated.cfm or by contacting Paula Wilson at paula.wilson@deq.idaho.gov, (208)373-0418.

DESCRIPTIVE SUMMARY: DEQ rule chapter "Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites," IDAPA 58.01.24, was adopted by the Idaho Board of Environmental Quality in 2008 and approved by the Idaho Legislature in 2009. The rule requires that DEQ develop a guidance document to aid in implementation of the rule. During work group meetings for guidance development, the work group identified that the current state of the science regarding the methodologies describing how the toxicity data is used to calculate risk, particularly for inhalation exposures, had changed. The work group also concluded that the procedures and screening levels for risk evaluation of the vapor intrusion pathway, as delineated in the existing rule, did not meet current industry practice by omitting the use of soil vapor measurements. This rulemaking has been initiated to update portions of the rule that are pertinent to evaluation of petroleum release sites in order to promote consistent corrective action decision-making at these sites.

The preliminary draft rule will include the following proposed revisions:

- (1) Correct chemical toxicity values in Table 3 to conform to currently accepted standards;
- (2) Update the Screening Level values for soil and ground water in Table 2 using these updated toxicity values and current risk calculation methodologies;
- (3) Revise the Screening Level Table 2 by adding screening values for soil vapor measurements; and
- (4) Sections 200, 300, and 400 will be revised to incorporate the use of soil vapor into the risk evaluation process.

The text of the rule will be drafted by DEQ in conjunction with a negotiating committee made up of persons having an interest in the development of this rule. Cities, counties, bankers, lenders, realtors, petroleum marketers, consultants, and citizens of the state of Idaho may be interested in participating in this rulemaking.

Upon conclusion of negotiations, DEQ intends to publish a proposed rule for public comment in the summer of 2011 and then present the final proposal to the Idaho Board of Environmental Quality for adoption of a pending rule in the fall of 2011. If adopted by the Board, the pending rule will be reviewed by the 2012 Idaho Legislature.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Bruce Wicherski at bruce.wicherski@deq.idaho.gov, (208)373-0246.

For those who cannot participate by attending the scheduled meeting, written comments may be submitted by mail, fax or e-mail at the address below. Written comments on the preliminary draft rule must be received by June 28, 2011. For information regarding submission of written comments on subsequent drafts of the negotiated rule, to receive copies of submitted written comments, and to receive the most recent version of the draft negotiated rule, contact the undersigned.

DATED this 4th day of May, 2011.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

Sections Affected Index

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.20 - Rules Governing Brucellosis

Docket No. **02-0420-1101**

010. Definitions.	16
011. Abbreviations.	18
028. Brucellosis Testing.	19
123. Designated Surveillance Area (DSA).	20
124. -- 129. (Reserved).	20

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.05 - Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)

Docket No. **16-0305-1101**

787. Home And Community Based Services (HCBS).	22
790. Children's Developmental Disability Wavier(s).	23
791. -- 798. (Reserved).	23

16.03.10 - Medicaid Enhanced Plan Benefits

Docket No. **16-0310-1005**

130. Psychosocial Rehabilitative Services (PSR) - Provider Agency Requirements.	26
131. Psychosocial Rehabilitative Services (PSR) - Agency Staff Qualifications.	27

IDAPA 20 - DEPARTMENT OF LANDS

20.07.02 - Rules Governing Oil and Gas Conservation in the State of Idaho

Docket No. **20-0702-1101**

051. -- 054. (Reserved).	30
055. Well Treatments.	30
056. -- 059. (Reserved).	34

IDAPA 23 - BOARD OF NURSING

23.01.01 - Rules of the Idaho Board of Nursing

Docket No. **23-0101-1002**

494. Application For Certification For Medication Assistant - Certified.	36
---	----

IDAPA 30 - IDAHO COMMISSION FOR LIBRARIES

30.01.01 - Rules of the Idaho Commission for Libraries Governing the Use of Commission Services

Docket No. **30-0101-1101**

050. Talking Book Service (TBS).	40
---------------------------------------	----

IDAPA 34 - SECRETARY OF STATE

34.05.01 - Rules Governing Farm Products Central Filing System

Docket No. **34-0501-1101**

200. Collateral Information Codes.	43
---	----

IDAPA 35 - STATE TAX COMMISSION

35.01.01 - Income Tax Administrative Rules

Docket No. **35-0101-1101**

754. -- 755. (Reserved).	50
-------------------------------	----

756. Hire One Act Credit For Qualifying New Employees -- Employer-Provided
Health Care Benefits (Rule 756). 50

757. -- 759. (Reserved)..... 51

35.01.03 - Property Tax Administrative Rules

Docket No. **35-0103-1101**

630. Tax Exemption For New Capital Investments (Rule 630)..... 53

Docket No. **35-0103-1102**

804. Tax Levy -- Certification -- Urban Renewal Districts (Rule 804)..... 54

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.02.72 - Rules Governing Administrative License Suspensions

Docket No. **39-0272-1101**

004. Incorporation By Reference. 61

005. Office -- Office Hours -- Mailing And Street Address -- Phone Numbers. 61

006. Public Records Act Compliance..... 61

007. -- 009. (Reserved)..... 61

010. Definitions. 61

101. Hearing Notices..... 62

102. -- 199. (Reserved)..... 62

200. Document Submission. 62

201. -- 299. (Reserved)..... 63

300. Subpoenas. 63

500. Records Of Proceedings. 63

501. -- 599. (Reserved)..... 63

600. Final Order Request For Reconsideration. 63

601. -- 699. (Reserved)..... 64

700. Failure To Appear. 64

701. -- 799. (Reserved)..... 64

800. Forms. 64

801. -- 999. (Reserved)..... 64

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - Rules for the Control of Air Pollution in Idaho

Docket No. **58-0101-1001**

617. Crop Residue Disposal. 66

618. Permit By Rule. 66

620. Registration Fee..... 67

622. General Provisions..... 67

623. Public Notification..... 68

624. Spot Burn, Baled Agricultural Residue Burn, And Propane Flaming Permits..... 68

Docket No. **58-0101-1101**

107. Incorporations By Reference..... 71

Docket No. **58-0101-1102**

107. Incorporations By Reference..... 74

182. -- 199. (Reserved)..... 76

58.01.04 - Rules for Administration of Wastewater Treatment Facility Grants

Docket No. **58-0104-1001**

001. Title And Scope..... 80

007. Definitions. 81

008. -- 019. (Reserved)..... 83

020. Priority Rating System.....	83
021. -- 029. (Reserved).....	85
030. Project Scope And Funding.	85
031. -- 039. (Reserved).....	86
040. Review And Evaluation Of Grant Applications.	86
041. Determination Of Eligibility Of Costs.	87
042. Environmental Review.	89
043. -- 049. (Reserved).....	90
050. Grant Offer And Acceptance.	90
051. -- 059. (Reserved).....	91
060. Payments.	91
58.01.12 - Rules for Administration of Water Pollution Control Loans	
Docket No. 58-0112-1001	
001. Title And Scope.....	94
007. Definitions.	94
020. Integrated Priority Rating System.	98
021. Disadvantaged Loans.....	99
022. Supplemental Grants.	100
023. -- 029. (Reserved).....	100
030. Project Scope And Funding.	100
032. Loan Fee.	101
033. -- 039. (Reserved).....	102
040. Loan Application And Review.	102
041. Determination Of Eligibility Of Costs.	104
042. Environmental Review.	106
043. -- 049. (Reserved).....	108
050. Loan Offer And Acceptance.	108
051. Accounting And Auditing Procedures.....	109
052. -- 059. (Reserved).....	109
060. Disbursements.	109
995. Waiver Of Requirements And Amendment Of Integrated Priority List.	109
58.01.20 - Rules for Administration of Drinking Water Loan Program	
Docket No. 58-0120-1001	
001. Title And Scope.....	112
010. Definitions.	112
020. Priority Rating System.....	116
021. Disadvantaged Loans.	117
022. -- 029. (Reserved).....	118
030. Project Scope And Funding.	118
032. Loan Fee.	119
033. -- 039. (Reserved).....	120
040. Loan Application And Review.	120
041. Determination Of Eligibility Of Costs.	121
042. Environmental Review.	123
043. -- 049. (Reserved).....	125
050. Loan Offer And Acceptance.	125
060. Disbursements.	126
995. Waivers.	127

58.01.22 - Rules for Administration of Planning Grants for Public Drinking Water Facilities

Docket No. **58-0122-1001**

001. Title And Scope.....	129
010. Definitions.....	129
011. -- 019. (Reserved).....	132
020. Priority Rating System.....	132
021. -- 029. (Reserved).....	134
030. Project Scope And Funding.....	134
031. Review And Evaluation Of Grant Applications.....	135
032. Determination Of Eligibility Of Costs.....	136
033. -- 039. (Reserved).....	138
040. Environmental Review.....	138
041. -- 049. (Reserved).....	139
050. Grant Offer And Acceptance.....	139
051. -- 059. (Reserved).....	140
060. Payments.....	140

LEGAL NOTICE

Summary of Proposed Rulemakings

PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the latest publication of the state Administrative Bulletin.

*The written comment submission deadline is June 22, 2011 unless otherwise listed.
(Temp & Prop) indicates the rule is both Temporary and Proposed.
(*PH) indicates that a public hearing has been scheduled.*

IDAPA 02 - DEPARTMENT OF AGRICULTURE PO Box 790, Boise, ID 83701-0790

02-0420-1101, Rules Governing Brucellosis. (Temp & Prop) Defines Idaho's Designated Surveillance Area (DSA); outlines brucellosis testing requirements for cattle in the DSA and provides for official individual identification of all sexually intact cattle leaving Idaho's DSA.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE PO Box 83720, Boise, ID 83720-0036

16-0305-1101, Rules Governing Eligibility for Aid to the Aged, Blind and Disabled. (Temp & Prop) Clarifies that Home and Community Bases Services are available to children or adults when the applicable waiver requirements are met; adds eligibility criteria requirements for the children's developmental disabilities waivers and provides clarification necessary for implementing the children's system redesign.

IDAPA 23 - IDAHO BOARD OF NURSING PO Box 83720, Boise, ID 83720-0061

23-0101-1002, Rules of the Idaho Board of Nursing. Authorizes the Board to use an alternative process to measure beginning level competency of applicants for certification as a medication assistant.

IDAPA 30 - IDAHO COMMISSION FOR LIBRARIES 325 W. State St., Boise, ID 83702

30-0101-1101, Rules of the Idaho Commission for Libraries Governing the Use of Commission Services. Clarifies the Talking Book Service circulation and loan processes and procedures; provides a method for changes and updates by the Commissioners.

IDAPA 34 - SECRETARY OF STATE PO Box 83720, Boise, ID 83720-0080

34-0501-1101, Rules Governing Farm Products Central Filing System. (Temp & Prop) Reinserts the county code and unit code tables back into the Collateral Information Codes section of the rule.

IDAPA 35 - STATE TAX COMMISSION PO Box 36, Boise, ID 83722-0410

35-0101-1101, Income Tax Administrative Rules. (Temp & Prop) Implements the Hire One Act by revising the income tax credit allowed for qualifying new employees; informs employers of the requirements to qualify for the income tax credit since it applies to new employees hired on or after April 15, 2011; defines employer-provided health care benefits.

35-0103-1101, Property Tax Administrative Rules. (Temp & Prop) Provides that the exemption for new capital investment may be granted after a notification containing the description of the project and the project qualifying period is received by the county; clarifies that the property eligible for taxation may be included on the new construction roll.

**IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT
PO Box 7129, Boise ID 83707-1129**

39-0272-1101, Rules Governing Administrative License Suspensions. (Temp & Prop) Removes requirement to seize any license and issue a temporary permit to any licensed driver who refuses to submit to, or submits to and fails, evidentiary testing for the presence of alcohol or drugs, whether the driver is licensed in-state or out-of-state; allows the driver, whose license is otherwise valid and current, to proceed with a photo ID in their possession that remains valid and current until a starting suspension date.

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
1410 N. Hilton, Boise, ID 83706-1255**

58.01.01 - Rules for the Control of Air Pollution in Idaho

***58-0101-1001, (*PH)** (Temp & Prop) Sets out provisions for obtaining spot burn, baled agricultural residue burn, and propane flaming permits. Comment by: 7/7/11.

***58-0101-1102, (*PH)** (Temp & Prop) Removes Section 199, Electric Generating Unit Construction Prohibition, and Subsection 107.03.o. that specifically excludes the Federal Register publications regarding coal fired utilities from incorporation by reference into these rules. Comment by: 7/7/11.

58-0104-1001, Rules for Administration of Wastewater Treatment Facility Grants. (Temp & Prop) Revises the priority rating criteria for the wastewater planning grants to closely match the Clean Water SRF loan criteria; produces an environmental study as part of a planning document; updates cost eligibility criteria to achieve consistency. Comment by: 6/29/11.

58-0112-1001, Rules for Administration of Water Pollution Control Loans. Revises priority rating criteria to incorporate points for sustainability; revises the step-by-step process to arrive at a loan subsidy so that interest rates and loan repayment periods will be used in a more flexible manner; updates priority list rating and cost eligibility criteria to achieve consistency with other DEQ rules. Comment by: 6/29/11.

58-0120-1001, Rules for Administration of Drinking Water Loan Program. Revises priority rating criteria to incorporate points for sustainability; revises the step-by-step process to arrive at a loan subsidy so that interest rates and loan repayment periods will be used in a more flexible manner; updates priority list rating and cost eligibility criteria to achieve consistency with other DEQ rules. Comment by: 6/29/11.

58-0122-1001, Rules for the Administration of Planning Grants for Public Drinking Water Facilities. (Temp & Prop) Revises the priority rating criteria for the wastewater planning grants to closely match the Clean Water SRF loan criteria; produces an environmental study as part of a planning document; updates cost eligibility criteria to achieve consistency. Comment by: 6/29/11.

NOTICE OF ADOPTION OF TEMPORARY RULE

Department of Lands

20-0702-1101, Rules Governing Oil and Gas Conservation in the State of Idaho

Idaho State Tax Commission

35-0103-1102, Property Tax Administrative Rules

NEGOTIATED RULEMAKING SCHEDULED MEETINGS

Idaho Board of Pharmacy

27-0101-1101, Rules of the Idaho State Board of Pharmacy

Department of Environmental Quality

58-0102-1102, Water Quality Standards

58-0124-1101, Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites

Please refer to the Idaho Administrative Bulletin, **June 1, 2011, Volume 11-6**, for notices and text of all rulemakings, public hearings and negotiated meeting schedules, Governor's executive orders, and agency contact information.

Issues of the Idaho Administrative Bulletin can be viewed at adminrules.idaho.gov.

Office of the Administrative Rules Coordinator, Dept. of Administration, PO Box 83720, Boise, ID 83720-0306

Phone: 208-332-1820; Fax: 332-1896; Email: rulescoordinator@adm.idaho.gov

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

*Idaho Department of Administration
Office of the Administrative Rules Coordinator*

July 1, 1993 -- Present

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

*This online index provides a history of all agency rulemakings from 1993 to the present.
It tracks all rulemaking activities on each chapter of rules and includes negotiated,
temporary, proposed, pending and final rules, public hearing notices,
vacated rulemaking notices, and executive orders of the Governor.*

ABRIDGED RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

*Idaho Department of Administration
Office of the Administrative Rules Coordinator*

April 7, 2011 -- June 1, 2011

*(eff. *PLR) - Final Rule Adoption Date Pending Legislative Review And Approval*

(eff. date)L - Denotes Adoption by Legislative Action

(eff. date)T - Temporary Rule Effective Date

SCR # - denotes the number of a Senate Concurrent Resolution (Legislative Action)

HCR # - denotes the number of a House Concurrent Resolution (Legislative Action)

*(This Abridged Index includes rules promulgated before March 29, 2010 that have not been
adopted as final rules and all rulemakings being promulgated after March 29, 2010 - Sine Die.)*

IDAPA 02 -- DEPARTMENT OF AGRICULTURE

02.04.14, Rules Governing Dairy Waste

02-0414-0902 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 09-10

02.04.20, Rules Governing Brucellosis

02-0420-1101 Temporary and Proposed Rulemaking, Bulletin Vol. 11-6 (eff. 5-1-11)T

02.06.13, Rules Relating to Rapeseed Production and Establishment of Rapeseed Districts in the State of Idaho

02-0613-0801 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 08-9

02-0613-0801 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 08-10

02-0613-0801 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 08-11

***IDAPA 10 -- IDAHO BOARD OF LICENSURE OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS***

10.01.01, Rules of Procedure

10-0101-1101 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 11-5

10.01.02, Rules of Professional Responsibility

10-0102-1101 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 11-5

10.01.04, Rules of Continuing Professional Development

10-0104-1101 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 11-5

IDAPA 15 -- OFFICE OF THE GOVERNOR

Executive Orders of the Governor

Executive Order No. **2011-01** Bulletin Vol. 11-5

Executive Order No. **2011-02** Bulletin Vol. 11-5

IDAPA 16 -- DEPARTMENT OF HEALTH AND WELFARE

16.02.03, Rules Governing Emergency Medical Services

16-0203-0901 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 09-5

16-0203-0901 Temporary and Proposed Rulemaking, Bulletin Vol. 09-10 (eff. 7-1-09)T

16-0203-0901 OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 126, Bulletin Vol. 10-5

16-0203-1101 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 11-3

16.03.01, Eligibility for Health Care Assistance for Families and Children

16-0301-1003 Temporary and Proposed Rulemaking, Bulletin Vol. 10-12 (eff. (1-1-11)T

16-0301-1003 OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 108, Bulletin Vol. 11-5

16-0301-1003 Adoption of Pending Rule, Bulletin Vol. 11-5 (eff. *PLR 2012)

16.03.03, Rules Governing Child Support Services

16-0303-1001 Temporary and Proposed Rulemaking, Bulletin Vol. 10-12 (eff. (1-1-11)T

16-0303-1001 OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 108, Bulletin Vol. 11-5

16-0303-1001 Adoption of Pending Rule, Bulletin Vol. 11-5 (eff. *PLR 2012)

16.03.04, Rules Governing the Food Stamp Program in Idaho

16-0304-1004 Temporary and Proposed Rulemaking, Bulletin Vol. 10-12 (eff. (1-1-11)T

- 16-0304-1004** OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 108, Bulletin Vol. 11-5
16-0304-1004 Adoption of Pending Rule, Bulletin Vol. 11-5 (eff. *PLR 2012)

16.03.05, Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)

- 16-0305-1003** Temporary and Proposed Rulemaking, Bulletin Vol. 10-12 (eff. (1-1-11)T)
16-0305-1003 OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 108, Bulletin Vol. 11-5
16-0305-1003 Adoption of Pending Rule, Bulletin Vol. 11-5 (eff. *PLR 2012)
16-0305-1101 Temporary and Proposed Rulemaking, Bulletin Vol. 11-6 (eff. (7-1-11)T)

16.03.08, Rules Governing Temporary Assistance for Families in Idaho

- 16-0308-1002** Temporary and Proposed Rulemaking, Bulletin Vol. 10-12 (eff. (1-1-11)T)
16-0308-1002 OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 108, Bulletin Vol. 11-5
16-0308-1002 Adoption of Pending Rule, Bulletin Vol. 11-5 (eff. *PLR 2012)

16.03.09, Medicaid Basic Plan Benefits

- 16-0309-1101** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 11-5

16.03.10, Medicaid Enhanced Plan Benefits

- 16-0310-0902** Temporary and Proposed Rulemaking, Bulletin Vol. 09-1 (eff. 1-1-09)T
16-0310-0902 OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 108, Bulletin Vol. 09-6
16-0310-0902 OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 126, Bulletin Vol. 10-5
16-0310-1004 Temporary Rulemaking, Bulletin Vol. 10-9 (eff. 7-1-10)T (Expires June 30, 2011)
16-0310-1005 Temporary and Proposed Rulemaking, Bulletin Vol. 10-11 (eff. 11-1-10)T
16-0310-1006 Notice of Agency Action Regarding The Adoption of Temporary Rules, Bulletin Vol. 10-11
16-0310-1006 Temporary Rulemaking, Bulletin Vol. 10-12 (eff. 1-1-11)T - *Expires June 30, 2011*
16-0310-1007 Temporary and Proposed Rulemaking, Bulletin Vol. 10-12 (eff. 1-1-11)T
16-0310-1101 Temporary Rulemaking, Bulletin Vol. 11-1 (eff. 9-1-10)T - (1-1-11)T - *Expires June 30, 2011*
16-0310-1102 Temporary Rulemaking, Bulletin Vol. 11-1 (eff. 10-1-10)T - *Expires June 30, 2011*
16-0310-1101 OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 108, Bulletin Vol. 11-5
16-0310-1102 OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 108, Bulletin Vol. 11-5
16-0310-0902 Rescission/Vacation of Rulemaking, Bulletin Vol. 11-6 (eff. 7-1-11)T
16-0310-1005 Adoption of Pending Rule and Admendment to Temporary Rule, Bulletin Vol. 11-6 (eff. 11-1-10)T

16.03.19, Rules Governing Certified Family Homes

- 16-0319-1101** Notice of Public Meetings, Bulletin Vol. 11-5

16.04.11, Developmental Disabilities Agencies (DDA)

- 16-0411-1101** Adoption of Temporary Rule, Bulletin Vol. 11-1 (eff. 1-1-11)T (*Expires 6-30-11*)
16-0411-1101 OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 108, Bulletin Vol. 11-5

16.06.12, Rules Governing the Idaho Child Care Program (ICCP)

- 16-0612-1003** Temporary and Proposed Rulemaking, Bulletin Vol. 10-12 (eff. 1-1-11)T
16-0612-1003 OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 108, Bulletin Vol. 11-5
16-0612-1003 Adoption of Pending Rule, Bulletin Vol. 11-5 (eff. *PLR 2012)

IDAPA 20 -- DEPARTMENT OF LANDS**20.07.02, Conservation Of Crude Oil and Natural Gas in the State of Idaho**

- 20-0702-1101** Temporary Rulemaking, Bulletin Vol. 11-6 (eff. 4-19-11)T

IDAPA 23 -- BOARD OF NURSING**23.01.01, Rules of the Idaho Board of Nursing**

- 23-0101-1002** Adoption of Temporary Rule, Bulletin Vol. 10-12 (eff. 11-5-10)T
23-0101-1002 OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 108, Bulletin Vol. 11-5
23-0101-1002 Proposed Rulemaking, Bulletin Vol. 11-6

IDAPA 27 -- BOARD OF PHARMACY

27.01.01, Rules of the Idaho State Board of Pharmacy

- 27-0101-1101** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 11-5
27-0101-1101 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 11-6 (Second Notice)

IDAPA 30 -- IDAHO COMMISSION FOR LIBRARIES

30.01.01, Rules of the Idaho Commission for Libraries Governing the Use of Commission Services

- 30-0101-1101** Temporary Rulemaking, Bulletin Vol. 11-2 (eff. 12-3-10)T
30-0101-1101 OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 108, Bulletin Vol. 11-5
30-0101-1101 Proposed Rulemaking, Bulletin Vol. 11-6

IDAPA 34 -- SECRETARY OF STATE

34.05.01, Rules Governing Farm Products Central Filing System

- 34-0501-1101** Temporary and Proposed Rulemaking, Bulletin Vol. 11-6 (eff. 4-7-11)T

IDAPA 35 -- STATE TAX COMMISSION

35.01.01, Income Tax Administrative Rules

- 35-0101-1101** Temporary and Proposed Rulemaking, Bulletin Vol. 11-6 (eff. 1-1-11)T

35.01.03, Property Tax Administrative Rules

- 35-0103-1101** Temporary and Proposed Rulemaking, Bulletin Vol. 11-6 (eff. 1-1-11)T
35-0103-1102 Temporary Rulemaking, Bulletin Vol. 11-6 (eff. 1-1-11)T

IDAPA 37 -- DEPARTMENT OF WATER RESOURCES

37.03.11, Rules for Conjunctive Management of Surface and Ground Water Resources

- 37-0311-1101** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 11-2

37.03.13, The Water Management Rules

- 37-0313-9701** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 97-12
37-0313-9701 Proposed Rulemaking, Bulletin Vol. 98-10
37-0313-9701 Notice of Intent to Promulgate Rules - Negotiated Rulemaking (2nd Notice), Bulletin Vol. 00-11

37.03.14, Transfers

- 37-0314-9801** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 98-5

37.03.15, Water Management Rules - Eastern Snake Plain Aquifer

- 37-0315-0001** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 00-12

IDAPA 39 -- IDAHO TRANSPORTATION DEPARTMENT

39.02.72, Rules Governing Administrative License Suspensions

39-0272-1101 Temporary and Proposed Rulemaking, Bulletin Vol. 11-6 (eff. 5-1-11)T

IDAPA 58 -- DEPARTMENT OF ENVIRONMENTAL QUALITY

58-0000-1101 Upper Snake Rock Subbasin TMDL (2000 & 2005) City of Twin Falls TSS Revision (HUC ID 17040212), Bulletin Vol. 11-2

58-0000-1102 The Black Lake TMDL (HUC 17010303), Bulletin Vol. 11-5

58.01.01, Rules for the Control of Air Pollution in Idaho

58-0101-1001 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 10-6

58-0101-1003 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 10-11

58-0101-1003 Proposed Rulemaking, Bulletin Vol. 11-5

58-0101-1001 Temporary and Proposed Rulemaking, Bulletin Vol. 11-6 (eff. 7-1-11)T

58-0101-1101 Adoption of Pending Rule and Amendment to Temporary Rule, Bulletin Vol. 11-6 (eff. 4-26-11)T

58-0101-1102 Temporary and Proposed Rulemaking, Bulletin Vol. 11-6 (eff. 4-26-11)T

58.01.02, Water Quality Standards

58-0102-9701 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 11-6

58.01.04, Rules for Administration of Wastewater Treatment Facility Grants

58-0104-1001 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 10-10

58-0104-1001 Temporary and Proposed Rulemaking, Bulletin Vol. 11-6 (eff. 4-26-11)T

58.01.12, Rules for Administration of Water Pollution Control Loans

58-0112-1001 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 10-10

58-0112-1001 Proposed Rulemaking, Bulletin Vol. 11-6

58.01.20, Rules for Administration of Drinking Water Loan Program

58-0120-1001 Proposed Rulemaking, Bulletin Vol. 11-6

58.01.22, Rules for Administration of Planning Grants for Drinking Water Facilities

58-0122-1001 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 10-10

58-0122-1001 Temporary and Proposed Rulemaking, Bulletin Vol. 11-6 (eff. 4-26-11)T

58.01.24, Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites

58-0124-1101 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 11-6

IDAPA 59 -- PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO (PERSI)**59.01.06, Retirement Rules of PERSI**

59-0106-1101 Temporary Rulemaking, Bulletin Vol. 11-3 (eff. 2-1-11)T

59-0106-1102 Temporary Rulemaking, Bulletin Vol. 11-3 (eff. 3-1-11)T

59-0106-1101 Proposed Rulemaking, Bulletin Vol. 11-5

59-0106-1102 Proposed Rulemaking, Bulletin Vol. 11-5

IDAPA 60 -- IDAHO STATE SOIL AND WATER CONSERVATION COMMISSION**60.05.04, Rules Governing Allocation of Funds to Conservation Districts**

60-0504-1001 Temporary Rulemaking (New Chapter), Bulletin Vol. 10-9 (eff. 8-11-10)T

60-0504-1001 OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 108, Bulletin Vol. 11-5

Subject Index

A

Abbreviations, IDAPA 02.04.20, Rules Governing Brucellosis 18
Acceptance Executed as a Contract Agreement, Grant Offer & Acceptance 91, 140
Acceptance Executed as a Contract Agreement, Loan Offer & Acceptance 108, 125
Acceptance of Grant Offer 140
Acceptance of Grant Offer, Grant Offer & Acceptance 90
Acceptance of Loan Offer, Loan Offer & Acceptance 108, 125
Accounting & Auditing Procedures 109
Accredited Veterinarian 16
Accrued Interest on Loans With Supplemental Grants 100
Adjustment of Loan Terms, Disadvantaged Loans 99, 118
Advisory Committee 68
Affordability Criteria Exceeded, Waivers 110, 127
Agency Staff Qualifications, PSR 27
Amendment of Integrated Priority List 99
Amendment of Priority List 85, 117, 134
Annual Limit, HCBS-NF or HCBS-DD 23
Annual Report 68
Applicability 69
Applicant 112
Application For Certification For Medication Assistant - Certified 36
Application Required 31
Application Requirements, Loan Application & Review 102, 120
Application Requirements, Review & Evaluation of Grant Applications 86, 135
Application Submission, Medication Assistant - Certified 36
Approved Brucella Vaccine 16
Approved Feedlot 16
Attending a Hearing, Failure to Appear 64
Availability of Federal Funds, Waivers 110, 127

B

Best Management Practice 94
Blood & Urine Tests, Document Submission 63
Board 112
Brucellosis 16

Brucellosis Emergency 16
Brucellosis Herd Management Plan 16
Brucellosis Testing 19
Burn Provisions 67
Burning Prohibitions 67
Burning, Agriculture Fields 66

C

Categorical Exclusion 89
Categorical Exclusion (CE) 112
Categorical Exclusions 138
Categorical Exclusions, Environmental Review 106, 124
Cattle 16
CE, Categorical Exclusion 95
Certified Copy 61
Child Age 3 Through 6 - ICF/ID Level of Care Plus Additional Requirements 23
Child Through Age 17 - ICF/ID Level of Care 23
Children's Developmental Disability Wavier(s) 23
Circulation, Talking Book Service 40
Close or Closing 95, 113
Collateral Information Codes 43
Collector Sewer 95
Combination Step Funding, Project Funding 118
Community Water System 113
Compliance, Document Submission 62
Conditions for Waiver 127
Construction 95, 113
Contaminant 113
Cost of Care, HCBS-NF 22
Costs in Excess of Financial Ability, Supplemental Grants 100
Cost-Sharing 23
County Codes 47
Criteria for Determining Whether Levies for Funds are to be Computed Using Base Value or Market Value for Assessment Purposes 58
Crop Residue Disposal 66
Cross Reference 53

D

Decreasing Interest Rate 118
Definitions IDAPA 58.01.04
Applicant 81
Board 81
Categorical Exclusion (CE) 81
Collector Sewer 81
Domestic Wastewater 81
Eligible Costs 81
Engineering Report 81
Environmental Impact Statement

(EIS) 81
Environmental Information Document (EID) 81
Finding of No Significant Impact (FNSI) 82
Handbook 82
Ineligible Costs 82
Interceptor Sewer 82
National Pollutant Discharge Elimination System 82
Nondomestic Wastewater 82
O & M Manual 82
Point Source 82
Pollutant 82
Priority List 82
Qualifying Entity 82
Rehabilitation 83
Reserve Capacity 83
Sewer Use Ordinance 83
State 83
Suspension 83
Termination 83
Treatment Plant 83
User Charge System 83
Wastewater 83
Wastewater Treatment Facility 83
Definitions, IDAPA 02.04.20, Rules Governing Brucellosis 16
Definitions, IDAPA 39.02.72, Rules Governing Administrative License Suspensions 61
Definitions, IDAPA 58.01.12, Rules For Administration Of Water Pollution Control Loans 94
Definitions, IDAPA 58.01.22
Applicant 130
Board 130
Categorical Exclusion (CE) 130
Community Water System 130
Contaminant 130
Department 130
Director 130
Distribution System 130
Eligible Costs 130
Environmental Impact Statement (EIS) 130
Environmental Information Document (EID) 130
Financial Capability 131
Finding of No Significant Impact (FNSI) 131
Handbook 131
Ineligible Costs 131
Managerial Capability 131
Maximum Contaminant Level (MCL) 131
Noncommunity Water System 131

Nonprofit Noncommunity Water System 131
Nontransient Noncommunity Water System 131
Person 131
Priority List 131
Public Drinking Water System/Public Water System/Water System 132
Qualifying Entity 132
Rehabilitation 132
Reserve Capacity 132
State 132
Suspension 132
Technical Capability 132
Termination 132
Water Treatment Plant 132
Definitions, Section 804, Urban Renewal Districts 54
Denial of Certification, Medication Assistant - Certified 36
Department 113
Designated Surveillance Area 17
Designated Surveillance Area (DSA) 20
Designation of Burn Days, Public Notification 68
Determination of Completeness of Application, Loan Application & Review 104, 121
Determination of Completeness of Application, Review & Evaluation of Grant Applications 87, 136
Determination Of Eligibility Of Costs 87, 104, 121, 136
Determination of Loan Fee 101, 119
Director 113
Disadvantaged Community 95, 113
Disadvantaged Loans 95, 99, 113, 117
Disbursements 109, 126
 Final Disbursement 109
 Loan Decreases 109
 Loan Disbursements 109
 Loan Increases 109
 Project Review to Determine Final Eligible Costs 109
Distribution System 113
Division of Animal Industries 17
Document Submission 62
Domestic Bison 17
Domestic Cervidae 17
Duplicate Original 62
Duty to Restrain, Brucellosis Testing 19

E

Effect of Payment 67
Effect on Loan Interest Rate, Loan Fee 102, 119

Effective Date, Medicaid 22
Eligibility Determination, Payments 140
Eligible Costs 95, 113
Eligible Costs & The Grant Offer, Determination of Eligibility of Costs 89
Eligible Costs & the Grant Offer, Determination of Eligibility of Costs 138
Eligible Costs & The Loan Offer, Determination of Eligibility of Costs 106
Eligible Costs & the Loan Offer, Determination of Eligibility of Costs 123
Eligible Costs, Determination of Eligibility of Costs 87, 104, 136
Eligible Systems 113
E-Mail Update Service, Public Notification 68
Employer-Provided 50
Environmental Documentation 89, 123, 138
Environmental Documentation, Environmental Review 106
Environmental Impact Statement (EIS) 95, 113
Environmental Impact Statement (EIS) Requirements 90
Environmental Impact Statement (EIS) Requirements, Drinking Water Loan Account Environmental Review 139
Environmental Impact Statement (EIS) Requirements, Environmental Review 107, 124
Environmental Information Document (EID) 95, 114
Environmental Information Document Requirements 89, 124
Environmental Information Document Requirements, Environmental Review 107
Environmental Review 89, 106, 123, 138
Environmental Review Process, Drinking Water Loan Account Environmental Review 138
Establishing & Adjusting Base & Increment Values, Urban Renewal Districts 55
Estimate of Reasonable Cost, Grant Offer & Acceptance 91, 140
Estimate of Reasonable Cost, Loan Offer & Acceptance 108, 125
Evidentiary Test 62
Examples of Costs That May be

Eligible, Determination of Eligibility of Costs 88, 104, 122, 137
Exemption From Review, Environmental Review 108, 125
Exposed 17

F

Failure To Appear 64
Failure to Make the Qualifying New Capital Investment 53
Federal Animal Health Official 17
Field Burning 66
Final Disbursement 126
Final EIS 90
Final EIS, Drinking Water Loan Account Environmental Review 139
Final EIS, Environmental Review 124
Final Environmental Impact Statement (EIS) 107
Final Finding of No Significant Impact 90, 107
Final Finding Of No Significant Impact, Drinking Water Loan Account Environmental Review 139
Final Finding of No Significant Impact, Environmental Review 124
Final Order Request For Reconsideration 63
Final Payment 92, 141
Final Project Review to Determine Actual Eligible Costs, Payments 92, 141
Financial Management System 96, 114
Finding of No Significant Impact 114
Finding of No Significant Impact (FONSI) 96
Forms 64
Forms, Permit by Rule 67
Forwarding Documents to the Department, Document Submission 62
Funding For Reserve Capacity, Project Funding 119

G

General Provisions 67
General Provisions, Spot Burn, Baled Agricultural Residue Burn, & Propane Flaming Permits 69
General Requirements, Permit by Rule 66
Grant Decreases, Payments 91, 141
Grant Increases, Payments 91, 140
Grant Offer 140
Grant Offer & Acceptance 90, 139
Grant Offer, Grant Offer & Acceptance 90
Grant Recipient 131

H

Handbook 114
Health Care Benefits 50
Health Hazard, Waivers 110, 127
Hearing Notices 62
Hire One Act Credit For Qualifying
New Employees -- Employer-
Provided Health Care Benefits 50
Home & Community Based Services
(HCBS) 22
Hydraulic Fracturing (Fracing) 32

I

Incorporations By Reference 71, 74
Increases for Bid Underestimates,
Payments 91
Increasing Repayment Period 118
Individual Identification
Requirements 20
Ineligible Costs 96, 114
Ineligible Project Costs, Determination
of Eligibility of Costs 88, 105, 123,
137
Infected Animals or Herds 17
Inspections & Reporting
Requirements 31
Integrated Priority List, Integrated
Priority Rating System 99
Integrated Priority Rating System 98
Interceptor Sewer 96
Issuing Facts & Findings 63

L

Levy Computation for Taxing Districts
Encompassing RAAs Within Urban
Renewal Districts 57
Limitation on Funding Assistance 86
Limitation on Funding Assistance,
Project Funding 135
Limitation On Pre-Grant Engineering
Reviews 86, 135
Limitations on Advance Payments 91
Loan Application & Review 102, 120
Loan Decreases, Disbursements 126
Loan Disbursements 126
Loan Fee 101, 119
Loan Increases, Disbursements 126
Loan Offer & Acceptance 108, 125
Loan Offer, Loan Offer &
Acceptance 108, 125
Loan Recipient 96

M

Maintained in the Community,
HCBS 22
Managerial Capability 114
Master Drilling/Treatment Plans 31
Materials Loaned, Talking Book

Service 40
Maximum Contaminant Level
(MCL) 114
Modification of an Urban Renewal
Plan 57

N

National Pollutant Discharge
Elimination System 96
Necessary Costs, Determination of
Eligibility of Costs 104, 137
Negative, Brucellosis 17
New Construction 53
Noncommunity Water System 114
Nondomestic Wastewater 96
Nonpoint Source Implementation
Funding, Project Funding 100
Nonpoint Source Pollution 96
Nonpoint Source Project Sponsor 96
Nonprofit Noncommunity Water
System 114
Non-Qualifying Health Care
Benefits 51
Nontransient Noncommunity Water
System 114
Notification of Incompleteness of
Application, Loan Application &
Review 104, 121
Notification of Incompleteness of
Application, Review & Evaluation of
Grant Applications 87
Notification of New Capital
Investment 53
Notification Regarding Eligible Costs,
Determination of Eligibility of
Costs 89
Notification Regarding Incompleteness
of Application, Review & Evaluation
of Grant Applications 136
Notification Regarding Ineligible Costs,
Determination of Eligibility of
Costs 106, 123, 138
Notification, Hearing Notices 62

O

Official Identification 17
Official Vaccinate 17
Operation & Maintenance Manual 96,
114

P

Partitioning the Environmental
Review 107, 125
Patron Status, Talking Book
Service 40
Payment of Fee 67
Payment of Loan Fee 102, 120
Payments 91, 140

Payments for State Grants 91, 140
Permit By Rule 66
Person 114
Petitioner 61
Plan of Operation 97, 115
Planning Document 96, 131, 134
PML Groupings & Farm Product
Codes 43
Point Source 97
Pollutant 97
Pollution, Waivers 110
Posting on Website, Public
Notification 68
Principal Forgiveness 118
Priority List 97, 115
Priority List, Priority Rating
System 117, 134
Priority Rating 83, 98, 116, 133
Priority Rating System 83, 116, 132
Priority Reevaluation 117
Priority Reevaluation, Priority Rating
System 84, 134
Priority Target Date 117
Priority Target Date, Priority Rating
System 84, 134
Project Bypass, Priority Rating
System 84, 117, 134
Project Funding 100, 118, 134
Project Review to Determine Final
Eligible Costs, Disbursements 126
Project Scope & Funding 85
Project Step Funding, Project
Funding 118
Projects Not Funded by Loans,
Supplemental Grants 100
Proof of Service 63
Propane Flaming Permit 69
Property of the Taxpayer 53
Proposed Order of Default, Failure to
Appear 64
Provider Agency Requirements,
PSR 26
PSR Agency Staff Qualifications 26
Public Drinking Water System/Public
Water System/Water System 115
Public Notification 68

Q

Qualifying Entity 115
Qualifying for a Disadvantaged
Loan 99, 117
Quarantine 18

R

Rating Forms 99, 117, 133
Reactor 18
Reapplication for Grant, Review &
Evaluation of Grant

Applications 87, 136
Reapplication for Loan, Loan
Application & Review 104, 121
Reasonable Costs, Determination of
Eligibility of Costs 87, 104
Received by the Department 61
Recordkeeping, Spot Burn, Baled
Agricultural Residue Burn, &
Propane Flaming Permits 69
Records Of Proceedings 63
Records of Tests, Brucellosis
Testing 19
Registration Fee 67
Rehabilitation 97, 115
Re-Identification of Official
Vaccinates 18
Requesting Copies, Records of
Proceedings 63
Required Records, Records of
Proceedings 63
Requirements for Awarding a
Loan 119
Reserve Capacity 97, 115
Restrain 18
Restricted Movement Permit 18
Review & Evaluation Of Grant
Applications 86, 135
Routine Activities Exempt 31

S

Service Suspension, Talking Book
Service 41
Serving Subpoenas 63
Sewer Use Ordinance/Sewer Use
Resolution 97
Spot & Baled Agricultural Residue Burn
Permit 69
Spot Burn, Baled Agricultural Residue
Burn, & Propane Flaming
Permits 68
State 115
State Animal Health Official 18
State/Federal Animal Health
Laboratory 18
Submission of Application, Loan
Application & Review 102, 120
Submission of Application, Review &
Evaluation of Grant
Applications 86, 135
Subpoenas 63
Supplemental Grants 97, 100
Supplier or Provider of Water 115
Suspect 18
Suspension 115
Sustainability 83, 97, 132
Swine 18

T

Talking Book Service (TBS) 40
Tax Exemption For New Capital
Investments 53
Tax Levy -- Certification -- Urban
Renewal Districts 54
Technical Capability 115
Temporary Certification, Medication
Assistant - Certified 36
Termination 97, 115
Terms of Agreement, Grant Offer &
Acceptance 91, 140
Terms of Loan Offers 125
Terms of Loan Offers, Loan Offer &
Acceptance 108
Testing Requirements Within The
DSA 20
Time Limit 31

U

Use of Environmental Reviews
Conducted by Other Agencies 107,
125, 139
Use of Environmental Reviews
Conducted by Other Agencies,
Environmental Review 90
User Charge System 97, 116

V

Validity of Review 139
Validity of Review, Environmental
Review 125

W

Waiver Of Requirements &
Amendment Of Integrated Priority
List 109
Waiver Services Needed 22
Waivers 127
Wastewater 97
Wastewater Treatment Facility 98
Wastewater Treatment Facility
Funding, Project Funding 101
Water Contamination, Waivers 110
Water Pollution Control Project 98
Water System Protection
Ordinance 116
Water Treatment Plant 116
Well Treatment Defined 30
Well Treatments 30
Well Treatments Within Public
Drinking Water System Delineated
Well Capture Zones 33
Wild Bison 18
Wild Elk 18