

IDAHO ADMINISTRATIVE BULLETIN

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Preface

The Idaho Administrative Bulletin is published once each month by the Department of Administration, Office of the Administrative Rules Coordinator, pursuant to Section 67-5203, Idaho Code. The Bulletin is a compilation of all administrative rulemaking documents in Idaho. The Bulletin publishes the official text notice and full text of such actions.

State agencies are required to provide public notice of rulemaking activity and invite public input. The public receives notice of a rulemaking activity through the Idaho Administrative Bulletin and the Legal Notice published monthly in local newspapers. The Legal Notice provides reasonable opportunity for public input, either oral or written, which may be presented to the agency within the time and manner specified in the Legal Notice. After the comment period closes, the agency considers fully all information submitted in regard to the rule. Comment periods are not provided in temporary or final rulemaking activities.

CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

The Bulletin is cited by year and issue number. For example, Bulletin 00-1 refers to the first Bulletin issued in calendar year 2000, Bulletin 01-1 refers to the first Bulletin issued in calendar year 2001, etc. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. 1 refers to January; Volume No. 2 refers to February; and so forth. Example: The Bulletin published in January of 2001 is cited as Volume 01-1, the December 1999 Bulletin is cited as Volume 99-12. The March 2000 Bulletin is cited as Volume 00-3.

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 that have been adopted and 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 **not** printed in the Administrative Code and are published only in the Bulletin.*

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

TYPES OF RULEMAKINGS PUBLISHED IN THE ADMINISTRATIVE BULLETIN

The state of Idaho administrative rulemaking process comprises five distinct activities; Negotiated, Proposed, Temporary, Pending, and Final rulemaking. Not all rulemakings consist of all five. At a minimum a rulemaking includes proposed, pending, and final rulemaking. Many rules are adopted as temporary rules when meeting 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 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 a consensus on the content of the rule. Agencies are encouraged to proceed through this informal rulemaking whenever it is feasible to do so. Publication of the text in the Administrative Bulletin by the agency is optional. This process should lead the rulemaking to the temporary and/or proposed rule stage.

PROPOSED RULEMAKING

A proposed rulemaking is an action by an agency in which 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 proposed rulemaking in the Bulletin. The notice of proposed rulemaking must include:

- a) the specific statutory authority 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) the text of the proposed rule prepared in legislative format;*
- d) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;*
- e) 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;*
- f) the manner in which persons may request an opportunity for an oral presentation; and*
- g) the deadline for public (written) comments on the proposed rule.*

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 unless published in conjunction with a temporary rule docket. An agency may vacate a proposed rulemaking if it decides not to proceed further with the promulgation process.

TEMPORARY RULEMAKING

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

- a) the 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 any one or all of the above requirements, a rule may become effective before it has been submitted to the legislature for review and the agency may proceed and adopt a temporary rule.

A temporary rule expires at the conclusion of the next succeeding regular session of the legislature unless the rule is approved, amended, or modified by concurrent resolution or when the rule has been replaced by a final rule.

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

An agency may rescind a temporary rule that has been adopted and is in effect if the rule is being replaced by a new temporary rule or has been published concurrently with a proposed rulemaking that is being vacated.

PENDING RULEMAKING

A pending rule is a rule that has been adopted by an agency under the regular rulemaking process 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 Pending Rule. This includes:

- a) 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*
- d) an identification of any portion of the rule imposing or increasing a fee or charge.*

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 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 Rule is published.

FINAL RULEMAKING

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

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 the agency has violated the legislative intent of the statute under which the rule was made, a concurrent resolution will be adopted rejecting, amending, or modifying the rule or any part thereof. A Notice of Final Rule must be published in the Idaho Administrative Bulletin for any rule that is rejected, amended, or modified by the legislature showing the changes made. A rule that has been reviewed by the legislature and has not been rejected, amended, or modified will become 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 which is final and effective may be applied retroactively, as provided in the rule.

AVAILABILITY OF THE ADMINISTRATIVE CODE AND BULLETIN

The Idaho Administrative Code and all monthly Bulletins are available for viewing and use by the public in all 44 county law libraries, state university and college and community college libraries, the state law library, the state library, the Public Libraries in Boise, Pocatello, Idaho Falls and Twin Falls, the Lewiston City Library, East Bonner County Library, Eastern Idaho Technical College Library, BYU Idaho Library, and Northwest Nazarene College Library.

SUBSCRIPTIONS AND DISTRIBUTION

For subscription information and costs of publications, 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 Administrative Bulletin is an official monthly publication of the State of Idaho. Yearly subscriptions or individual copies are available for purchase.

The Administrative Code, is an annual compilation or supplemental compilation of all final and enforceable temporary administrative rules and includes tables of contents, reference guides, and a subject index.

Individual Rule Chapters and *Individual Rulemaking Dockets*, are specific portions of the Bulletin and Administrative Code produced on demand.

Internet Access - The Administrative Code and Administrative Bulletin, individual chapters and dockets, are available on the Internet at the following address: <http://www2.state.id.us/adm/adminrules/>

EDITOR'S NOTE: All rules are subject to frequent change. Users should reference all current issues of the Administrative Bulletin for negotiated, temporary, proposed, pending, and final changes to all rules, or call the Office of the Administrative Rules at (208) 332-1820.

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 38.05.01.060.02.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.

"IDAPA 38." refers to the Idaho Department of Administration.

"05." refers to Title 05 which is the Department of Administration's Division of Purchasing.

"01." refers to Chapter 01 of Title 05, "Rules of the Division of Purchasing".

"060." refers to Major Section 060, "Content of the Invitation to Bid".

"02." refers to Subsection 060.02.

"c." refers to Paragraph 060.02.c.

"ii." refers to Subparagraph 060.02.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 "-", (38-0501-0101). 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:

"DOCKET NO. 38-0501-0101"

"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).

"0101" denotes the year and sequential order of the docket submitted and published during the year; in this case the first rulemaking action of the chapter published in calendar year 2001.

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 that is part of the same rule, a typical internal citation may appear as follows:

"...as found in Section 201 of this rule." OR "...in accordance with Subsection 201.06.c. of this rule."

It may also be cited to include the IDAPA, Title, and Chapter number also, 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 agency rule.

"01" denotes the Chapter number of the agency rule.

"201" references the main Section number of the rule that is being cited.

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 2002

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
02-1	January, 2002	*November 14, 2001	January 2, 2002	January 23, 2002
02-2	February, 2002	December 19, 2001	February 6, 2002	February 27, 2002
02-3	March, 2002	January 23, 2002	March 6, 2002	March 27, 2002
02-4	April, 2002	February 20, 2002	April 3, 2002	April 24, 2002
02-5	May, 2002	March 27, 2002	May 1, 2002	May 22, 2002
02-6	June, 2002	April 24, 2002	June 5, 2002	June 26, 2002
02-7	July, 2002	May 22, 2002	July 3, 2002	July 24, 2002
02-8	August, 2002	June 19, 2002	August 7, 2002	August 28, 2002
02-9	September, 2002	July 24, 2002	September 4, 2002	September 25, 2002
02-10	October, 2002	**August 21, 2002	October 2, 2002	October 23, 2002
02-11	November, 2002	September 25, 2002	November 6, 2002	November 27, 2002
02-12	December, 2002	October 23, 2002	December 4, 2002	December 25, 2002

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2003

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03-1	January, 2003	*November 13, 2002	January 1, 2003	January 22, 2003
03-2	February, 2003	December 18, 2002	February 5, 2003	February 26, 2003
03-3	March, 2003	January 22, 2003	March 5, 2003	March 26, 2003
03-4	April, 2003	February 19, 2003	April 2, 2003	April 23, 2003
03-5	May, 2003	March 26, 2003	May 7, 2003	May 28, 2003
03-6	June, 2003	April 23, 2003	June 4, 2003	June 25, 2003
03-7	July, 2003	May 21, 2003	July 2, 2003	July 23, 2003
03-8	August, 2003	June 25, 2003	August 6, 2003	August 27, 2003
03-9	September, 2003	July 23, 2003	September 3, 2003	September 24, 2003
03-10	October, 2003	**August 20, 2003	October 1, 2003	October 22, 2003
03-11	November, 2003	September 24, 2003	November 5, 2003	November 26, 2003
03-12	December, 2003	October 22, 2003	December 3, 2003	December 24, 2003

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

*****Last day to submit proposed rules in order to complete rulemaking for review by legislature.***

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IDAPA 06 - STATE BOARD OF CORRECTION

06.01.01 - RULES OF THE BOARD OF CORRECTION

DOCKET NO. 06-0101-0201

NOTICE OF PROCLAMATION OF RULEMAKING

AUTHORITY: Section 20-212(1), Idaho Code, requires the Idaho State Board of Correction to adopt rules by proclamation. Pursuant to Sections 67-454 and 67-5291, Idaho Code, the rules of the Idaho State Board of Correction are subject to review and approval by the Idaho State Legislature. In accordance with Section 20-212(1) of the Idaho Code, this rule shall become final and effective thirty (30) days after the date of publication in the Idaho Administrative Bulletin.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of this Notice of Proclamation of Rulemaking:

A restructure of the Department of Correction makes necessary a revision to Board of Correction rulemaking, specifically Subsection 010.15, the definition of "Division". The Department of Correction was comprised of five (5) operational units. The Department of Correction has been reorganized into two (2) operational units with seven (7) divisions.

ASSISTANCE OR QUESTIONS: For assistance or questions concerning this rulemaking, contact DeAnna Jones, Rules Coordinator, Department of Correction, at (208) 658-2143 or Fax (208) 327-7496.

DATED this 25th day of June, 2002.

Don Drum, Administrator, Support Division
Idaho Department of Correction
1299 North Orchard, Suite 110
Boise, Idaho 83706
Telephone number: (208) 658-2104
Facsimile number: (208) 327-7496

THE FOLLOWING IS THE TEXT OF DOCKET NO. 06-0101-0201

010. DEFINITIONS.

01. **Administrator.** The exempt employee in authority over a division of the Department. (11-5-99)
02. **Archival Research.** Research requiring access to stored historical data, files, documentation, video or audio tapes, electronically sorted data, or written material. (11-5-99)
03. **Attorney Of Record.** An attorney appointed by a court or retained by an inmate in a legal action. (11-5-99)
04. **Board.** The state Board of Correction. (11-5-99)
05. **Case Management File.** A collection of legal documents, reports, submissions, statements, and support materials used in making decisions about an inmate, parolee, or probationer regarding classification, treatment, programming, management, parole, or clemency decisions. (11-5-99)

- 06. Confidential Mail.** Is mail to or from the president, the governor, the Attorney General or any Assistant or Deputy Attorney General, the Idaho legislature or Congress (except for bulk mailings), the courts, attorneys (except for bulk mailings), the Board, the director, and Department administrators and facility heads. (11-5-99)
- 07. Contact Visiting.** Visiting with an inmate where there are no physical barriers between the visitor and the inmate and the inmate and visitor may be allowed to touch. (11-5-99)
- 08. Contraband.** Any thing of any kind which is prohibited by Board, Department, or facility rules, procedures, or directives. Contraband also includes any thing of any kind which a facility head has not approved for possession by an inmate or which a facility head has not approved to bring in to a facility or on to department property. (11-5-99)
- 09. Contractor.** A person who has entered into a contract with the Board or Department, or a contract with the state of Idaho administered by the Board or Department to provide any service. (11-5-99)
- 10. County Jail.** A detention or holding facility operated by the sheriff of a county. (11-5-99)
- 11. Department.** The state Department of Correction. (11-5-99)
- 12. Department Property.** Real property owned or leased and operated or managed by the Board or Department. (11-5-99)
- 13. Directive.** A sequence of steps within a particular division to implement a procedure. (11-5-99)
- 14. Director.** The director of the Department of Correction. (11-5-99)
- 15. Division.** An operating unit of the Department. The Department divisions are: (11-5-99)
- a. Operations, comprised of Community Corrections, Correctional Industries, Prisons, and Programs; ~~(11-5-99)~~(9-6-02)
- and
- b. Support, comprised of Evaluation and Compliance, Human Resource Services, and Management ~~(11-5-99)~~(9-6-02)
- Services;
- c. ~~Community Corrections;~~ (1-4-02)
- d. ~~Institutional Services; and~~ (7-6-01)
- e. ~~Human Resource Services.~~ (7-6-01)
- 16. Execution.** The carrying out of a sentence of death. (11-5-99)
- 17. Facility.** A building or residence, including the property and land where the building or residence is located, owned or leased and operated or managed by the Board or Department. (11-5-99)
- 18. Facility Head.** The person with primary responsibility to oversee, manage or operate a Department facility. (11-5-99)
- 19. Field Memoranda.** Detailed guidelines to implement directives within a facility or a service unit of a division. (11-5-99)
- 20. General Mail.** All mail other than confidential mail. (11-5-99)
- 21. Health Authority.** The Department employee with primary responsibility to oversee or manage the Department medical services. (11-5-99)

22. **Immediate Family.** The immediate family of an inmate is: (11-5-99)
- a. The mother or father of the inmate, including step parent; (11-5-99)
 - b. The brother or sister of the whole or half (1/2) blood or by adoption or the stepbrother or stepsister of the inmate; (11-5-99)
 - c. The wife or husband of the inmate, as proved by marriage license or other operation of law; (11-5-99)
 - d. The natural child, adopted child or stepchild of the inmate; (11-5-99)
 - e. The grandparents of blood relation to the inmate; or (11-5-99)
 - f. The grandchildren of blood relation to the inmate. (11-5-99)
23. **Intern.** A Student of a recognized college or university who may be involved in a course of study or research project conducted within a facility or service area under the authority of the Board. (11-5-99)
24. **Inmate.** An individual in the physical custody of the Board. (11-5-99)
25. **Inmate Visitor.** A member of the public who is approved to visit with an inmate at a Department facility. (11-5-99)
26. **Legal Assistant.** A person who has been granted permission by the facility head or designee to assist an inmate in a specific legal matter and who is a law student or an employee of an attorney of record, or an employee of a local, state or federal court, or an employee of a legal aid service. (11-5-99)
27. **Literature.** Notices, placards, banners, advertisements, and other writings not generated by the Department for Department distribution. (11-5-99)
28. **Minor.** A individual less than eighteen (18) years old. (11-5-99)
29. **Non-Contact Visiting.** Visiting with an inmate where there are physical barriers between the visitor and the inmate and the inmate and visitor are not allowed to touch. Verbal communication is generally accomplished through telephones, speakers or openings in the physical barrier designed to allow sound to pass. (11-5-99)
30. **Obscene.** Material is considered obscene if it: (11-5-99)
- a. Portrays physical contact of a person with the sexual organs of another by genital-genital, oral-genital, digital-anal, digital-genital, anal-genital contact; (11-5-99)
 - b. Portrays the insertion of foreign objects into the anus or vagina; (11-5-99)
 - c. Portrays the discharge of bodily fluids; (11-5-99)
 - d. Portrays bestiality; (11-5-99)
 - e. Portrays sexual contact with a minor under age eighteen (18) or a person who appears to be under the age of eighteen (18); (11-5-99)
 - f. Portrays violent activity in a sexual context; or (11-5-99)
 - g. Portrays an act where one (1) of the participants appears to be non-consenting to the act. (11-5-99)

31. **Offender.** A person under the legal care, custody, supervision or authority of the Board including a person within or without the state pursuant to agreement with another state or a contractor. (11-5-99)
32. **Parole Commission.** The Idaho Commission of Pardons and Paroles. (11-5-99)
33. **Parolee.** An offender who is released from a facility to a period of supervision upon grant of parole by a paroling authority. (11-5-99)
34. **Penological Interests.** The security, programmatic, and rehabilitative interests of the Board and the Department. (11-5-99)
35. **Person.** An individual, corporation, governmental entity or organization, however organized or constituted. (11-5-99)
36. **Photo Identification.** A state issued driver's license, a state issued identification card displaying a photograph, a military issued identification card displaying a photograph or, a current valid passport. (11-5-99)
37. **Post Order.** A detailed set of guidelines and procedures for each post or area of employee assignment which governs and explains the duties of the employee assigned to the post or area of responsibility. (11-5-99)
38. **Probationer.** An offender who is placed on a period of supervision on probation by a court of competent jurisdiction. (11-5-99)
39. **Procedure.** A sequence of steps or actions to be followed to implement and support a rule or policy. (11-5-99)
40. **Public.** A person in the general public. For purposes of these rules public does not include offenders, contractors, vendors, volunteers, interns, or the employees of the Board, Department or, Parole Commission. (11-5-99)
41. **Public Information Officer.** An employee of the Department designated by the director to be the primary contact person from whom the public and media may request information. (11-5-99)
42. **Research Activities.** Activities which systematically investigate a phenomenon or series of phenomena. (11-5-99)
43. **Research On Human Subjects.** Research requiring access to, and participation of, employees of the Department or offenders. (11-5-99)
44. **Tobacco Products.** Cigarettes, whether packaged or hand rolled, cigars, snuff, chew, or any other variation of a product containing tobacco. (11-5-99)
45. **Vendor.** A person who supplies goods or services to the Board or any operation or facility under the authority of the Board. (11-5-99)
46. **Visiting Staff.** Employees of the Department or the Parole Commission conducting business in the Department central office building on a regular or irregular basis. (11-5-99)
47. **Visitor.** A member of the public as defined herein who is approved to visit a department facility. (11-5-99)
48. **Volunteer.** A person who has volunteered or donated time or services to the Board or a Department operation or facility. (11-5-99)
49. **Work Site.** Any place where inmates may be found when assigned to a work project. (11-5-99)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.02.04 - RULES GOVERNING PLUMBING SAFETY INSPECTIONS

DOCKET NO. 07-0204-0201

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is May 1, 2002.

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 regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-2605(1), 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 August 21, 2002.

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 rule change replaces the outdated May 1990 5th Edition Cross Connection Control Manual with the most current edition; the December 1995 6th Edition Cross Connection Control Manual. The Cross Connection Control Manual is published by the Pacific Northwest Section of the American Water Works Association (AWWA).

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

For the protection of the public health, safety, and welfare, as well as conferring a benefit to the public by keeping the Bureau's rules as up to date as possible.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule change adopts an updated version of a reference book already in rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Ted Hogander, Plumbing Bureau Chief, 332-7154.

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 August 28, 2002.

DATED this 19th day of June 2002.

Dave Munroe, Administrator
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
Phone: (208) 334-3951
Fax: (208) 855-2164

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0204-0201

012. REQUIREMENTS IN ADDITION TO THE PLUMBING CODE.

01. Cross Connection Control Manual. The "Cross Connection Control Manual" published by the Pacific Northwest Section of the American Water Works Association (~~May~~December, 1990~~5~~6th Edition) is hereby adopted as the standard for cross connection control and back flow prevention devices. (~~12-29-91~~)(5-1-02)T

02. Jurisdiction/Septic Systems. Septic tank and drain fields: Under the definition of a plumbing system as set forth in Section 54-2604(h), Idaho Code, the plumbing contractor's interest and responsibility ceases with the "connection" to the septic tank. (11-14-85)

03. Waste Disposal. The Department of Health and Welfare is the inspection authority on waste disposal. (6-4-76)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.02.06 - RULES CONCERNING UNIFORM PLUMBING CODE

DOCKET NO. 07-0206-0201

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective dates of the temporary rule is June 1, 2002 and November 1, 2002.

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 regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-2605(1), 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 August 21, 2002.

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 proposed rule changes replace the word "adoption" with the words "incorporation by reference" and state where copies of the 2000 Uniform Plumbing Code can be found. They also provide consistency between the administrative rules of the Plumbing Bureau and those of the state's Health Districts. Additionally, the proposed rule changes protect the public from potential health hazards by providing consistency between state statute and the 2000 Uniform Plumbing Code.

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

For the protection of the public health, safety, and welfare, as well as conferring a benefit to the public by keeping the Plumbing Bureau's rules consistent with those of the state's Health Districts and the 2000 Uniform Plumbing Code.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule changes update the Plumbing Bureau's rules to provide consistency. However, the industries affected were represented at the February 1, 2002 and May 3, 2002 Idaho Plumbing Board Meetings, at which the rule changes were discussed.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Ted Hogander, Plumbing Bureau Chief, 332-7154.

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 August 28, 2002.

DATED this 19th day of June 2002.

Dave Munroe, Administrator
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
Phone: (208) 334-3951
Fax: (208) 855-2164

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0206-0201

011. ~~ADOPTION~~ INCORPORATION BY REFERENCE OF THE 2000 UNIFORM PLUMBING CODE. The 2000 Uniform Plumbing Code, including Appendices “A, B, C, D, E, G, H, I, J, and L,” is ~~adopted~~ incorporated by reference with the following amendments. The 2000 Uniform Plumbing Code is available at the Division of Building Safety, 1090 E. Watertower St., Meridian, Idaho 83642; the Division of Building Safety, 611 Wilson, Ste. 4-C, Pocatello, Idaho 83201; and the Division of Building Safety, 1250 Ironwood Dr., Ste. 220, Coeur d’Alene, Idaho 83814. ~~(3-15-02)(6-1-02)T~~

01. Section 218. Delete definition of “Plumbing System.” Incorporate definition of “Plumbing System” as set forth in Section 54-2604, Idaho Code. (3-15-02)

02. Section 420.0. Pressure balance or thermostatic mixing valves are not required for high flow (over eight (8) g.p.m.) tub filler valves with hand shower sets attached. (3-15-02)

03. Section 604.1. Materials. Crosslinked Polyethylene (PEX) Tubing manufactured to ASTM – F876/F877 and tested, approved, and listed to ANSI/NSF 14 and 61, for potable water, and Crosslinked Polyethylene, Aluminum Crosslinked Polyethylene (PEX/AL/PEX) along with Polyethylene, Aluminum, Polyethylene (PE/AL/PE) manufactured to ASTM – F1281/F1282 and tested, approved, and listed to the ANSI/NSF 61, for potable water along with all applicable installation standards may be used for hot and cold water distribution systems within a building or cold water distribution systems outside of a building. Listed PE (polyethylene) water service and yard piping may be installed within a building (above ground and below ground) with one (1) joint, provided that only listed and approved metallic transition fittings shall be used. (3-15-02)

04. Section 609.10. Water hammer. Does not apply to residential construction. (7-1-98)

05. Table 6-4 And Table A-2. Change fixture unit loading value for bathtub or combination bath/shower, and clotheswashers to two (2) fixture units. (3-15-02)

06. Section 610.2. All new one (1) and two (2) family residences must have a pre-plumbed water softener loop. The kitchen sink must have one (1) hot soft line and one (1) cold soft line and one (1) cold hard line. Exterior cold hose bibbs intended for irrigation purposes must be piped with hard water. Provisions must be made for the discharge of the water softener to terminate in an approved location. (11-1-02)T

067. Table 7-3. Maximum unit loading and maximum length of drainage and vent piping. (EXCEPTION) The building drain and building sewer is not less than four (4) inches extending from its connection with the city or private sewer system and shall run full size to inside the foundation or building lines (ref: Section 717.0). Change fixture unit loading value for clotheswashers, domestic to two (2) fixture units. (3-15-02)

078. Section 703.1 - Underground Drainage And Vent Piping. No portion of the drainage or vent system installed underground, underground under concrete or below a basement or cellar shall be less than two (2) inches in diameter. (3-15-02)

089. Section 703.2 And 710.5. Add Exception. In single family dwellings, one (1) fixture unit may be allowed for each gallon per minute of flow from a pump or a sump ejector. (3-15-02)

0910. Section 704.2. Double sanitary tees may be used for back to back or side by side fixture trap arms without increasing the barrel size. (7-1-98)

11. Section 704.3. Delete. (6-1-02)T

102. Table 7-5. Change fixture unit loading value for one and a half (1 1/2) inch horizontal drainage to two (2) fixture units. (7-1-98)

~~143.~~ **Section 707.4 Cleanouts.** A full-sized accessible cleanout shall be installed in the vertical immediately above the floor or at the base of each waste or soil stack. A full-size cleanout extending to or above finished grade line shall be installed at the junction of the building drain and the building sewer (ref.: Section 719.1). Cleanouts shall be installed at fifty (50) foot intervals in horizontal drain lines two (2) inches or smaller. (3-15-02)

~~124.~~ **Sections 722.2, 722.3, 722.4, 722.5, and 722.6.** Delete. (3-15-02)

15. **Section 801.2.3.** Add: Food preparation sinks, pot sinks, scullery sinks, dishwashing sinks, silverware sinks, commercial dishwashing machines, silverware-washing machines, steam kettles, potato peelers, ice cream dipper wells, and other similar equipment and fixtures must be indirectly connected to the drainage system by means of an air gap. The piping from the equipment to the receptor must not be smaller than the drain on the unit, but it must not be smaller than one (1) inch (twenty-five point four (25.4) mm). (6-1-02)T

~~136.~~ **Section 807.4.** A domestic dishwashing machine may be installed without the use of an airgap if the drain hose is looped to the bottom side of the counter top and secured properly. (3-15-02)

~~147.~~ **Section 908. Exception - Vertical Wet Venting.** A horizontal wet vent may be created provided it is created in a vertical position and all other requirements of Section 908 are met. (7-1-98)

~~158.~~ **Section 1002.3.** Trap arms may not exceed one hundred eighty (180) degrees of horizontal turn without the use of a cleanout. (3-15-02)

IDAPA 09 - IDAHO DEPARTMENT OF LABOR

09.01.06 - RULES OF THE APPEALS BUREAU

DOCKET NO. 09-0106-0201

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective May 1, 2002.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 72-1333(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 August 21, 2002.

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 change is to provide an exception to IDAPA 09.01.06.012 for filing of a timely appeal. If a party establishes that but for an error by the U.S. Postal Service the appeal would have been postmarked timely, the appeal will be considered timely.

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

IDAPA 09.01.06.012 is being changed in response to the March 12, 2002, Idaho Supreme Court decision in Moore v. Melaleuca, 43 P.3d 782. This decision recognizes an exception to the Department's postmark rule for timely appeals and will confer a benefit to these appellants.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule is being changed in response to an Idaho Supreme Court decision.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Evelyn Thomas at 208/332-3570 ext. 3138.

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 August 28, 2002.

DATED this 19th day of June, 2002.

Tom Valasek
Administrator
Administrative Services
Idaho Department of Labor
317 W. Main St.
Boise, ID 83735
208/332-3570 ext. 3437
208/334-6430 Fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 09-0106-0201

012. FILING OF AN APPEAL.

01. Filing Of An Appeal Pursuant To The Employment Security Law. An appeal shall be in writing, signed by an interested party or representative, and shall contain words that, by fair interpretation, request the appeal process for a specific determination, redetermination or decision of the Department. The appeal may be filed by delivering it, or faxing it, to any Job Service office or to the Appeals Bureau of the Department, 317 W. Main Street, Boise, Idaho 83735-0720. The date of personal delivery shall be noted on the appeal and shall be deemed the date of filing. A faxed appeal that is received by a Job Service office or the Appeals Bureau by 5:00 p.m. (as of the time zone of the office receiving the appeal) on a business day shall be deemed filed on that date. A faxed appeal that is received by a Job Service office or the Appeals Bureau on a weekend or holiday or after 5:00 p.m. on a business day shall be deemed filed on the next business day. An appeal may also be filed by mailing it to any Job Service office or to the Appeals Bureau, Idaho Department of Labor, 317 W. Main Street, Boise, Idaho 83735-0720. If mailed, the appeal shall be deemed to be filed on the date of mailing as determined by the postmark on the ~~request~~ envelope containing the appeal, unless a party establishes by a preponderance of the evidence that but for error by the U.S. Postal Service, the envelope would have been postmarked within the period for timely appeal. If such a postal error is established, the appeal shall be deemed to be timely filed. Ref. Sec. 72-1368(6), Idaho Code.

~~(4-5-00)~~(5-1-02)T

02. Filing Of An Appeal Pursuant To The Claims For Wages Act. An appeal shall be in writing, signed by the appellant or the appellant's representative, and shall contain words that, by fair interpretation, request the appeal process for a specific determination or revised determination of the Department. The appeal may be filed by personal delivery, by mail, or by fax to the Wage and Hour Section of the Department at the address indicated on the Wage Claim Determination. The date of personal delivery shall be noted on the appeal and shall be deemed the date of filing. If mailed, the appeal shall be deemed to be filed on the date of mailing as determined by the postmark. A faxed appeal that is received by the Wage and Hour Section by 5:00 p.m. on a business day shall be deemed filed on that date. A faxed appeal that is received by the Wage and Hour Section on a weekend, holiday or after 5:00 p.m. on a business day shall be deemed filed on the next business day. Ref. Sec. 45-617(6), Idaho Code. (4-5-00)

03. Date Of Mailing. The "Date of Mailing" or "Date Mailed". The date indicated on Department determinations, revised determinations, redeterminations and decisions shall be presumed to be the date the document was deposited in the United States mail, unless shown otherwise by a preponderance of competent evidence. (4-5-00)

IDAPA 11 - IDAHO STATE POLICE

11.11.02 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL FOR JUVENILE DETENTION OFFICERS

DOCKET NO. 11-1102-0201

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective October 1, 2001.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 19-5107, 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 August 21, 2002.

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:

Adds newly-required sections in reference to incorporation by reference, office, office hours, mailing address, street address, and public records act compliance.

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

Protection of the public health, safety, or welfare.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Michael N. Becar at (208) 884-7251.

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 August 28, 2002.

DATED this 14th day of June, 2002.

Michael N. Becar
Executive Director
Idaho State Police
Peace Officer Standards and Training
700 South Stratford Drive
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7251
(208) 884-7295 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1102-0201

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into this rule.

(10-1-01)T

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

01. Idaho State Police, Peace Officer Standards And Training. The principal place of business of the Idaho State Police, Peace Officer Standards and Training, is in Meridian, Idaho. The office is located at 700 South Stratford Drive, Meridian, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is: Peace Officer Standards and Training Academy, P.O. Box 700, Meridian, Idaho 83680-0700. The telephone of the office is (208) 884-7250. The facsimile number of the office is (208) 884-7295.

(10-1-01)T

02. Idaho Department Of Juvenile Corrections. The principal place of business of the Idaho Department of Juvenile Corrections is in Boise, Idaho. The office is located at 400 North 10th Street, Second Floor, Boise, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is: Idaho Department of Juvenile Corrections, P.O. Box 83720, Boise, Idaho 83720-0285. The telephone of the office is (208) 334-5100. The facsimile number of the office is (208) 334-5120.

(10-1-01)T

006. PUBLIC RECORDS ACT COMPLIANCE.

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records.

(10-1-01)T

007. -- 009. (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. 16-0305-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 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, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 56-1004(1), Idaho Code.

DESCRIPTIVE SUMMARY: The pending rules are being adopted as proposed. The original text of the proposed rules was published in the May Idaho Administrative Bulletin, Volume 02-5, pages 38 through 43.

The Department of Health and Welfare received a sufficient number of requests for public hearings during the comment period pursuant to Section 67-5222(1), Idaho Code. However, no hearings have been scheduled for the proposed rule amendments pursuant to Section 67-5222(2)(a), Idaho Code, which provides that no public hearings are required if the agency has no discretion as to the substantive content of the proposed rule because the rule is intended to solely comply with a controlling judicial decision or court order.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Phil Gordon, (208) 334-5818.

DATED this 17th day of June, 2002.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Legal Services Division
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

IDAPA 16, TITLE 03, Chapter 05

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

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-5, May 1, 2002, pages 38 through 43.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

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

DOCKET NO. 16-0305-0202

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective July 1, 2002.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 56-201 through 56-233, Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, 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 August 21, 2002.

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 is a non-technical explanation of the substance and purpose of the proposed rulemaking of the following changes:

- 1) Defines an asset transfer for sole benefit of a spouse, blind or disabled child or disabled individual.
- 2) Adds current student child earned income disregard and current forty dollars (\$40) nursing home personal needs allowance to two rules overlooked in previous rulemaking.
- 3) Provides a higher income deduction for a Medicaid-eligible veteran in a State or private nursing home. The deduction reduces income used to calculate the veteran's share of the cost of his nursing home care.
- 4) Provides that "end of treatment" for a woman eligible for Medicaid through the Breast and Cervical Cancer program is determined by the Division of Medicaid. Eligibility for Medicaid through the Breast and Cervical Cancer program ends when treatment ends.
- 5) Repeals an obsolete rule providing coverage to a group of individuals receiving early widow's or widower's Social Security.
- 6) Provides a definition of "reasonable and ordinary monthly needs" for evaluating the purchase of an annuity as an asset transfer. Provides that an irrevocable annuity is an asset transfer if it does not provide fair market value to the participant and if any other individual or entity benefits from the transfer.
- 7) Provides that an asset transfer penalty is not imposed if the individual proves the transfer was made for another purpose than qualifying for Medicaid. Provides that an annuity must be a single premium annuity unless such annuities were not available at the time of purchase or it's not practical to exchange the annuity for a single premium annuity.

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 the public comment should be addressed.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Sections 67-5226(1)(a), 5226(1)(b), and 5226(1)(c), Idaho Code and are necessary in order to protect public health, safety and welfare, to comply with deadlines in amendments to governing law and federal programs, and to confer a benefit to the public.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted due to the nature of the changes and to comply with governing law and federal programs.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Phil Gordan, Acting Chief, Bureau of Benefit Program Operations at (208) 334-5818.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be

directed to the undersigned and must be postmarked on or before August 28, 2002.

DATED this 17th day of June, 2002.

Sherri Kovach
Administrative Procedures Coordinator
DHW – Administrative Procedures Section
450 West State Street, 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0305-0202

005. DEFINITIONS.

These definitions apply to IDAPA 16.03.05, “Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)”:

01. AABD Cash. An EBT payment to a participant, a participant’s guardian, or a holder of a limited power of attorney for EBT payments. ~~(7-1-99)~~(7-1-02)T

02. Applicant. A person applying for public assistance from the Department, and whose application is not fully processed. (7-1-99)

03. Asset Transfer For Sole Benefit. An asset transfer is considered to be for the sole benefit of a spouse, blind or disabled child, or disabled individual if the transfer is arranged in such a way that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of transfer or at any time in the future. (7-1-02)T

034. Child. A child is under age eighteen (18), or under twenty-one (21) and attending school, college, university, or vocational or technical training designed to prepare him for gainful employment. A child is not married. A child is not the head of a household. (7-1-99)

045. Department. The Department of Health and Welfare. (7-1-99)

056. Direct Deposit. The electronic deposit of a participant’s AABD cash to the participant’s personal account with a financial institution. (7-1-99)

067. Electronic Benefits Transfer (EBT). A method of issuing AABD cash to a participant, a participant’s guardian or a holder of a limited power of attorney for EBT payments for a participant. EBT rules are in IDAPA 16.03.20, “Rules Governing Electronic Benefits Transfer (EBT) of Public Assistance and Food Stamps”. (7-1-99)

078. Essential Person. A person of the participant’s choice whose presence in the household is essential to the participant’s well-being. The essential person provides the services a participant needs to live at home. ~~(7-1-99)~~(7-1-02)T

089. Fair Market Value. The ~~F~~fair market value of an asset is the price for which the asset can be reasonably expected to sell on the open market, in the geographic area involved. ~~(3-15-02)~~(7-1-02)T

0910. Medicaid. The Federally ~~aided~~ funded program for medical care (Title XIX, Social Security Act) ~~(7-1-99)~~(7-1-02)T

101. Medical Assistance Rules. Idaho Department of Health and Welfare Rules, IDAPA 16.03.09, "Rules Governing Medical Assistance". (7-1-99)

112. Medicaid For Families With Children Rules. Idaho Department of Health and Welfare Rules, IDAPA 16.03.01, "Rules Governing Eligibility for Medicaid for Families and Children". (7-1-99)

123. Participant. An individual applying for or receiving assistance. (7-1-99)

134. Sole Beneficiary. The only beneficiary of a trust, including a beneficiary during the grantor's life, a beneficiary with a future interest, and a beneficiary by the grantor's will. (7-1-99)

145. TAFI Rules. Idaho Department of Health and Welfare Rules, IDAPA 16.03.08, "Rules Governing Temporary Assistance for Families in Idaho". (7-1-99)

156. Working Day. A calendar day when regular office hours are observed by the state of Idaho. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

451. DEEMING INCOME.

Income deeming counts the income of another person as available to an AABD participant, for eligibility and the amount of AABD cash. Income is deemed to the participant from his ineligible spouse. Income is deemed to the child participant from his ineligible parent. Income deeming starts the first full calendar month the participant is in a deeming situation. Deeming ends the first full calendar month the participant is not in a deeming situation. Deeming to a child ends the month after the child's eighteenth birthday. (7-1-99)

01. Ineligible Parent. A natural or adoptive father or mother, or a stepparent, who does not receive AABD and lives in the same household as a child. (7-1-99)

02. Ineligible Spouse. A participant's husband or wife, living with the participant, not receiving AABD is an ineligible spouse. The ineligible husband or wife, of the parent of a child participant, living with the child participant and his parent, is an ineligible spouse. (7-1-99)

03. Ineligible Child. A child under age twenty-one (21) who does not receive AABD, and lives with the AABD participant. (7-1-99)

04. Income Deeming Exclusions. Income excluded from deeming is listed in Table 451.04.

TABLE 451.04 - INCOME DEEMING EXCLUSIONS			
Type of Income	Ineligible Spouse or Parent, Ineligible Child, Eligible Legal Non-citizen	Essential Person	Sponsor of Legal Non-citizen
Income excluded by Federal laws other than the Social Security Act.	Excluded	Excluded	Excluded

TABLE 451.04 - INCOME DEEMING EXCLUSIONS			
Type of Income	Ineligible Spouse or Parent, Ineligible Child, Eligible Legal Non-citizen	Essential Person	Sponsor of Legal Non-citizen
Public Income Maintenance Payments (PIM). Public income maintenance payments include TAFI, AABD, SSI, refugee cash assistance, BIA-GA, VA payments based on need, local, county and state payments based on need, and payments under the 1974 Disaster Relief Act.	Excluded	Not Excluded	Not Excluded
Income used by a PIM program for amount of payment to someone other than an SSI recipient.	Excluded	Not Excluded	Not Excluded
Grants, scholarships, fellowships.	Excluded	Not Excluded (unless excluded by Federal laws)	Not Excluded (unless excluded by Federal laws)
Foster care payments.	Excluded	Not Excluded	Not Excluded
Food Stamps and Dept. of Agriculture donated foods.	Excluded	Not Excluded	Not Excluded
Home grown produce.	Excluded	Not Excluded	Not Excluded
Tax refunds on real property or food.	Excluded	Not Excluded	Not Excluded
Income used in an approved plan for achieving self support (PASS).	Excluded	Not Excluded	Not Excluded
Income used to pay court ordered or Title IV-D support payments.	Excluded	Not Excluded	Not Excluded
Payments based to Alaskans based on age and residence.	Excluded (not applicable to children)	Not Excluded	Not Excluded
Disaster Assistance.	Excluded	Excluded	Excluded
Infrequent or irregular income.	Excluded	Not Excluded	Not Excluded
Blind Work Expenses (BWE).	Excluded	Not Excluded	Not Excluded
Payments to provide in-home support.	Excluded	Not Excluded	Not Excluded
Home energy assistance and support and maintenance assistance.	Excluded	Excluded	Excluded
Child's earned income, up to one thousand four <u>one thousand and ninety</u> dollars (\$ 1,400 <u>1,490</u>) per month and one five <u>six</u> thousand two hundred and twenty <u>two hundred and twenty</u> dollars (\$ 15,620 <u>15,620</u>) per year.	Excluded (not applicable to spouses or parents)	Does Not Apply	Does Not Apply
Impairment-related work expenses (IRWE).	Excluded	Not Excluded	Not Excluded
Interest on burial funds, appreciation in the value of burial space purchase agreements excluded from resources and interest on the value of burial space purchase agreements.	Excluded	Not Excluded	Not Excluded

(7-1-99)(7-1-02)T

(BREAK IN CONTINUITY OF SECTIONS)

723. PATIENT LIABILITY FOR PERSON WITH NO COMMUNITY SPOUSE.

For a participant with no community spouse, patient liability is computed as described in Subsections 723.01 through 723.03 of this rule. ~~(7-1-99)~~(7-1-02)T

01. Income Of Participants In Long-Term Care. For a single participant, or participant whose spouse is also in long-term care and chooses the SSI method of calculating the amount of income and resources, the patient liability is his total income less the deductions in Subsection 723.03 of this rule. ~~(7-1-99)~~(7-1-02)T

02. Community Property Income Of Long-Term Care Participant With Long-Term Care Spouse. Patient liability income for a participant, whose spouse is also in long-term care, choosing the community property method, is one-half (1/2) his share of the couple's community income, plus his own separate income. The deductions in Table 723.03 are subtracted from his income. (7-1-99)

03. Income Of Participant In Facility. A participant residing in the long-term care facility at least one (1) full calendar month, beginning with his most recent admission, must have the deductions in Subsection 723.03 subtracted from his income, after the AABD exclusions are subtracted from the income. Total monthly income includes income paid into an income (Miller) trust that month. The income deductions must be subtracted in the order listed. Remaining income is patient liability. (3-15-02)

a. AABD Income Exclusions. Subtract income excluded in determining eligibility for AABD cash. (7-1-99)

b. Aid and Attendance and UME Allowances. Subtract a VA Aid and Attendance allowance and Unusual Medical Expense (UME) allowance for a veteran or surviving spouse, unless the veteran lives in a state operated veterans' home. (3-30-01)

c. SSI Payment Two (2) Months. Subtract the SSI payment for a participant entitled to receive SSI at his at-home rate for up to two (2) months, while temporarily in a long-term care facility. (7-1-99)

d. AABD Payment. Subtract the AABD payment, and income used to compute the AABD payment, for a participant paid continued AABD payments up to three (3) months in long-term care. (7-1-99)

e. Protected First Ninety (\$90) Dollars of VA Pension. Subtract the first ninety (\$90) dollars of a protected VA pension for a veteran with no spouse or dependents or for a surviving spouse with no dependents in a private long-term care facility or a State Veterans Nursing Home. ~~(7-1-99)~~(7-1-02)T

f. Personal Needs. Subtract forty dollars (\$40) for the participant's personal needs. For a veteran or surviving spouse ~~with a protected in a private long-term care facility or a State Veterans Nursing Home the first ninety (\$90) dollars of VA pension, the protected pension~~ substitutes for the forty dollar (\$40) personal needs deduction. ~~(3-15-02)~~(7-1-02)T

g. Employed and Sheltered Workshop Activity Personal Needs. For an employed participant or participant engaged in sheltered workshop or work activity center activities, subtract the lower of the personal needs deduction of two hundred dollars (\$200) or his gross earned income. The participant's total personal needs allowance must not exceed two hundred and thirty dollars (\$230). For a veteran or surviving spouse with sheltered workshop or earned income, and a protected VA pension, the total must not exceed two hundred dollars (\$200). This is a deduction only. No actual payment can be made to provide for personal needs. (3-30-01)

h. Home Maintenance. Subtract two hundred and twelve dollars (\$212) for home maintenance cost if the participant had an independent living situation, before his admission for long-term care. His physician must certify in writing the participant is likely to return home within six (6) months, after the month of admission to a long-

term care facility. This is a deduction only. No actual payment can be made to maintain the participant's home. (7-1-99)

i. Maintenance Need. Subtract a maintenance need deduction for a family member, living in the long-term care participant's home. A family member is claimed, or could be claimed, as a dependent on the Federal Income Tax return of the long-term care participant. The family member must be a minor or dependent child, dependent parent, or dependent sibling of the long-term care participant. The maintenance need deduction is the AFDC payment standard for the dependents, computed according to the AFDC State Plan in effect before July 16, 1996. (7-1-99)

j. Medicare and Health Insurance Premiums. Subtract expenses for Medicare and other health insurance premiums, and deductibles or coinsurance charges, not subject to payment by a third party. Deduction of Medicare Part B premiums is limited to the first two (2) months of Medicaid eligibility. Medicare Part B premiums must not be subtracted, if the participant got SSI or AABD cash the month prior to the month for which patient liability is being computed. (7-1-99)

k. Mandatory Income Taxes. Subtract taxes mandatorily withheld from unearned income for income tax purposes. To qualify for deduction of mandatory taxes, the tax must be withheld from income before the participant receives the income. (7-1-99)

l. Guardian Fees. Subtract court-ordered guardianship fees of the lesser of ten percent (10%) of the monthly benefit handled by the guardian, or twenty-five dollars (\$25). Where the guardian and trustee are the same person, the total deduction for guardian and trust fees must not exceed twenty-five dollars (\$25) monthly. (7-1-99)

m. Trust Fees. Subtract up to twenty-five dollars (\$25) monthly paid to the trustee for administering the participant's trust. (7-1-99)

n. Impairment Related Work Expenses. Subtract impairment-related work expenses for an employed participant who is blind or disabled under AABD criteria. Impairment-related work expenses are purchased or rented items and services, purchased or rented to perform work. The items must be needed because of the participant's impairment. The actual monthly expense of the impairment-related items is subtracted. Expenses must not be averaged. (7-1-99)

o. Income Garnished for Child Support. Subtract income garnished for child support to the extent the expense is not already accounted for in computing the maintenance need standard. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

725. PATIENT LIABILITY FOR PARTICIPANT WITH COMMUNITY SPOUSE.

After income ownership is decided, patient liability is determined using steps in Table 725.

TABLE 725 - INCOME DEDUCTIONS FOR PARTICIPANT IN FACILITY		
Step	Procedure	
01.	AABD Income Exclusions	Subtract income excluded in determining eligibility for AABD cash.
02.	Aid and Attendance and UME Allowances	Subtract a VA Aid and Attendance allowance and Unusual Medical Expense (UME) allowance for a veteran or surviving spouse, unless the veteran lives in a state operated veterans' home.
03.	SSI Payment Two (2) Months	Subtract the SSI payment for a participant entitled to receive SSI at his at-home rate for up to two (2) months, while temporarily in a long-term care facility.

TABLE 725 - INCOME DEDUCTIONS FOR PARTICIPANT IN FACILITY		
Step	Procedure	
04. AABD Cash	Subtract the AABD cash payment and income used to compute AABD cash, for a participant eligible to have his AABD cash continued up to three (3) months, while he is in long-term care.	
05. Protected VA Pension	Subtract a protected the first ninety (90\$) of the VA pension for a veteran with no spouse or dependents or for a surviving spouse with no dependents.	
06. Personal Needs	Subtract thirty forty dollars (\$340) for the participant's personal needs. Do not allow this deduction for a veteran or surviving spouse with a protected VA pension. The protected pension substitutes for the thirty dollar (\$30) personal needs deduction.	
07. Employed and Sheltered Workshop Activity Needs	For an employed participant or participant engaged in sheltered workshop or work activity center activities subtract the lower of two hundred dollars (\$200) or his earned income.	
08. Community Spouse Allowance: Step a.	<p>Compute the Community Spouse Allowance (CSA) using Step a. through Step c.</p> <p>Compute the Shelter Adjustment. Add the current Food Stamp Program Standard Utility Allowance to the community spouse's shelter costs.</p> <p>Shelter costs include rent, mortgage principal and interest, homeowner's taxes, insurance, and condominium or cooperative maintenance charges. The Standard Utility Allowance must be reduced by the value of any utilities included in maintenance charges for a condominium or cooperative. Subtract the Shelter Standard from the shelter and utilities. The Shelter Standard is thirty percent (30%) of one hundred fifty percent (150%) of one-twelfth (1/12) of the income official poverty line defined by the Federal Office of Management and Budget (OMB) for a family of two (2) persons.</p> <p>The Shelter Adjustment is the positive balance remaining.</p>	
09. Community Spouse Allowance: Step b.	<p>Compute the Community Spouse Need Standard (CSNS). Add the Shelter Adjustment to the minimum CSNS. The minimum CSNS equals one hundred fifty percent (150%) of one-twelfth (1/12) of the income official poverty line defined by the OMB for a family unit of two (2) members. The minimum CSNS is revised annually in July. The total CSNS may not exceed the maximum CSNS. The maximum CSNS is computed by multiplying one thousand five hundred dollars (\$1,500) by the percentage increase in the consumer price index for all urban Consumers (all items; U.S. city average) between September 1988 and the September before the current calendar year. The maximum CSNS is revised annually in January.</p>	

TABLE 725 - INCOME DEDUCTIONS FOR PARTICIPANT IN FACILITY		
Step	Procedure	
10. Community Spouse Allowance: Step c.	<p>Compute the Community Spouse Allowance.</p> <p>Subtract the community spouse's gross income from the CSNS. The community spouse's income includes income produced by his resources. Round any remaining cents to the next higher dollar. Any positive balance remaining is the CSA. The CSA is subtracted as actually paid to the community spouse, up to the computed maximum.</p> <p>A larger spouse support amount must be used as the CSA, if court-ordered. The CSA ordered by a court is not subject to the CSA limit.</p>	
11. Family Member Allowance (FMA)	<p>Compute the family member's gross income.</p> <p>Subtract the family member's gross income from the minimum CSNS. Divide the difference by three (3). Round cents to the next higher dollar.</p> <p>Any remainder is the FMA for that family member. The FMA is allowed, whether or not it is actually paid by the participant.</p> <p>A family member is, or could be claimed, as a dependent on the Federal income tax return of either spouse. The family member must be a minor or dependent child, dependent parent or dependent sibling of either spouse. The family member must live in the community spouse's home.</p>	
12. Medicare and Health Insurance Premiums	<p>Subtract expenses for Medicare and other health insurance premiums, and deductibles or coinsurance charges, not subject to payment by a third party. Deduction of Medicare Part B premiums is limited to the first two (2) months of Medicaid eligibility.</p> <p>Do not subtract the Medicare Part B premiums if the participant got SSI or AABD cash the month prior to the month for which patient liability is being computed.</p>	
13. Mandatory Income Taxes	<p>Subtract taxes mandatorily withheld from unearned income for income tax purposes. To qualify for deduction of mandatory taxes, the tax must be withheld from income before the participant receives the income.</p>	
14. Guardian Fees	<p>Subtract court-ordered guardianship fees of the lesser of ten percent (10%) of the monthly benefit handled by the guardian, or twenty-five dollars (\$25). Where the guardian and trustee are the same person, the total deduction for guardian and trust fees must not exceed twenty-five dollars (\$25) monthly.</p>	
15. Trust Fees	<p>Subtract up to twenty-five dollars (\$25) monthly paid to the trustee for administering the participant's trust.</p>	
16. Impairment Related Work Expenses	<p>Subtract impairment-related work expenses for an employed participant who is blind or disabled under AABD criteria.</p> <p>Impairment-related work expenses are purchased or rented items and services, purchased or rented to perform work.</p> <p>The items must be needed because of the participant's impairment. The actual monthly expense of the impairment-related items is subtracted. Expenses must not be averaged.</p>	
17. Income Garnisheed for Child Support	<p>Subtract income garnisheed for child support to the extent the expense is not already accounted for in computing the Family Member Allowance.</p>	

~~(3-30-01)~~(7-1-02)T

(BREAK IN CONTINUITY OF SECTIONS)

802. WOMAN DIAGNOSED WITH BREAST OR CERVICAL CANCER.

A woman not otherwise eligible for Medicaid and meeting the conditions in Subsections 802.01 through 802.06 of this rule is eligible for Medicaid for the duration of her cancer treatment. Medicaid income and resource limits do not apply to this coverage group. ~~(3-15-02)~~(7-1-02)T

01. Diagnosis. The participant is diagnosed with breast or cervical cancer through the Centers for Disease Control and Prevention's National Breast and Cervical Cancer Early detection Program. (3-15-02)

02. Age. The participant is under age sixty-five (65). (3-15-02)

03. Creditable Health Insurance. The participant is uninsured or, if insured, the plan does not cover her type of cancer. (3-15-02)

04. Non-Financial Eligibility. The participant meets the Medicaid non-financial eligibility requirements in Sections 100 through 108 and Sections 166 and 167 of these rules. (3-15-02)

05. Medical Support Cooperation. The participant meets the medical support cooperation requirement in Sections 702 through 706 of these rules. (3-15-02)

06. Group Health Plan Enrollment. The participant meets the requirement to enroll in available cost-effective employer group health insurance. (3-15-02)

07. Presumptive Eligibility. The Department can presume the participant is eligible for Medicaid, before a formal Medicaid eligibility determination is made. A clinic authorized to screen for breast or cervical cancer by the National Breast and Cervical Cancer Early Detection Program makes the presumptive eligibility determination. The clinic tells the participant how to complete the formal Medicaid determination process. The Medicaid notice and hearing rights do not apply to presumptive eligibility. No overpayment occurs if the formal Medicaid determination finds the participant is not eligible. ~~(3-15-02)~~(7-1-02)T

08. End Of Treatment. The Division of Medicaid determines the end of treatment date according to IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Section 013. (7-1-02)T

(BREAK IN CONTINUITY OF SECTIONS)

807. ~~PARTICIPANT RECEIVING EARLY WIDOW'S OR WIDOWER'S SOCIAL SECURITY (RESERVED).~~

~~A participant is eligible for Medicaid if he is entitled to an early widow's or widower's Social Security benefits that makes him ineligible for SSI or AABD cash. The participant must have been at least age sixty (60) but not yet age sixty five (65) when he became eligible for early widow's or widower's Social Security benefits. The participant must have received SSI or AABD cash before age sixty (60). The participant is considered an SSI recipient for Medicaid. (7-1-99)~~

(BREAK IN CONTINUITY OF SECTIONS)

831. ASSET TRANSFER ~~FOR LESS THAN FAIR MARKET VALUE~~ RESULTING IN PENALTY.

Starting August 11, 1993, the participant is subject to a penalty if he transfers his income or resources for less than fair market value. The asset transfer penalty applies to Medicaid services received October 1, 1993 and later. Excluded resources, other than the home and associated property, are not subject to the asset transfer penalty. The

asset transfer penalty applies to a Medicaid participant in long-term care or HCBS. A participant in long-term care is a patient in a nursing facility or a patient in a medical institution, requiring and receiving the level of care provided in a nursing facility. ~~(4-5-00)(7-1-02)T~~

01. Rebuttable Presumption. Unless a transfer meets the requirements of Section 840 of these rules, ~~there is a rebuttable presumption it is presumed~~ that the transfer was made for the purpose of qualifying for Medicaid. The asset transfer penalty is applied unless the participant shows that the asset transfer would not have affected his eligibility for Medicaid or the transfer was made for another purpose than qualifying for Medicaid. ~~(3-15-02)(7-1-02)T~~

02. Contract for Services Provided by a Relative. A contract for personal services to be furnished to the participant by a relative is presumed to be made for the purpose of qualifying for Medicaid. The asset transfer penalty applies unless the participant shows that: (3-15-02)

a. A written contract for personal services was signed before services were delivered. The contract must require that payment be made after services are rendered. The contract must be dated and the signatures notarized. Either party must be able to terminate the contract; and (3-15-02)

b. The contract must be signed by the participant or a legally authorized representative through a power of attorney, legal guardianship or conservatorship. A representative who signs the contract must not be the provider of the personal care services under the contract; and (3-15-02)

c. Compensation for services rendered must be comparable to rates paid in the open market. (3-15-02)

03. Transfer Of Income Or Resources. Transfer of income or resources includes reducing or eliminating the participant's ownership or control of the asset. (4-5-00)

04. Transfer Of Income Or Resources By A Spouse. A transfer by the participant's spouse of either spouse's income or resources, before eligibility is established, subjects the participant to the asset transfer penalty. After the participant's eligibility is established, a transfer by the spouse of the spouse's own income or resources does not subject the participant to the asset transfer penalty. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

837. LIFE ESTATES AND ANNUITIES AS ASSET TRANSFERS.

Conditions for determining if a life estate is an asset transfer for less than fair market value are listed in Subsection 837.01 of this rule. The purchase of an annuity is an asset transfer that is presumed to be made for the purpose of qualifying for Medicaid. The asset transfer penalty applies unless the participant shows the purchase of the annuity would not have affected his eligibility for Medicaid or, the payment from the annuity is not greater than necessary to meet the reasonable and ordinary monthly needs of the beneficiary. For the purposes of Section 837, the reasonable and ordinary monthly needs are those defined by the maximum community spouse allowance at Section 725 of these rules. ~~He~~ The participant must also show that the annuity meets the conditions in Subsections 837.03 and 837.04 of this rule. ~~(3-15-02)(7-1-02)T~~

01. Life Estate. A life estate worth less than the value of the transferred real property is subject to the asset transfer penalty. To compute the value of the life estate, multiply the fair market value of the real property at the time of transfer by the remainder factor for the participant's age at the time of transfer listed in the following table:

TABLE 837.01 - LIFE ESTATE REMAINDER TABLE							
Age	Life Estate Remainder	Age	Life Estate Remainder	Age	Life Estate Remainder	Age	Life Estate Remainder
0	.02812	1	.01012	2	.00983	3	.00922

TABLE 837.01 - LIFE ESTATE REMAINDER TABLE							
Age	Life Estate Remainder	Age	Life Estate Remainder	Age	Life Estate Remainder	Age	Life Estate Remainder
4	.01019	5	.01062	6	.01116	7	.01178
8	.01252	9	.01337	10	.01435	11	.01547
12	.01671	13	.01802	14	.01934	15	.02063
16	.02185	17	.02300	18	.02410	19	.02520
20	.02635	21	.02755	22	.02880	23	.03014
24	.03159	25	.03322	26	.03505	27	.03710
28	.03938	29	.04187	30	.04457	31	.04746
32	.05.058	33	.05.392	34	.05.750	35	.06132
36	.06540	37	.06974	38	.07433	39	.07917
40	.08429	41	.08970	42	.09543	43	.10145
44	.10779	45	.11442	46	.12137	47	.12863
48	.13626	49	.14422	50	.15257	51	.16126
52	.17031	53	.17972	54	.18946	55	.19954
56	.20994	57	.22069	58	.23178	59	.24325
60	.25509	61	.26733	62	.27998	63	.29304
64	.30648	65	.32030	66	.33449	67	.34902
68	.36390	69	.37914	70	.39478	71	.41086
72	.42739	73	.44429	74	.46138	75	.47851
76	.49559	77	.51258	78	.52951	79	.54643
80	.56341	81	.58033	82	.59705	83	.61358
84	.63002	85	.64641	86	.66236	87	.67738
88	.69141	89	.70474	90	.71779	91	.73045
92	.74229	93	.75308	94	.76272	95	.77113
96	.77819	97	.78450	98	.79000	99	.79514
100	.80025	101	.80468	102	.80946	103	.81563
104	.82144	105	.83038	106	.84512	107	.86591
108	.89932	109	.95455				

(3-15-02)

02. Irrevocable Annuity. An irrevocable annuity is an asset transfer if it does not provide fair market value to the participant. To provide fair market value, an irrevocable annuity must meet life expectancy and annual interest tests listed in Subsections 837.03 and 837.04 of this rule. The value for calculating the asset transfer penalty is the difference between the actual rate produced by the annuity and five percent (5%) per year. The sixty (60) month look-back applies. ~~(7-1-99)(7-1-02)T~~

03. Irrevocable Annuity Life Expectancy Test. The participant's life expectancy, shown in the following table, must equal or exceed the term of the annuity. Using Table 837.03 compare the face value of the annuity to the participant's life expectancy at the purchase time. The annuity meets the life expectancy test if the participant's life expectancy equals or exceeds the term of the annuity. If the exact age is not in the Table, use the next lower age.

TABLE 837.03 - LIFE EXPECTANCY TABLE					
Age	Years of Life Remaining Male	Years of Life Remaining Female	Age	Years of Life Remaining Male	Years of Life Remaining Female
0	73.26	79.26	74	10.12	12.74
10	64.03	69.93	75	9.58	12.09
20	54.41	60.13	76	9.06	11.46
30	45.14	50.43	77	8.56	10.85
40	35.94	40.86	78	8.07	10.25
50	27.13	31.61	79	7.61	9.67
60	19.07	22.99	80	7.16	9.11
61	18.33	22.18	81	6.72	8.57
62	17.60	21.38	82	6.31	8.04
63	16.89	20.60	83	5.92	7.54
64	16.19	19.82	84	5.55	7.05
65	15.52	19.06	85	5.20	6.59
66	14.86	18.31	86	4.86	6.15
67	14.23	17.58	87	4.55	5.74
68	13.61	16.85	88	4.26	5.34
69	13.00	16.14	89	3.98	4.97
70	12.41	15.44	90	3.73	4.63
71	11.82	14.75	95	2.71	3.26
72	11.24	14.06	100	2.05	2.39
73	10.67	13.40	110	1.14	1.22

(3-15-02)

04. Irrevocable Annuity Annual Interest Test. The annuity must produce annual interest of at least five percent (5%). A variable rate annuity meets the interest rate test if the average yearly rate for the most recent five (5) year period is five percent (5%) or more. The participant can rebut the five percent (5%) interest test. He must show that single premium annuities ~~are~~ were not offered by insurers ~~now, or~~ when the annuity was purchased and it would not be practical to exchange the annuity for one with a higher interest rate. Insurers must be rated excellent or superior by an insurance rating firm such as A.M. Best Co. ~~(4-5-00)(7-1-02)T~~

05. Revocable Annuity. The surrender amount of a revocable annuity is a resource. Early surrender of a revocable annuity is not an asset transfer for less than fair market value. (7-1-99)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM IN IDAHO

DOCKET NO. 16-0309-0202

NOTICE OF RULEMAKING

PENDING RULE AND AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is January 1, 2002. This pending rule has been adopted by the agency and is now pending review by the 2003 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 Section(s) 56-202(b) and 56-203(g), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the existing 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. The deletion of Section 152.02.a. was inadvertently omitted when the temporary and proposed published, this section has been struck out in order to make it consistent with the change made in Section 153.02. The original text of the proposed rules was published in the May 1, 2002 Administrative Bulletin, Volume 02-5, pages 45 through 48.

Pursuant to Section 67-5228, Idaho Code, transcriptional corrections have been made to the rule and are being published with this Notice of Rulemaking as part of the pending rule.

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 differ from the proposed text are printed in this bulletin. The original text of the proposed rules was published in the May 1, 2002 Administrative Bulletin, Volume 02-5, pages 45 through 48.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Arla Farmer at (208) 364-1958.

DATED this 28th day of June, 2002.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone
(208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

IDAPA 16, TITLE 03, Chapter 09

RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM IN IDAHO

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are reprinted in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-5, May 1, 2002, pages 45 through 48.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 16-0309-0202

SECTION 152

152. REQUIREMENTS OF NON-EMERGENCY TRANSPORTATION PROVIDERS.

SUBSECTION 152.02.a.

02. Non-Commercial Transportation Provider. Any transportation provider that does not meet the definition of a commercial transportation provider is a non-commercial transportation provider. Non-commercial transportation services may be performed by an agency or by an individual provider. Agency transporters are entities that provide transportation as well as at least one other service to one or more Medicaid clients. Individual transporters are non-commercial providers who transport a family member, acquaintance or other person in a personal vehicle. If the Medicaid clients being transported are also clients of the transportation provider for services such as residential care, mental health, developmental therapy or other services, the provider will be considered a non-commercial provider with respect to those clients, even if the provider otherwise qualifies as a commercial transporter. A provider will be considered non-commercial with respect to any Medicaid clients transported if those clients are being transported to or from another service in which the provider has any ownership or control or if the arrangement to provide transportation is not an arm's length transaction. (3-15-02)

~~a.~~ *Limitation on reimbursement per vehicle. Reimbursement for non-commercial transportation will be limited to no more than five (5) Medicaid eligible passengers per vehicle during any trip or leg of a trip.* (3-15-02)

~~ba.~~ **Hardship Exception.** The Department may grant an exception on the basis of hardship. The provider must submit information to show at minimum that its reasonable costs of vehicle operation exceed the applicable reimbursement rate. In evaluating requests for exception, the Department will consider factors such as alternative forms of services and transportation available in the area, the cost of alternatives, the appropriateness of the vehicles utilized and the benefit to clients. Special consideration may be given to any provider servicing the area through a grant from the Federal Transit Administration. The Department may limit the exception including the amount of additional reimbursement, the type of services to which transportation is being provided, and the time duration of the exception. (3-15-02)

eb. Minimum qualifications. Each non-commercial transportation provider must, at minimum, meet the following standards: (3-15-02)

i. Continuously maintain liability insurance that covers passengers. For agency providers, coverage must be at least one-hundred thousand (\$100,000) per individual and three-hundred thousand (\$300,000) each incident. Individual providers must carry at least the minimum liability insurance required by Idaho law. If an agency permits employees to transport clients in employees' personal vehicles, the agency must ensure that adequate insurance coverage is carried to cover those circumstances. (3-15-02)

ii. Obtain and maintain all licenses and certifications required by government to conduct business and to operate the types of vehicles used to transport clients. Agencies shall maintain documentation of appropriate licensure for all employees who operate vehicles. (3-15-02)

iii. Adhere to all laws, rules, and regulations applicable to drivers and vehicles of the type used. (3-15-02)

iv. Enter into a Medicaid enrollment application and provider agreement. (3-15-02)

dc. Records. Each non-commercial transportation provider shall, at the time of transport, collect the following information, and shall maintain it for a minimum of five (5) years: (3-15-02)

i. Client name and Medicaid ID number for each trip. (3-15-02)

ii. Date, time, geographical point of pick-up and odometer reading at pick-up for each client trip. (3-15-02)

iii. Date, time, geographical point of drop-off and odometer reading at drop-off for each client trip. (3-15-02)

iv. Mileage each client was transported for each trip billed. (3-15-02)

v. Identification of the vehicle and driver transporting each client on each trip. (3-15-02)

vi. Notice of prior authorization, when required. (3-15-02)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM IN IDAHO

DOCKET NO. 16-0309-0204

NOTICE OF RULEMAKING

PENDING RULE AND AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is January 1, 2002. This pending rule has been adopted by the agency and is now pending review by the 2003 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 Section(s) 56-202(b) and 56-203(g), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the existing 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.

In Subsection 030.04 "prenatal" has been deleted because it has been determined to be a part of the Medicaid Birth Cost recovery.

Pursuant to Section 67-5228, Idaho Code, a transcriptional correction has been made to the rule and is being published with this Notice of Rulemaking as part of the pending rule.

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 differ from the proposed text are printed in this bulletin. The original text of the proposed rules was published in the May 1, 2002 Administrative Bulletin, Volume 02-5, pages 51 and 52.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Sharon Duncan at (208) 334-5760.

DATED this 17th day of June, 2002.

Sherri Kovach
Administrative Procedures Coordinator
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone
(208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

IDAPA 16, TITLE 03, Chapter 09

RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM IN IDAHO

There are substantive changes from the proposed rule text.

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

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-5, May 1, 2002, pages 51 and 52.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 16-0309-0204

SUBSECTION 030.04.

030. THIRD PARTY LIABILITY.

04. Seeking Third Party Reimbursement. The Department will seek reimbursement from a third party for MA when the party's liability is established after MA is granted, and in any other case in which the liability of a third party existed, but was not treated as a current resource, with the exceptions of ~~prenatal~~ EPSDT; and EPSDT related services. ~~(1-1-02)T~~(1-1-02)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM IN IDAHO

DOCKET NO. 16-0309-0206

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2003 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, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 56-202(b) and 56-203(g), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending 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.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the May 1, 2002 Administrative Bulletin, Volume 02-5, pages 60 through 67.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Arla Farmer at (208) 364-1958.

DATED this 17th day of June, 2002.

Sherri Kovach
Administrative Procedures Coordinator
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

IDAPA 16, TITLE 03, Chapter 09

RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM IN IDAHO

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-5, May 1, 2002, pages 60 through 67.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM IN IDAHO

DOCKET NO. 16-0309-0208

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective January 1, 2001.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 56-202(b) and 56-203(g), Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, 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 August 21, 2002.

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 non-technical explanation of the substance and purpose of the proposed rulemaking:

The State Medicaid Plan amendment establishes separate prospective payment rates for medical, mental and dental health care for Federally Qualified Health Centers (FQHC) and prospective payment rate for medical and mental health care for Rural Health Clinics (RHC). The amendment specifies that payment for services conforms to Section 702 of the Benefit Improvement and Protection Act (BIPA) of 2000. The revision to the rules will be a change in the reimbursement method from a retrospective payment system to a prospective payment system.

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 the public comment should be addressed.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to comply with deadlines in amendments to governing law and federal programs.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted with the Idaho Primary Care Association.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Jan Uren at (208) 364-1854.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before August 28, 2002.

DATED this 12th day of June, 2002.

Sherri Kovach
Administrative Procedures Coordinator
DHW – Administrative Procedures Section
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0208

144. FEDERALLY QUALIFIED HEALTH CENTER (FQHC).

Federally qualified health centers are defined ~~as~~ in federal law at 42 USC Section 1396d(1)(2), which incorporates the definition at 42 USC Section 1395x(aa)(1), and includes community health centers, migrant health centers or providers of care for the homeless, outpatient health programs or facilities operated by a tribe or tribal organization under the Indian Self-Determination Act, as well as clinics that qualify but are not actually receiving grant funds according to Sections 329, 330 or 340 of the Public Health Service Act that may provide ambulatory services to Medical Assistance recipients. ~~(4-1-90)(1-1-01)T~~

- 01. Care And Services Provided.** FQHC services are defined as follows: (4-1-90)
- a.** Physician services; or (4-1-90)
 - b.** Services and supplies incidental to physician services including drugs and pharmaceuticals which cannot be self-administered; or (4-1-90)
 - c.** Physician assistant services; or (4-1-90)
 - d.** Nurse practitioner or clinical nurse specialist services; or ~~(4-1-90)(1-1-01)T~~
 - e.** Clinical psychologist services; or (4-1-90)
 - f.** Clinical social worker services; or (4-1-90)
 - g.** Licensed dentist and dental hygienist services; or (1-1-01)T
 - gh.** Services and supplies incident to a nurse practitioner, physician's assistant, clinical psychologist, ~~or~~ clinical social worker, or dentist or dental hygienist services which would otherwise be covered if furnished by or incident to physician services; or ~~(4-1-90)(1-1-01)T~~
 - hi.** In the case of an FQHC that is located in an area that has a shortage of home health agencies, FQHC services are part-time or intermittent nursing care and related medical services to a home bound individual; and (4-1-90)
 - ij.** Other payable Title XIX ~~payable~~ ambulatory services offered by the Idaho Medicaid program that the FQHC undertakes to provide; ~~and including~~ ~~(4-1-90)~~
 - j.** ~~P~~pneumococcal or immunization vaccine and its administration. ~~(4-1-90)(1-1-01)T~~

02. FOHC Encounter. An encounter is a face-to-face contact for the provision of medical, mental, or dental services between a clinic center patient and a physician, physician assistant, nurse practitioner, clinical social worker, clinical psychologist or other specialized nurse practitioner provider as specified in Subsections 144.01.a. through 144.01.hg. of these rules. ~~(12-31-91)(1-1-01)T~~

a. ~~Contact with more than one (1) health professional or multiple contacts with the same professional in the same day and in the same location constitutes a single encounter unless the patient, subsequent to the first encounter, suffers an illness or injury requiring additional diagnosis or treatment; Each contact with a separate discipline of health professional (medical, mental, or dental), on the same day at the same location, is considered a separate encounter. All contacts with all practitioners within a disciplinary category (medical, mental, dental) on the same day is one (1) encounter.~~ ~~(4-1-90)(1-1-01)T~~

i. ~~A core service ordered by a physician who did not perform an examination or treatment at the outset of the encounter which is subsequently delivered by support staff is considered a single encounter;~~ (4-1-90)

~~ii. Multiple contacts with clinic staff of another discipline defined in Subsections 144.01.a. through 144.01.h. considered a single encounter. (12-31-91)~~

~~b. Other ambulatory services, not counted as an encounter or reimbursed under an encounter rate, which a FQHC may use its employees or may subcontract, includes radiology, physical therapy, occupational therapy, speech therapy, audiology services, dental services, pharmacy services, independent laboratory services, physician specialists, optometry, nutritional education or dietary counseling and monitoring by a registered dietician, ambulance and other medical services which are rendered safely, efficiently and effectively. Reimbursement for services is limited to three (3) encounters per patient per day. (4-1-90)(1-1-01)T~~

~~c. As an exception to Subsection 144.02.a. of these rules, a second encounter with the same professional on the same day may be reimbursed; or (1-1-01)T~~

~~d. As an exception to Subsection 144.02.b. of these rules, an additional encounter may be reimbursed, if the encounter is caused by an illness or injury that occurs later in time than the first encounter and requires additional diagnosis or treatment. (1-1-01)T~~

03. Conditions Of Participation. A qualified FQHC ~~may~~ will be recognized as a Medicaid provider, ~~as of April 1, 1990, with the following stipulations:~~ (7-1-94)(1-1-01)T

~~a. The provider is confirmed eligible by the Public Health Service on and after April 1, 1990; and (4-1-90)~~

~~b. The applicant's request for a retroactive provider agreement may be approved from: (4-1-90)~~

~~i. The date on which it was granted FQHC eligibility by the Public Health Service; or (4-1-90)~~

~~ii. Retroactively for dates of service on or after April 1, 1990, for Medicaid provider agreements executed by October 31, 1991; or (4-1-90)~~

~~iii. As otherwise specified in the provider agreement for applications received after October 31, 1991. (4-1-90)~~

~~e. The FQHC applicant shall simultaneously terminate its Medicaid rural health clinic and other Department specified Medicaid agreements from which the FQHC may provide recipients with medical services and supplies at other than reasonable cost reimbursement; and (4-1-90)~~

~~d. Written agreements between the provider and subcontractors shall state that the subcontractor shall retain related records for at least three (3) years after each provider's fiscal year end. The written agreements shall assure access to records affecting Medicaid reimbursement by the Department, the Secretary of Health and Human Services or their respective designee. The agreement shall specify that failure to maintain such records voids the agreement between the subcontractor and the provider. (4-1-90)~~

145. RURAL HEALTH CLINICS (RHC).

Rural Health Clinic is a facility located in a rural area designated as a shortage area, and is neither a rehabilitation agency nor a facility primarily for the care and treatment of mental diseases. (1-1-01)T

01. Care And Services Provided. ~~The following items of care and services will be available to MA recipients~~ RHC services are defined as follows: (11-10-81)(1-1-01)T

~~a. Services furnished by a p[h]ysician within the scope of practice of the medical profession under state law services; and or (11-10-81)(1-1-01)T~~

~~b. Services furnished by a physician assistant, nurse practitioner, nurse midwife, or other specialized nurse practitioner, a clinical psychologist or by a clinical social worker within the scope of practice of his profession under state law; and supplies incident to a physician service, which cannot be self administered; or~~

~~(4-1-90)(1-1-01)T~~

~~c. Supplies that are furnished incidental to professional services furnished by a physician, physician assistant, nurse practitioner, nurse midwife, or specialized nurse practitioner clinical psychologist or a clinical social worker services; and or~~ ~~(4-1-90)(1-1-01)T~~

~~d. Part-time or intermittent visiting Nurse practitioner or clinical nurse care and related medical supplies will be provided to homebound recipients in a home health agency shortage area specialist services; and or~~ ~~(11-10-81)(1-1-01)T~~

~~e. Other ambulatory Clinical psychologist services furnished by a rural health clinic; or~~ ~~(11-10-81)(1-1-01)T~~

~~f. Clinical social worker services; or~~ (1-1-01)T

~~g. Services and supplies incident to a nurse practitioner, physician's assistant, clinical psychologist, or clinical social worker as would otherwise be covered by a physician service; or~~ (1-1-01)T

~~h. A RHC located in an area with a shortage of home health agencies, part-time or intermittent nursing care and related medical services to a home bound individual.~~ (1-1-01)T

02. ~~Payment Rates RHC Encounter.~~ An encounter is a face-to-face contact for the provision of a medical or mental service between a clinic patient and a provider as specified in Subsections 145.01.a. through 145.01.f. of these rules. ~~(11-10-81)(1-1-01)T~~

~~a. Payment for rural health clinic services must not exceed the cost rate basis as established by the Medicare contractor. Each contact with a separate discipline of health professional (medical or mental) on the same day at the same location is considered a separate encounter.~~ ~~(11-10-81)(1-1-01)T~~

~~b. Payment for ambulatory services must be at the rates established by the Department but must not exceed Medicare rates. Reimbursement for services is limited to two (2) encounters per patient per day.~~ ~~(11-10-81)(1-1-01)T~~

~~c. As an exception to Subsection 145.02.a. of these rules, a second encounter with the same professional on the same day may be reimbursed; or~~ (1-1-01)T

~~d. As an exception to Subsection 145.02.b. of these rules, an additional encounter may be reimbursed, if the encounter is caused by an illness or injury that occurs later in time than the first encounter and requires additional diagnosis or treatment.~~ (1-1-01)T

~~e. A core service ordered by a health professional who did not perform the service but was performed by support staff is considered a single encounter.~~ (1-1-01)T

~~f. Multiple contacts with clinic staff of the same discipline (medical, mental) on the same day related to the same illness or injury are considered a single encounter.~~ (1-1-01)T

03. Conditions Of Participation. A qualified RHC will be recognized a Medicaid provider. (1-1-01)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM
DOCKET NO. 16-0309-0209
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective July 1, 2002.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 56-202(b), 56-203(g), (i), (j), 56-1003(1), 56-1004(1)(a), Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, 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 August 21, 2002.

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 non-technical explanation of the substance and purpose of the proposed rulemaking:

A new rule is needed to provide definitions of cancer treatment and end of treatment for women diagnosed with breast or cervical cancer through the National Breast and Cervical Cancer Early Detection Program referred to in Idaho as "Women's Health Check". There has been no federal guidance regarding these definitions.

This new rule authorizes the Department to determine when cancer treatment has ended. This will allow the State to better control program scope and associated costs.

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 the public comment should be addressed.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to protect public health and safety and welfare.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted due to the very small number of participants who are enrolled in the program.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Robin Pewtress at (208) 364-1892.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before August 28, 2002.

DATED this 18th day of June, 2002.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Administrative Procedures Section
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0209

~~012.--013.~~ (RESERVED).

013. DIAGNOSIS OF BREAST OR CERVICAL CANCER THROUGH THE WOMEN'S HEALTH CHECK.

Women eligible for Medical Assistance, as provided for in IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)," Section 802, will be covered while receiving either primary or adjuvant cancer treatment, or both. The Division of Medicaid, or its successor, is responsible for determining when a woman's treatment has ended. (7-1-02)T

01. Primary Treatment. The initial action of treating a patient medically or surgically for cancer using conventional treatment modalities. (7-1-02)T

02. Adjuvant Therapy. Treatment that includes either radiation or systemic chemotherapy, or both, as part of the plan of care. (7-1-02)T

03. End Of Treatment. Cancer treatment ends: (7-1-02)T

a. When the woman's plan of care reflects a status of surveillance, follow-up, or maintenance mode;
or (7-1-02)T

b. If the woman's treatment relies on an unproven procedure, as referred to in Subsection 065.02.h. in these rules, in lieu of primary or adjuvant treatment. (7-1-02)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.10 - RULES GOVERNING MEDICAID PROVIDER REIMBURSEMENT
DOCKET NO. 16-0310-0201
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective January 1, 2001.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 56-202(b) and 56-203(g), Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, 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 August 21, 2002.

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 non-technical explanation of the substance and purpose of the proposed rulemaking:

Revise reimbursement method from a retrospective payment system to a prospective payment system.

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 the public comment should be addressed.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to comply with deadlines in amendments to governing law and federal programs.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted with the Idaho Primary Care Association.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Jan Uren at (208) 364-1854.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before August 28, 2002.

DATED this 12th day of June, 2002.

Sherri Kovach
Administrative Procedures Coordinator
DHW – Administrative Procedures Section
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0310-0201

700. REIMBURSEMENT ~~OF~~ FOR FEDERALLY QUALIFIED HEALTH CENTERS AND RURAL HEALTH CLINICS.

Pursuant to the provisions of Section 6404 of the Omnibus Budget Reconciliation Act of 1989, and as provided in IDAPA 16.03.09.144, "Rules Governing Medical Assistance," services rendered by a federally qualified health center (FQHC) shall be covered effective retroactively to April 1, 1990. Payment for Federally Qualified Health Center and Rural Health Clinic services shall be made in accordance with Section 702 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, P.L. 106-554, 42USC Section 1396a(aa), Subsections (1) through (4).

(7-1-97)(1-1-01)T

701. REIMBURSEMENT -- GENERAL

The aggregate reimbursement for all covered services and supplies provided by an FQHC shall be equal to, no less than, and shall not exceed, one hundred percent (100%) of the reasonable costs related to patient care allowed under 42 CFR 413, and as appropriately clarified by the Secretary of Health and Human Services for Medicare principles of cost reimbursement.

(7-1-99)

01. Screening Guidelines Of FQHC Staff Productivity. *Payments for FQHC services will be subject to an evaluation of the reasonableness of the FQHC health care staff's productivity level, which will be determined by the following screening guidelines, not to exceed the maximum payment per encounter pursuant to Subsection 701.03. The allowable cost per encounter is calculated as the greater number of the actual total encounters, or the expected total encounters as defined in Subsections 701.01.a. through 701.01.e. below:*

(7-1-99)

a. A least four thousand two hundred (4,200) visits per year per full time equivalent physician employed by the FQHC; and

(7-1-99)

b. At least two thousand one hundred (2,100) encounters per year per full time physician assistant or nurse practitioner employed by the FQHC; or

(7-1-99)

c. If staffing levels consist of various combinations of physicians, nurse practitioners, physician assistants, a combined screening approach may be used. For example, if a FQHC has three (3) physicians and one (1) nurse practitioner, calculate the screening guidelines as follows: $3 \times 4,200 = 12,600$ plus $1 \times 2,100 = 2,100$ for a total of fourteen thousand seven hundred (14,700) visits.

(7-1-99)

d. If the Medicare Intermediary waives or adjusts the total number of encounters determined under the productivity guidelines for a specific fiscal period, the Department may also waive or adjust the productivity guidelines.

(7-1-99)

e. A full time equivalent for purposes of this Section is two thousand eighty (2,080) hours per year, and/or forty (40) hours per week for fifty-two (52) weeks.

(7-1-99)

02. Offset, Reclassified Or Excluded Costs. *The costs of the specific following items and services are to be offset, reclassified, or excluded from Medicaid reasonable costs:*

(4-1-90)

a. Excessive and unreasonable costs which violate the prudent buyer concept are excluded from total costs; and

(4-1-90)

b. Medicaid payments for presumptive eligibility screenings provided in Idaho Department of Health and Welfare Rules, IDAPA 16, Title 03, Chapter 09, Section 102, "Rules Governing Medical Assistance," shall be offset against the appropriate cost centers at cost settlement; and

(12-31-91)

c. Special services related to pregnancy provided in Idaho Department of Health and Welfare Rules, IDAPA 16.03.09, Section 101, "Rules Governing Medical Assistance," with the exception of nutritional education

~~and dietary monitoring and counseling as authorized in Idaho Department of Health and Welfare Rules, IDAPA 16.03.09, Subsection 101.06, "Rules Governing Medical Assistance," will be included as encounters in cost report statistics and for cost settlement; (12-31-91)~~

~~i. Other ambulatory services not included in the definition of an encounter defined by Idaho Department of Health and Welfare Rules, IDAPA 16.03.09, Subsection 144.02, "Rules Governing Medical Assistance," shall be reimbursed at one hundred percent (100%) of reasonable costs; (12-31-91)~~

~~ii. EPSDT screenings and the incidental services are a patient encounter. Services and items specifically not included in the Idaho Title XIX state plan but authorized as EPSDT services through Section 6403 of OBRA 1989 may be reimbursed on a fee for service basis or reported as other ambulatory services for cost settlement; (4-1-90)~~

~~iii. EPSDT services not outside the scope of Medicaid shall be reimbursed at one hundred percent (100%) of reasonable costs for MA recipients up to and including the month of their twenty first (21st) birthday. Limits upon the number or scope of services for EPSDT recipients are not waived for a FQHC provider. (4-1-90)~~

~~03. Maximum Payment Per Encounter. The cost per encounter will not exceed the Medicare payment level. The FQHC reimbursement methodology includes one (1) urban and one (1) rural payment limit that is determined annually for the Medicare program by the Health Care Financing Administration. (7-1-99)~~

~~702. REASONABLE COSTS OF FQHC SERVICES.~~

~~01. Off-Site Physician Services. Off-site physician services outside the scope of allowable services of an FQHC will be reimbursed according to the Department's established fee schedule for such services. (4-1-90)~~

~~02. Ambulatory Service Costs. Ambulatory services shall not be considered an encounter. The direct costs and related customary charges of each ambulatory service provided shall be accounted for in an independent cost center in the provider's financial records and the Medicaid cost report. (4-1-90)~~

~~03. Overhead Costs. Overhead costs shall be allocated to core services, each category of other ambulatory services and nonallowable services in proportion of the cost of each to total cost. (4-1-90)~~

~~04. Employee Salaries Or Wages. Payments under the National Health Services Corps reimbursement program for employee salaries or wages shall not be offset against allowable costs. (4-1-90)~~

~~05. Other Ambulatory Services. Other ambulatory services will be reimbursed no more than the lesser of allowable costs or the reasonable costs reimbursed by Medicare for the same services. (4-1-90)~~

~~703. COST REPORT FILING REQUIREMENTS.~~

~~Each FQHC provider shall submit the completed Medicaid cost report form containing such information and worksheets as the Department requires to determine Medicaid reasonable costs. The deadline will be the last day of the third month following the provider's fiscal period unless a delay is granted by the Department. (4-1-90)~~

~~01. Delay Of Deadline. A delay of thirty (30) days past the filing deadline may be granted by the Department if a written request for deferral of submittal is received prior to the filing deadline. The request must state specifically the reasons and/or extraordinary circumstances which have occurred to make timely submittal of the report impossible. (4-1-90)~~

~~02. Failure To File. If a provider fails to file a complete cost report by the first day of each calendar month subsequent to the deadline, the Department shall withhold interim payments until the provider complies. The Department shall send a notice of reduction in the encounter rate and withhold payments as follows: (4-1-90)~~

~~a. A ten percent (10%) reduction shall be effective the second Friday of the first calendar month after the provider's deadline; (4-1-90)~~

~~b. Continued failure to comply shall result in the complete suspension of payments on the second~~

~~Friday of the second month following the deadline:~~

~~(4-1-90)~~

~~c. Continued failure to comply by the last day of the third month following the deadline shall be a breach of the Medicaid provider agreement. The provider shall be ineligible for subsequent payments from this date;~~

~~(4-1-90)~~

~~d. Upon submittal of acceptable and complete cost reporting forms, notwithstanding Subsection 703.02.e., all withheld payments shall be restored to the provider without interest charges;~~

~~(12-31-91)~~

~~e. Refusal or continued failure to comply within thirty (30) days of Medicaid suspension per Subsection 703.02.e., shall be grounds for retrospective recovery of all Medicaid payments for the fiscal period to be cost settled. The provider shall be terminated from the Medicaid program for at least six (6) months after payment recovery is complete.~~

~~(12-31-91)~~

~~**03. Audit Or Desk Review.** If certain cost items are discovered during an audit or desk review which are not related to patient care, the Department staff shall make the necessary adjustments to correct the report and inform the provider of the changes made.~~

~~(4-1-90)~~

~~a. If these same nonallowable costs appear on a subsequent cost report, the provider shall be notified why certain costs were disallowed and that inclusion of the same nonallowable costs in the next cost report could be treated as program abuse and referred to the appropriate agencies for consideration of criminal and/or civil prosecution, or other Departmental sanctions;~~

~~(4-1-90)~~

~~b. There shall be no referral where the allowability of a cost report item has been disputed and the provider has clearly indicated on the subsequent report that the particular item is still in dispute and is being included in the cost report only to establish the basis for an appeal.~~

~~(4-1-90)~~

~~**04. Consolidated Cost Reports.** Costs of individual provider sites may be determined through consolidated cost reports only if prior authorization by the Department is granted prior to the beginning of the respective fiscal year.~~

~~(4-1-90)~~

~~a. Authorization for consolidated cost reports shall be given only when there is no significant difference between the types of services and the related customary charges or costs as provided to the general public or Medicaid population served by each site.~~

~~(4-1-90)~~

~~**704. ADEQUACY OF COST INFORMATION.**~~

~~The FQHC must maintain records which identify the costs and charges of the covered services from the site where the service was provided and which at least account for the following:~~

~~(4-1-90)~~

~~**01. Physician Time Spent.** The FQHC must identify the time which each physician spent in direct patient care and administrative activities.~~

~~(4-1-90)~~

~~**02. Reconcile Direct Costs.** The FQHC must reconcile the direct costs and related customary charges of each service not incorporated into the encounter rate in each fiscal period's Medicaid cost report.~~

~~(4-1-90)~~

~~**03. Central Office Costs.** Allowable central office or home office costs must be allocated to individual provider sites under a reasonable and consistent basis which reflects the number of encounters and the utilization costs of each category of ambulatory services at each site. The worksheets and method of location to each site must also be available upon the Department's request.~~

~~(4-1-90)~~

~~**705. INTERIM PAYMENT RATES.**~~

~~The encounter rate for each FQHC site will be determined on the information which best estimates the reasonable costs of services for a fiscal period. Ambulatory services not included in the definition of an encounter will be reimbursed, subject to the restrictions on the number or type of services allowed to any recipient, as a Medical Assistance benefit during the interim before cost settlement according to fee schedules on file for the services provided.~~

~~(4-1-90)~~

~~01. **Interim Encounter Rates.** Interim encounter rates should reflect the total estimated Medicaid costs of core services, plus or minus any difference between the Department's interim fee for service payments and the reasonable costs of other ambulatory services divided by the total number of anticipated Medicaid encounters.~~

~~(4-1-90)~~

~~02. **Rate Adjustments.** Rate adjustments may be requested by the provider no more than twice in each provider's fiscal year. Rate adjustment requests must be specific as to the amount in question, and be accompanied by information which supports the provider's request which includes, but is not limited to, audited or interim financial statements, budget data, management information data, pro-forma cost reports, patient utilization data and costs of new services or equipment, or specific information the Department requests.~~

~~(4-1-90)~~

~~**706. COST SETTLEMENTS.**~~

~~The Department shall issue interim and final cost settlements based on the Medicaid cost report issued by the Department.~~

~~(4-5-00)~~

~~01. **Unaudited Cost Report.** Within sixty (60) days of receipt of a FQHC provider's unaudited cost report, the Department shall review the cost report submitted, notwithstanding any appropriate adjustments the Department may make, in order to issue a tentative settlement to reimburse the FQHC for any underpayment or recover overpayment for the fiscal period to be settled.~~

~~(4-5-00)~~

~~02. **Audited Cost Report.** Within thirty (30) days after each provider's audited cost report is finalized by the Department's agent, the Department shall reimburse a FQHC for any underpayments or recover any overpayments made for the fiscal period represented in the audited report.~~

~~(4-5-00)~~

~~**707. INTEREST CHARGES ON OVERPAYMENTS AND UNDERPAYMENTS FOR COST SETTLEMENTS.**~~

~~The Department shall charge interest on overpayments and pay interest on underpayments to providers according to Section 461.~~

~~(12-31-91)~~

~~**701. -- 707. (RESERVED).**~~

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.10 - RULES GOVERNING MEDICAID PROVIDER REIMBURSEMENT
DOCKET NO. 16-0310-0202
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective July 1, 2002.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 56-202(b) and 56-113, Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, 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 August 21, 2002.

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 non-technical explanation of the substance and purpose of the proposed rulemaking:

These rules remove the Idaho Legislative intent language that capped rates to the rates in effect in state fiscal year 2000, including special rates of private intermediate care facilities for the mentally retarded, for the period July 1, 2000 through June 30, 2002. Further, the existing rate methodology which relies on the prospective payment system as defined in rule, will be applied beginning July 1, 2002. In addition, typographical errors were corrected in two sections of this chapter.

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 the public comment should be addressed.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to comply with deadlines in amendments to governing law.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the change was made to comply with Idaho Legislative intent.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Leslie Clement at (208) 364-1840.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before August 28, 2002.

DATED this 17th day of June, 2002.

Sherri Kovach
Administrative Procedures Coordinator
DHW – Administrative Procedures Section
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0310-0202

240. PROSPECTIVE RATES FOR ICF/MR.

Sections 240 through 247 of these rules provide procedures and specifications necessary to implement the provisions and accomplish the objectives of the payment system for ICF/MR providers. Total payment will include the following components: Property reimbursement, capped costs, an efficiency increment, exempt costs, excluded costs. *Notwithstanding the provisions of Section 56-113, Idaho Code, it is the intent of the Idaho Legislature that for the period July 1, 2000, through June 30, 2002, rates, including special rates of private intermediate care facilities for the mentally retarded, shall not exceed the rates in effect in state fiscal year 2000 (July 1, 1999, through June 30, 2000).* ~~(3-15-02)(7-1-02)T~~

(BREAK IN CONTINUITY OF SECTIONS)

310. SPECIAL RATES.

Section 56-117, Idaho Code, provides authority for the Director to pay facilities a special rate for care given to patients who have long term care needs beyond the normal scope of facility services. These patients must have needs which are not adequately reflected in the rates calculated pursuant to the principles set forth in Section 56-102, Idaho Code. The payment for such specialized care will be in addition to any payments made in accordance with other provisions of this chapter. The incremental cost to a facility that exceeds the rate for services provided pursuant to the provisions of this section will be excluded from the computation of payments or rates under other provisions of Section 56-102, Idaho Code, and these rules. (4-5-00)

01. Determinations. A determination to approve or not approve a special rate will be made on a patient-by-patient basis. No rate will be allowed if reimbursement for these needs is available from a non-Medicaid source. A special rate request will be for an expected condition that will be on-going for a period of greater than two (2) weeks. (4-5-00)

02. Application. Until the facility applies for a special rate, patients with such needs will be included in the computation of the facility's rates following the principles described in Section 56-102, Idaho Code. (4-5-00)

03. Approval. Approved special rates will become effective on the date the application is received, but no earlier than the first day of the month in which the application for a special rate was received. (4-5-00)

04. Reporting. Costs equivalent to payments at the special rate will be removed from the cost components subject to limits, and will be reported separately. (4-5-00)

05. Limitation. The reimbursement rate paid will not exceed the provider's charges to other patients for similar services. (4-5-00)

06. Prospective Rate Treatment. Prospective treatment of special rates became effective July 1, 2000. Subsections 310.07 through 310.09 of these rules provide clarification of how special rates will be handled under the prospective payment system. (3-15-02)

07. Residents Qualifying. Special rates are intended for residents who have long term care needs beyond the normal scope of facility services, and whose needs are not adequately reflected in the rates set pursuant to Section 56-102, Idaho Code. (3-15-02)

08. Determination Of Payment For Qualifying Residents. Special rates shall be reimbursed in one (1) of the methods described in Subsections ~~§~~310.08.a. through ~~§~~310.08.d. of these rules. ~~(3-15-02)(7-1-02)T~~

a. Special Rate Units. If a facility operates a special rate unit; i.e., behavioral unit, or a Traumatic

Brain Injury (TBI) unit, etc., the following reimbursement methods will apply under the circumstances described in Subsections §310.08.a.i. through §310.08.a.vi. of these rules. ~~(3-15-02)(7-1-02)T~~

i. Facility is Under the Direct Care Limit - If the facility operates a special rate unit, the costs of which do not exceed the direct care limit, with all direct care costs included in the rate calculation, no special rate shall be paid for the unit. (3-15-02)

ii. Facility is Over the Direct Care Limit - If the facility operates a special rate unit, the costs of which exceed the direct care limit, with all direct care costs included in the rate calculation, the special rate for the unit will be equal to the lesser of the per diem amount by which direct care costs exceed the limit, or the special rate add-on calculated as follows: each Medicaid resident approved for a special rate is classified using Medicare's grouper (currently RUG's III v.5.12 44 Group) and is assigned a total rate equal to the applicable Medicare price that would be paid if the resident were Medicare eligible. The special rate "add-on" to the facility rate is calculated by subtracting the resident-specific Medicaid rate (based on each resident's Medicaid CMI) from the Medicare price. The average of the special rate add-on amounts calculated using this methodology shall be compared to the amount the provider is over the limit. The lesser amount is allowed as a special rate. (3-15-02)

iii. New Unit Added Before July 1, 2000 - A unit added before July 1, 2000 that does not have sufficient historical cost data in the cost report used to set the rate shall receive the same rate that would have been set under the retrospective system until a cost report with sufficient cost detail is filed. (3-15-02)

iv. New Unit Added After July 1, 2000 - To qualify for special rates, new units, or increases to the number of licensed beds in an existing unit must first receive Departmental approval. Since a new unit will not have the cost history of an existing unit, the provider's relationship to the cap will not be considered in qualifying for a special rate. Those residents who are approved for special rates will have their special rate calculated as the difference between the applicable Medicare price under PPS, and the Medicaid rate for that individual resident as explained in Section 310.08.a.ii. of these rules. However, the amount would not be limited to the amount the provider is over the limit, as the costs of the unit are not in the rate calculation. (3-15-02)

v. One Hundred Percent (100%) Special Care Facility in Existence as of July 1, 2000 - If at July 1, 2000 an entire facility is devoted to caring for "special rate" residents, including Medicaid residents approved for special rates as well as private pay and other residents who would qualify for special rates if they were Medicaid eligible, the facility's allowable reimbursement will be calculated as follows. The costs of the direct care component will not be subject to the cost limit. However, those costs will still be case-mix adjusted based on the ratio of the Medicaid case-mix to the facility-wide case-mix index. (3-15-02)

vi. Customary Charge - If the cost to operate a special rate unit is being included in a facility's rate calculation process, the facility must report its usual and customary charge for that unit on the quarterly reporting form. A weighted customary charge shall be computed by taking the number of Medicaid days approved for special rates times the usual and customary charge for private pay individuals in that unit, plus the Medicaid days not in the special rate unit times the usual and customary charge for that portion of the facility. (3-15-02)

b. Equipment/Non-Therapy Supplies. Equipment and non-therapy supplies not adequately addressed in the current RUG's system shall be reimbursed at invoice cost as an add-on to the facility's rate for the resident receiving the equipment or supplies. The facility need not exceed the direct care limit to receive a special rate for such services. Items that qualify for such treatment include but are not limited to the following: air fluidized beds, overlay mattresses, TPN supplies and VAC wound care. (3-15-02)

c. Ventilator Dependent Residents And Residents Receiving Tracheotomy Care. In the case of ventilator dependent and tracheotomy residents, a two (2) step approach shall be taken to establish the special rate. The facility need not exceed the direct care limit to receive a special rate for ventilator care and tracheotomy care. The first step is the calculation of a staffing add-on for the cost, if any, of additional direct care staff required to meet the exceptional needs of these residents. The add-on shall be calculated following the provisions set forth in Subsection 310.08.d. of these rules. The second step shall be an equipment, ~~and/or~~ supply, or both, add-on to be added to the rate up to the invoice cost or rental amount. The combined amount of these two (2) components shall be considered the special rate. ~~(3-15-02)(7-1-02)T~~

d. Residents Who Do Not Reside in a Special Rate Unit Requiring One-to-One Staffing Ratios. Facilities that do not have established units with a cost history built into their cost reports and rates may at times have residents who require unusual levels of staffing; such as, one-to-one staffing ratios. If the resident qualifies for a special rate, the additional reimbursement will be allowed as follows:

Example Using Sixteen (16) Hours of One-To-One Care	
Total hours per day:	24.0
Less minimum staff level required:	(2.0)
Net special rate hours allowed:	22.0
Average wage rate of CNA's per WAHR survey:	\$7.53
Plus Benefits at Thirty percent (30%):	\$2.26
Allowed wages and Benefits	\$9.79
Allowable daily special rate add-on:	\$215.38
Divided by total hours:	24.0
Calculated hourly rate:	\$8.97
One to one hours approved:	16.0
Sixteen (16) hours of one to one add-on:	\$143.53

(3-15-02)

e. For differing levels of one-to-one care; i.e., eight (8) hours or twenty-four (24) hours, only the total hours of one-to-one care approved would be changed in Subsection 310.08.d. The WAHR CNA wage rate as described in IDAPA 16.03.09, "Rules Governing Medical Assistance," Section 148 will be updated prior to the July 1st rate setting each year. Should the WAHRS survey be discontinued, prior amounts may be indexed forward, or a comparable survey may be conducted.

(3-15-02)

09. Treatment Of The Special Rate Cost For Future Rate Setting Periods. Special rates shall be established on a prospective basis similar to the overall facility rate. When a cost report is used to set a prospective rate contains special rate cost, an adjustment shall be made to "offset," or remove, the amount received for the special rates from the calculation of costs. The amount received shall be calculated by multiplying the special rate paid for each qualifying resident by the number of days that were paid. The case-mix index for each resident shall be left in the facility-wide average and the Medicaid average for rate setting purposes, as the offset would only be for the incremental portion of the rate, above what Medicaid would have paid.

(3-15-02)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.05.05 - RULES GOVERNING FEES FOR HEALTH OPERATING, LICENSES AND INSPECTION SERVICES

DOCKET NO. 16-0505-0201

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The temporary rule was effective July 1, 2002.

AUTHORITY: In compliance with Sections 67-5226(1) and 67-5221(1), Idaho Code, notice is hereby given that the Board of Environmental Quality (Board) has adopted a temporary rule and the Department of Environmental Quality (DEQ) is commencing proposed rulemaking to promulgate a final rule. The action is authorized by Sections 39-105 and 39-107, 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 August 21, 2002. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

Department of Health and Welfare rule chapter IDAPA 16.05.05, "Rules Governing Fees for Health and Environmental Operating Permits, Licenses and Inspection Services," contains sections imposing environmental fees which are no longer flexible enough to meet the needs of the different health districts. This rulemaking deletes sections relating to the imposition of environmental fees, parcel surveys and sanitary restriction administration, and transfers those sections to a new DEQ rule chapter to be cited as IDAPA 58.01.14, "Rules Governing Fees for Environmental Operating Permits, License and Inspection Services," (Docket No. 58-0114-0201).

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.

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

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 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 would benefit local government, the health districts and the regulated community. By repealing the sections of the rule in IDAPA 16.05.05 that are related to programs administered by DEQ, and DEQ adopting the equivalent language for these sections, there is no increase in fees imposed by these actions. Language has been added to the general Environmental Fees section that allows for local government or the health districts to adopt their own fees for services. Without the timely adoption of this rulemaking, there is a risk that health district fees could not be collected and necessary programs would not be adequately supported.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Barry Burnell at (208)373-0502 or bburnell@deq.state.id.us.

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 August 28, 2002.

DATED this 21st day of June, 2002.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton. Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pgradwoh@deq.state.id.us

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0505-0201

IDAPA 16, TITLE 05, Chapter 05

16.05.05 - RULES GOVERNING FEES FOR HEALTH ~~AND ENVIRONMENTAL~~ OPERATING PERMITS, LICENSES, AND INSPECTION SERVICES

(BREAK IN CONTINUITY OF SECTIONS)

001. TITLE AND SCOPE.

01. Title. The rules are to be cited in full as Idaho Department of Health and Welfare Rules, IDAPA 16.05.05, "Rules Governing Fees for Health ~~and Environmental~~ Operating Permits, Licenses, and Inspection Services". (7-1-02)T

02. Scope. These rules establish reasonable fees for health ~~and environmental~~ operating permits, licenses, inspection services and waiver application processing rendered by the Department of Health and Welfare or its designees. (5-7-93)(7-1-02)T

(BREAK IN CONTINUITY OF SECTIONS)

~~004. -- 099.~~ **(RESERVED).**

~~100.~~ **ENVIRONMENTAL FEES.**

~~The fees specified in Sections 101 through 199 shall be charged for the following environmental services rendered by the Department or its designees. The fees are to be paid by the party receiving the services described therein to the department or designee performing this service, in the time, place and manner specified by the performing agency.~~ (10-22-92)

~~101. -- 109.~~ **(RESERVED).**

~~110.~~ **INDIVIDUAL AND SUBSURFACE SEWAGE DISPOSAL SYSTEM PERMIT.**

~~For those services rendered in the process of issuing installation permits for individual and subsurface sewage disposal systems (see Idaho Department of Environmental Quality Rules, IDAPA 58.01.03, Section 003 through Subsection 005.08, "Rules Governing Individual and Subsurface Sewage Disposal Systems"), the following fees apply.~~ (5-7-93)

~~01. Individual Households Or Buildings. For individual households or buildings, if the individual and subsurface sewage disposal system is: (2-15-82)~~

~~a. A new installation, the fee shall be ninety dollars (\$90); or (10-22-92)~~

~~b. A replacement or expansion of an existing system, the fee shall be ninety dollars (\$90). (10-22-92)~~

~~02. Multiple Households Or Buildings. For individual and subsurface sewage disposal systems serving more than one (1) household or building in any combination, the fee shall be ninety dollars (\$90) plus ten dollars (\$10) per each household or each two hundred fifty (250) gallons of flow. (10-22-92)~~

~~111. -- 114. (RESERVED);~~

~~115. INDIVIDUAL AND SUBSURFACE SEWAGE DISPOSAL SYSTEM PUMPER PERMIT:~~

~~For those services rendered in the process of issuing permits to persons operating individual and subsurface sewage disposal system pumping equipment (see Idaho Department of Environmental Quality Rules, IDAPA 58.01.15, Section 004 through Subsection 004.04, "Rules Governing the Cleaning of Septic Tanks"), the fee shall be forty dollars (\$40) plus ten dollars (\$10) for each tank truck or tank per annum. (5-7-93)~~

~~116. -- 119. (RESERVED);~~

~~120. SUBSURFACE SEWAGE DISPOSAL SYSTEM INSTALLER'S REGISTRATION PERMIT:~~

~~For those services rendered in the process of issuing Installer's Registration Permits (see Idaho Department of Environmental Quality Rules, IDAPA 58.01.03, Sections 006 through Subsection 006.06, "Rules For Individual and Subsurface Sewage Disposal Systems"), the fee shall be fifty dollars (\$50) per annum for a standard and basic alternative system installer's registration permit and one hundred dollars (\$100) per annum for a standard, basic and complex alternative system installer's registration permit. (5-7-93)~~

~~121004. -- 129. (RESERVED).~~

(BREAK IN CONTINUITY OF SECTIONS)

~~131. -- 149. (RESERVED);~~

~~150. PARCEL SURVEY:~~

~~For those services rendered in evaluating existing water supply or sewage disposal systems when such evaluation is a condition for the sale of real property, the fee shall be sixty dollars (\$60) excluding laboratory services. (10-22-92)~~

~~151. -- 159. (RESERVED);~~

~~160. SANITARY RESTRICTION ADMINISTRATION:~~

~~For those services rendered in the administration of sanitary restrictions, pursuant to Section 50-1326, Idaho Code, the following fees apply: (2-15-82)~~

~~01. Subdivisions Or Plats Proposing Individual And Subsurface Sewage Disposal System Discharge To Subsurface. For subdivisions or plats for which sewage treatment and disposal systems are designed to discharge to the subsurface, the fee shall be one hundred dollars (\$100) plus twenty dollars (\$20) per lot. (5-7-93)~~

~~02. Subdivisions Or Plats Proposing Other Than Individual And Subsurface Sewage Disposal System Discharge To Subsurface. For subdivisions or plats for which sewage treatment and disposal systems are not designed to discharge to the subsurface, the fee shall be twenty-five dollars (\$25). (2-15-82)~~

~~1631. -- 201. (RESERVED).~~

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.06.12 - RULES GOVERNING THE IDAHO CHILD CARE PROGRAM (ICCP)

DOCKET NO. 16-0612-0201

NOTICE OF RULEMAKING - AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is March 15, 2002.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given that this agency is amending a previously adopted temporary rule. The action is authorized pursuant to Section(s) 56-203(b), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation for amending the temporary rule:

Section 318 in the temporary rule is being amended to provide authority for the Administrator of the Division of Welfare to waive any of the conditions of this rule. The purpose is to ensure continued availability of child care in Idaho. The original text of the temporary rule was published in the May 1, 2002 Administrative Bulletin, Volume 02-5, pages 71 and 72.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption and subsequent amendment of the rule is appropriate and necessary to confer a benefit to Idahoans.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted due to the nature of the rulemaking, the intent of the rule is to be in effect from March 15, 2002 through May 31, 2002 only.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary, contact Lynn Holmes at (208) 334-5818.

DATED this 17th day of June, 2002.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Division of Legal Services
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 16-0612-0201

SECTION 318

318. CHILDCARE STABILIZATION GRANTS.

The Department has established a grant program to ensure continued availability of child care for ICCP families. Up to one hundred thousand dollars (\$100,000) is available for this grant program. The rules governing these grants in

Section 318 through Section 319 are effective from March 15, 2002 through May 31, 2002. Providers must meet the conditions listed in Subsections 318.01 through 318.06 in these rules. The Administrator of the Division of Welfare may waive any of these conditions at his discretion in an effort to ensure continued availability of child care in Idaho.
~~(3-15-02)F~~(3-15-02)T

- 01. Application Date.** The provider must apply for the grant no later than May 1, 2002. (3-15-02)T
- 02. Provider Start Date.** The provider must be an ICCP provider continuously since August 1, 2001. (3-15-02)T
- 03. Children Receiving ICCP.** At least fifty one percent (51%) of the children cared for by the provider must receive ICCP. (3-15-02)T
- 04. April ICCP Billing.** The amount the provider bills to ICCP for April 2002 services must be at least fifty percent (50%) of their total billed costs for April 2002 child care services. (3-15-02)T
- 05. Co-Pay Status.** ICCP parent co-pay must be current. (3-15-02)T
- 06. Proof Of Income And Expenses.** The provider must make available to the Department an income and expense balance sheet listing:
 - a.** The total number of children in care and the fees charged for those children. (3-15-02)T
 - b.** The number of children receiving ICCP payments and the income received for the care of those children. (3-15-02)T
 - c.** The number of self pay children in care and the income received for the care of those children. (3-15-02)T

IDAPA 23 - IDAHO STATE BOARD OF NURSING

23.01.01 - RULES OF THE IDAHO BOARD OF NURSING

DOCKET NO. 23-0101-0201 (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2002.

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 54-1404, 54-1410, and 54-1411, 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 August 21, 2002.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodations 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 proposed rule creates the regulatory framework for issuance, renewal, and reinstatement of emeritus licenses and establishes the fees for issuance, renewal, and reinstatement.

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

This rulemaking confers a benefit.

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:

The fees created by this rulemaking are necessary to fulfill the statutory mandate of Sections 54-1410 and 54-1411, Idaho Code, to issue emeritus licenses.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there was a need for temporary rulemaking in order to fulfill the statutory mandate.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sandra Evans, MAEd., R.N., Executive Director, at (208) 334-3110, ext. 26.

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 August 28, 2002.

DATED this 5th day of June, 2002.

Sandra Evans, MAEd., R.N.
Executive Director
Idaho Board of Nursing
280 N. 8th St., Ste. 210
P. O. Box 83720
Boise, ID 83720-0061
Phone: (208) 334-3110, ext. 26
Facsimile: (208) 334-3262

THE FOLLOWING IS THE TEXT OF DOCKET NO. 23-0101-0201

060. LICENSE RENEWAL.

All licenses must be renewed as prescribed in the Section 54-1411, Idaho Code. (3-30-01)

01. Renewal Application - Licensed Professional Nurse. A renewal application will be mailed to every currently licensed professional nurse, at the address on record with the Board, on or before July 1 of every odd-numbered year. (3-30-01)

02. Renewal Application - Licensed Practical Nurse. A renewal application will be mailed to every currently licensed practical nurse, at the address on record with the Board, on or before July 1 of every even-numbered year. (3-30-01)

03. Renewal Application - Advanced Practice Professional Nurse. A renewal application will be mailed to every advanced practice professional nurse, at the address on record with the Board, on or before July 1 of every odd-numbered year. (3-30-01)

04. Renewal Application - Emeritus Licensure. A renewal application will be mailed to every holder of a current emeritus license, at the address on record with the Board, on or before July 1 of the renewal year that applied to the applicant's license at the time emeritus status was granted. If the applicant was an RN or APPN at the time emeritus status was granted, renewal will take place in odd numbered years. If the applicant was an LPN at the time emeritus status was granted, renewal will take place in even numbered years. (7-1-02)T

045. Final Date To Renew. The original signed renewal application and renewal fee as prescribed in Section 900 of these rules, must be submitted to the Board and post-marked not later than August 31 of the appropriate renewal year. (3-30-01)

056. Date License Lapsed. Licenses not renewed prior to September 1 of the appropriate year will be lapsed and therefore invalid. (11-28-84)

067. Effective Period. Renewed licenses shall be effective for a two (2) year period, from September 1 of the renewal year. (3-30-01)

061. LATE RENEWAL OR REINSTATEMENT OF A ~~LAPSED~~ LICENSE.

01. Reinstatement Within One Year (Late Renewal). A person whose license has lapsed for failure to pay the renewal fee by the specified date may apply for reinstatement within one (1) year by: (3-30-01)

a. Filing a completed renewal application; and (3-30-01)

b. Payment of the verification of records fee and the renewal fee as prescribed in Subsection 900.035 of these rules. (~~7-1-93~~)(7-1-02)T

02. Reinstatement After One Year. After one (1) year, but less than three (3) years, a person whose license has lapsed for failure to pay the renewal fee by the specified date may apply for reinstatement by: (3-30-01)

a. Filing a completed reinstatement application; and (3-30-01)

b. Payment of the verification of records fee and the renewal fee as prescribed in Subsection 900.03 of these rules; and (7-1-93)

c. Providing evidence satisfactory to the Board of the applicant's ability to practice safely and competently. (3-30-01)

03. Reinstatement After Three Years. After three (3) years, a person whose license has lapsed for failure to timely pay the renewal fee may apply for reinstatement by: (3-30-01)

- a. Filing a completed application; and (3-30-01)
- b. Payment of the verification of records fee and the renewal fee as prescribed in Subsection 900.035 of these rules; and ~~(3-30-01)~~(7-1-02)T
- c. ~~Complying with the requirements of Subsection 040.07~~ Payment of the temporary license fee prescribed in Subsection 901.07 of these rules, if required; and ~~(3-30-01)~~(7-1-02)T
- d. Providing evidence satisfactory to the Board of the applicant's ability to practice safely and competently. (3-30-01)

04. Reinstatement After Discipline. A person whose license has been subject to disciplinary action by the board may apply for reinstatement of the license to active and unrestricted status by: (7-1-02)T

- a. Submitting a completed application for reinstatement; and (7-1-02)T
- b. Payment of a verification of records fee; and renewal fee as prescribed in Subsection 900.05; and (7-1-02)T
- c. Document compliance with any term and restrictions set forth in any order as a condition of reinstatement; and (7-1-02)T
- d. Provide proof, satisfactory to the board, of the applicant's competency to practice. (7-1-02)T

05. Reinstatement Of Emeritus License To Current Status. A person who holds a current emeritus license in good standing may apply for reinstatement of the license to active and unrestricted status by: (7-1-02)T

- a. Submitting a completed application for reinstatement; and (7-1-02)T
- b. Payment of the verification of records fee and renewal fee as prescribed in Subsection 900.05 of these rules; and (7-1-02)T
- c. Providing proof, satisfactory to the board, of the applicant's current competency to practice. (7-1-02)T

(BREAK IN CONTINUITY OF SECTIONS)

900. RENEWAL AND REINSTATEMENT FEES.

Fees will be assessed for renewal of licensure, ~~and~~ for late renewal or reinstatement of a lapsed license, or reinstatement of a disciplined license. Any person submitting the renewal application and fee post-marked later than August 31 shall be considered delinquent and the license lapsed and therefore invalid: ~~(3-30-01)~~(7-1-02)T

01. Licensed Professional Nurse Renewal Fee. Licensed professional nurses will be assessed a renewal fee of fifty dollars (\$50) due by August 31 of each odd-numbered year; and (3-30-01)

02. Licensed Practical Nurse Renewal Fee. Licensed practical nurses will be assessed a renewal fee of fifty dollars (\$50) due by August 31 of each even-numbered year; and (3-30-01)

03. Advanced Practice Professional Nurse. Licensed advanced practice professional nurses will be assessed a renewal fee of fifty dollars (\$50) due by August 31 of each odd-numbered year; and (3-30-01)

04. Emeritus License. Emeritus status nurses will be assessed a renewal fee of twenty dollars (\$20) due by August 31 of the renewal year. (7-1-02)T

045. Late Renewal/Reinstatement Fee. Advanced practice professional nurses, licensed professional nurses, ~~and~~ licensed practical nurses, and emeritus status nurses, requesting a late renewal, ~~or~~ reinstatement of a lapsed license, or reinstatement of a disciplined license, and emeritus status nurses seeking reinstatement of a license to active practice, will be assessed a fee of thirty-five dollars (\$35) for records verification and a fifty dollar (\$50) renewal fee which will be due upon application. (~~3-30-01~~)(7-1-02)T

056. Delay In Processing. Processing of renewal applications not accompanied by cash, cashier's check, a money order, or other guaranteed funds may be delayed in order to allow clearance of personal checks through the licensee's bank. (3-30-01)

901. LICENSURE FEES.

Fees will be assessed for licensure of professional and practical nurses by examination and endorsement, and for temporary licenses and verification of licensure to another state. (6-1-78)

01. Licensure By Examination. A fee will be assessed applicants for licensure by examination as follows: (3-30-01)

a. Professional nurse applicants: ninety dollars (\$90). (3-30-01)

b. Practical nurse applicants: seventy-five dollars (\$75). (3-30-01)

02. Advanced Practice Professional Nurses. Advanced practice professional nurse applicants: ninety dollars (\$90). (3-30-01)

03. Licensure By Endorsement. The fee assessed for licensure by endorsement of licensed professional and licensed practical nurses will be eighty-five dollars (\$85). (3-30-01)

064. Verification Of Licensure Fee. Licensed professional and licensed practical nurses requesting verification of licensure to another state will be assessed a fee of thirty dollars (\$30) which will be due upon request. (3-30-01)

075. Authorization Fee. Advance practice professional nurses will be assessed an authorization fee of fifty dollars (\$50) which will be due upon application. (3-30-01)

06. Emeritus License Fee. Applicants requesting emeritus status will be assessed a fee of twenty-five dollars (\$25), which will be due upon application. (7-1-02)T

047. Temporary License Fee. Professional and practical nurses requesting a temporary license will be assessed a fee of twenty-five dollars (\$25) which will be due upon application. (3-30-01)

058. Limited License Fee. Persons who are issued a limited license following disciplinary action or temporary voluntary surrender of a license will be assessed a fee of one hundred dollars (\$100) which will be due upon issuance of the limited license. (3-30-01)

IDAPA 35 - STATE TAX COMMISSION

35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-0203

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section(s) 63-105A and 63-3624, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

**Thursday, August 29, 2002
1:00 p.m. - 3:00 p.m.
WestCoast Twin Falls Hotel, Oak Room
1357 Blue Lakes Blvd. North
Twin Falls, Idaho 83301**

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 arrangement, contact the undersigned at (208) 334-7844.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

Property Tax Rule 316 - The 5-year reappraisal plan for counties require certain criteria be met. Property Tax Administrative Rule 316 is being promulgated to set up procedures to be followed when a county falls behind on their 5-year reappraisal plan. Sections 63-314 and 63-316, Idaho Code.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There are not fees or charges being imposed or increased in this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because nature of the rule is conferring a benefit and the time constraints of having the benefits in effect for the year 2002.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alan Dornfest, at (208) 334-7530.

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 August 28, 2002.

DATED this 24th day of June, 2002.

Alan Dornfest
Tax Policy Specialist Supervisor
State Tax Commission
800 Park, Plaza IV
P.O. Box 36, Boise, ID 83722
(208) 334-7530 FAX / (208) 334-7844

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-0203

~~316. (RESERVED).~~

316. COMPLIANCE OF CONTINUING VALUATION PROGRAM (Rule 316).

Sections 63-314 and 63-316, Idaho Code. ()

01. Definitions. ()

a. Continuing Appraisal. "Continuing appraisal" means the program by which each assessor completes the assessment of all taxable properties each year. This term includes any appraising or indexing done to accomplish the continuing program of valuation as defined in Rule 314 of these rules. ()

b. Monitor. "Monitor" means collecting data and compiling statistical reports that show the number and percentage of parcels physically inspected at scheduled intervals within each year of each five (5) year appraisal cycle. The term "monitor" also includes an examination of and summary report of compliance with the most recently completed ratio study under Section 63-109, Idaho Code, and Rule 131 of these rules showing the status of appraisal and indexing to achieve market value. ()

c. Progress Reports. "Progress reports" mean any informational or statistical report compiled and distributed by the State Tax Commission regarding the physical appraisal progress of a county. ()

d. Appraisal Cycle. "Appraisal cycle" means consecutive five (5) year periods beginning with appraisals completed for the 1998 property roll, as established by the requirement in Section 63-314, Idaho Code, to submit appraisal program plans no less than once every five (5) years, starting in February of 1997. ()

e. Remediation Plan. "Remediation plan" means, a written statement of the actions that will be taken by the county to bring the continuing program of valuation into compliance with the requirements of Section 63-314, Idaho Code. ()

02. Monitoring Procedure. The State Tax Commission will monitor compliance with the continuing program of valuation in each county no less than annually. The State Tax Commission will monitor the completion of the appraisal of no less than twenty percent (20%) of all parcels by the end of the first year of the appraisal cycle, no less than forty percent (40%) by the end of the second year, no less than sixty percent (60%) by the end of the third year, no less than eighty percent (80%) by the end of the fourth year, and no less than one hundred percent (100%) by the end of the fifth year in order that all parcels are appraised no less than every five (5) years. As a result of the monitoring process, the State Tax Commission will prepare and distribute progress reports to each county assessor at the end of each monitoring period. Each monitoring period will be conducted in the following manner: ()

a. The State Tax Commission will compile a progress report each July. The State Tax Commission will use this progress report in each county to determine compliance with Section 63-314, Idaho Code. This report will consist of an analysis of the county's progress within the current appraisal cycle as well as a summary report of the most recently completed ratio study showing the status of appraisal and indexing to achieve market value. The State Tax Commission will notify each county assessor on or before August 15 each year of the current status of the continuing program of valuation progress and any necessary corrective action. The State Tax Commission will notify the board of county commissioners that this report has been provided to the county assessor. ()

b. Upon receipt of a written request from the county assessor, the State Tax Commission will complete and distribute a six (6) month progress report in January. This January report will show the total parcels in the county, the number of parcels that need to be physically inspected for the current year's assessment, a summary report of the most recently completed ratio study, and the number of parcels upon which physical inspections were completed during the preceding six (6) months. The State Tax Commission will distribute any January progress report only to inform the county assessor of the status of the continuing program of valuation and will not use the data gathered for this report to determine compliance with Section 63-314, Idaho Code. The State Tax Commission will notify the board of county commissioners that this report has been provided to the county assessor. ()

03. Remediation Plans. If the results of any July report show that a county has achieved the adequate appraisal of less than the required percent of the parcels, as stated in Subsection 316.02, the assessor and board of

county commissioners will be required to submit to the State Tax Commission, a remediation plan that demonstrates how compliance will be achieved in the subsequent twelve (12) months. The remediation plan will be submitted to the State Tax Commission on or before September 15. The remediation plan will be finalized and approved by the State Tax Commission on or before October 1. The State Tax Commission will monitor progress toward successful completion of any remediation plan at intervals scheduled with the county assessor. ()

04. State Tax Commission To Ensure Corrective Action. If any July progress report shows that a county assessor has achieved the adequate appraisal of less than the required percent of parcels, as stated in Subsection 316.02 and implementation of the subsequent remediation plan does not achieve the required percent or the next July progress report shows the number of completed appraisals continues to be less than the required percent, the State Tax Commission will begin proceedings to ensure corrective action is taken up to and including taking exclusive and complete control of the continuing program of valuation as provided for in Section 63-316, Idaho Code. ()

05. Compliance Procedure Examples. ()

a. Example 1: The following chart outlines what will occur if a county assessor fails to complete the appraisal of the required number of parcels for 2003 and subsequently fails to complete the appraisal of the required number of parcels for 2004.

<u>January 2003 (if requested)</u>	-	<u>Informational Progress Report</u>
<u>July 2003</u>	-	<u>First Compliance Progress Report</u>
<u>Compliance</u>	-	<u>No Action</u>
<u>Non-Compliance</u>	-	<u>Remediation Plan and Monitoring</u>
<u>January 2004 (if requested)</u>	-	<u>Informational Progress Report</u>
<u>July 2004</u>	-	<u>Second Compliance Progress Report</u>
<u>Compliance</u>	-	<u>No Action</u>
<u>Non-Compliance</u>	-	<u>Enforcement of Section 63-316, Idaho Code (State Tax Commission may start proceedings to take exclusive and complete control of the program.)</u>

()

b. Example 2: The following chart outlines what will occur if a county assessor successfully completes the appraisal of the required number of parcels for 2003, 2004, and 2005 but fails to complete the appraisal of the required number of parcels for 2006 and subsequently fails to complete the appraisal of the required number of parcels for 2007.

<u>January 2003 (if requested)</u>	-	<u>Informational Progress Report</u>
<u>July 2003</u>	-	<u>First Compliance Progress Report</u>
<u>Compliance</u>	-	<u>No Action</u>
<u>January 2004 (If requested.)</u>	-	<u>Second Informational Progress Report</u>
<u>July 2004</u>	-	<u>Second Compliance Progress Report</u>
<u>Compliance</u>	-	<u>No Action</u>
<u>January 2005 (If requested.)</u>	-	<u>Informational Progress Report</u>
<u>Compliance</u>	-	<u>No Action</u>

<u>July 2005</u>	-	<u>Third Compliance Progress Report</u>
<u>Compliance</u>	-	<u>No Action</u>
<u>January 2006 (If requested.)</u>	-	<u>Informational Progress Report</u>
<u>July 2006</u>	-	<u>Fourth Compliance Progress Report</u>
<u>Compliance</u>	-	<u>No Action</u>
<u>Non-Compliance</u>	-	<u>Remediation Plan and Monitoring</u>
<u>January 2007 (If requested.)</u>	-	<u>Informational Progress Report</u>
<u>July 2007</u>	-	<u>Fifth Compliance Progress Report</u>
<u>Compliance</u>	-	<u>No Action</u>
<u>Non-Compliance</u>	-	<u>Enforcement of Section 63-316, Idaho Code (State Tax Commission may start proceedings to take exclusive and complete control of the program.)</u>

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IDAPA 35 - STATE TAX COMMISSION

35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-0204

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: This temporary rule is effective June 19, 2002.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and regular proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 63-105A and 63-3624, 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 August 21, 2002.

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 non-technical explanation of the substance and purpose of the proposed rulemaking:

The Property Tax Administrative Rule 803 is being amended to make technical corrections required by HB 680 passed by the 2002 Legislative Session. School districts will only be required to subtract a portion of equipment monies to comply with HB 680.

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

Statutory timing of the program requires the rule be adopted as a temporary rule.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because nature of the rule is conferring a benefit and the time constraints of having the benefits in effect for the year 2002.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Alan Dornfest, at (208) 334-7530.

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 August 28, 2002.

DATED this 24th day of June, 2002.

Alan Dornfest
Tax Policy Specialist Supervisor
State Tax Commission
800 Park, Plaza IV
P.O. Box 36
Boise, ID 83722
(208) 334-7530 FAX
(208) 334-7844

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-0204

803. BUDGET CERTIFICATION -- DOLLAR CERTIFICATION FORM (L-2 FORM) (Rule 803).

Sections 63-803 and 63-3067, Idaho Code. (3-15-02)

01. Definitions. (4-5-00)

a. "Dollar Certification Form" (L-2 Form). The Dollar Certification Form (L-2 Form) is the form used to submit to the State Tax Commission the budget request from each Board of County Commissioners for each taxing district. This form shall be presumed a true and correct representation of the budget previously prepared and approved by a taxing district. The budget will be presumed adopted in accordance with pertinent statutory provisions unless clear and convincing documentary evidence establishes that a budget results in an unauthorized levy provided in Section 63-809, Idaho Code. (4-5-00)

b. "Prior Year's Market Value for Assessment Purposes." Prior year's market value for assessment purposes shall mean the value used to calculate levies during the immediate prior year. This value shall be used for calculating the permanent budget increase permitted for cities, pursuant to Section 63-802(1)(f), Idaho Code, and for fire districts, pursuant to Section 31-1420(3), Idaho Code. (4-5-00)

c. Annual Budget. For the purpose of calculating dollar amount increases permitted pursuant to Section 63-802(1), Idaho Code, the annual budget shall include any amount approved as a result of an election held pursuant to Sections 63-802(1)(f), 63-802(1)(g), or 31-1420(3), Idaho Code, provided that said amount is certified on the L-2 Form as part of the budget request. If the amount certified does not include the entire amount approved as a result of the election held pursuant to Sections 63-802(1)(f), 63-802(1)(g), and 31-1420(3), then the amount not used shall be added to the foregone increase amount determined for the taxing district. See the following example.

CERTIFIED PROPERTY TAX BUDGET LIBRARY DISTRICT*				
	FY 1999	FY 2000	FY 2001	FY 2002
Annual Budget	\$10,000	\$10,000	\$10,700	\$11,621
3% Increase	\$0	\$300	\$321	\$349
Subtotal	\$10,000	\$10,300	\$11,021	\$11,970
1999 Election Amount	\$0	\$400 of \$1000	\$600 of \$1000	\$0
Certified Budget	\$10,000	\$10,700	\$11,621	\$11,970

*The Library District with zero (\$0) new construction and annexation approves an additional budget amount of one thousand dollars (\$1000) in 1999, but only certifies six hundred dollars (\$600) for the year 2000. Note the example does not account for any foregone amount resulting from the district's decision to not increase its budget by three percent (3%) in 1997, 1998 or 1999. (3-30-01)

02. Budget Certification. The required budget certification shall be made to each Board of County Commissioners representing each county in which the district is located. The certification shall be on a form prescribed by the State Tax Commission. (4-5-00)

03. Budget Requested Documents. Each Board of County Commissioners shall submit to the State Tax Commission a budget request for each taxing district in the county that certifies a budget request to finance the ~~ad valorem~~ property tax funded portion of its annual budget. The Board shall not submit other documents unless requested to do so by the State Tax Commission. Documents not to be submitted to the State Tax Commission unless requested include newspaper advertisements, school district budget books, entire budget documents, other than the budget request, and similar documents. Each taxing district certifying a budget request to finance the ~~ad valorem~~ property tax funded portion of its annual budget shall complete the State Tax Commission's L-2 Form.

~~(4-5-00)~~(6-19-02)T

04. L-2 Form Contents. Each taxing district or unit completing an L-2 Form shall include the following information on this form. (4-5-00)

a. "Department or fund." Identify the department or fund for which the taxing district is requesting a budget for the current tax year. (4-5-00)

b. "Total approved budget." List the dollar amount of the total budget for each department or fund identified. The amounts must include all money that a taxing district has a potential to spend at the time the budget is set, regardless of whether funds are to be raised from property tax. (4-5-00)

c. "Cash forward balance." List any money brought forward from a prior year to help fund the approved budget. Cash forward balance (Column 3) is the difference between the total approved budget (Column 2) and the sum of amounts reported as other revenue not shown in Column 5 (Column 4), agricultural equipment property tax replacement (Column 5), and balance to be levied (Column 6). (3-15-02)

d. "Other revenue not shown in Column 5." List the revenue included in the total approved budget to be derived from sources other than property tax or money brought forward from a prior year. For example, sales tax revenue is included. (3-15-02)

e. "Agricultural equipment property tax replacement." Report the amount of money to be received under Section 63-3067, Idaho Code. For school districts, report only the appropriate amount of such money to be subtracted as provided in Subsection 803.06. ~~(3-15-02)~~(6-19-02)T

f. "Balance to be levied." Report the amount of money included in the total approved budget to be derived from property tax. (3-15-02)

g. Other information. Provide the following additional information. (4-5-00)

i. The name of the taxing district or authority; (4-5-00)

ii. The date of voter approval (if required by statute) and effective period for any new or increased fund which is exempt from the budget limitations in Section 63-802, Idaho Code; (4-5-00)

iii. The signature, date signed, printed name, address, and phone number of an authorized representative of the taxing district; and ~~(4-5-00)~~()

~~such:~~ **iv.** *For a fire district with a population greater than twenty-five hundred (2500), a signature certifying* ~~(4-5-00)~~

iv. For a hospital district which has held a public hearing, a signature certifying such action. (4-5-00)

05. Special Provisions For Fire Districts Levying Against Operating Property. To prevent double counting of public utility property values, for any year following the first year in which any fire district increases its budget using the provision of Section 63-802(2), Idaho Code, such fire district shall not be permitted further increases under this provision unless the following conditions are met: (3-30-01)

a. The fire district and public utility have entered into a new agreement of consent to provide fire protection to the public utility; and (3-30-01)

b. Said new agreement succeeds the original agreement; and (3-30-01)

c. In the first year in which levies are certified following the new agreement, the difference between the current year's taxable value of the consenting public utility and public utility value used in previous budget calculations made pursuant to this section is used in place of the current year's taxable value of the consenting public utility. (3-30-01)

06. Special Provisions For Property Tax Replacement Pursuant To Section 63-3067, Idaho Code. Property tax replacement monies received pursuant to Section 63-3067, Idaho Code, must be reported on the L-2 form. For all taxing districts except school districts, these monies must be subtracted from the “balance to be levied”. For school districts, only “appropriate property tax replacement monies” are to be subtracted. The reduced balance shall be used to compute levies, but the maximum amount permitted pursuant to Sections 63-802 and 33-802, Idaho Code, shall be based on the sum of these property tax replacement monies and the amount actually levied, or, for school districts, the sum of “appropriate property replacement monies” and the amount actually levied.

~~(3-15-02)~~(6-19-02)T

a. “Appropriate property tax replacement monies” is determined only for school districts and means all property tax replacement monies received pursuant to Section 63-3067, Idaho Code, except an amount equal to 0.004 multiplied by the year 2000 value of property exempted in Section 63-602EE, Idaho Code. If the amount so determined is greater than the total amount of property tax replacement monies, no property tax replacement monies received pursuant to Section 63-3067, Idaho Code, shall be subtracted from the school district maintenance and operation’s (M&O) budget.

(6-19-02)T

ab. After receipt from the counties of the year 2000 tax charges on property exempted in Section 63-602EE, Idaho Code, but no later than July 23, 2001, the State Tax Commission shall notify each county clerk of the amount of property tax replacement money to be paid to each taxing district in that county. Beginning in 2002 and thereafter, the State Tax Commission shall, by the fourth Monday of July, notify each county clerk if the amount of property tax replacement money to be paid to a taxing district or the “appropriate amount of property tax replacement money” to be paid to any school district changes from the amount paid in the preceding year. In 2002, the State Tax Commission shall also notify each county clerk of the amount of the “appropriate property tax replacement monies” to be subtracted before computing the M&O levy for each school district.

~~(3-15-02)~~(6-19-02)T

bc. By no later than the first Monday of August of each year, each county clerk shall notify each appropriate taxing district or unit of the total amount of property tax replacement monies that will be received and shall further notify each school district of the appropriate amount to be subtracted before the M&O levy is computed.

~~(3-15-02)~~(6-19-02)T

ed. The subtraction required in Subsection 803.06 may be from any fund(s) subject to the limitations of Section 63-802, Idaho Code, and from school district maintenance and operation funds made pursuant to Section 33-802, Idaho Code.

(3-15-02)

de. Levy limits shall be tested against the amount actually levied.

(3-15-02)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-0201

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized by Sections 39-105 and 39-107, Idaho Code.

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

September 11, 2002, 7 p.m.
Department of Environmental Quality Conference Center
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 revise the open burning rule to remedy inconsistencies between the language and the requirements of other local, state and federal rules, regulations and laws. The changes are also needed to correct some awkward or ambiguous phrasing. Burn periods for prescribed fires, additional prohibitions, and reasonable precautions are proposed. The proposed rule will clarify the requirements for the burning of residential solid waste, and add reference to the adoption of the Smoke Management and Crop Residue Disposal Act. Anyone who conducts or regulates open burning or who may be affected by smoke from open burning may be interested in this rulemaking.

This proposed rule is an amendment to long-standing rules that regulate activities not regulated by the federal government. With the exception of very limited changes, the rule has not been updated in many years. The 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.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during a negotiation conducted pursuant to Section 67-5220, Idaho Code and IDAPA 58.01.23.812 - 815. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Volume 02-2, February 6, 2002, page 36. The negotiation period ran from February 6 through May 31, 2002. Negotiations were based on draft rule language distributed by the Department of Environmental Quality (DEQ) at the start of the period. Outreach and requests for input were extended to multiple potentially interested parties. The proposed rule incorporates and addresses the comments received as appropriate. Participants in the process to date include the City of Kuna, City of Middleton, Idaho Department of Lands, Idaho Farm Bureau Federation, Idaho Forest Owners Association, Idaho State Department of Agriculture, Intermountain Forest Association, U.S. Bureau of Land Management, U.S. Forest Service, U.S. Fish and Wildlife Service, members of the public, and DEQ staff.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Diane Riley at (208) 373-0502 or driley@deq.state.id.us.

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 September 11, 2002.

DATED this 19th day of June, 2002.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pgradwoh@deq.state.id.us

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0101-0201

600. RULES FOR CONTROL OF OPEN BURNING.

The purpose of Sections 600 through 616~~7~~ is to reduce the amount of emissions and minimize the impact of open burning to protect public human health and ~~welfare~~ the environment from air pollutants resulting from open burning. (3-19-99)(____)

601. FIRE PERMITS, HAZARDOUS MATERIALS, AND LIABILITY.

Compliance with the provisions of Sections 600 through ~~604 and Sections 606 through~~ 616~~7~~ does not exempt or excuse any person from complying with applicable laws and ordinances of other ~~governmental~~ jurisdictions responsible for fire control or hazardous material disposal or from liability for damages or injuries which may result from open burning. (5-1-94)(____)

602. NONPREEMPTION OF OTHER JURISDICTIONS.

The provisions of Sections 600 through ~~604 and Sections 606 through~~ 616~~7~~ are not intended to interfere with the rights of any city, county or other governmental entities or agencies to provide equal or more stringent control of open burning within their respective jurisdictions. (5-1-94)(____)

603. GENERAL RESTRICTIONS.

01. Categories And Materials. No person shall allow, suffer, cause or permit any open burning operation unless it is a category of open burning set forth in Sections 606~~0~~ through 616~~7~~ and ~~does~~ the materials burned do not include any of the following ~~materials~~: (5-1-94)(____)

- a. Garbage, as defined in Section 006; (5-1-94)(____)
- b. Dead animals ~~or parts thereof~~, animal parts, or animal wastes (feces, feathers, litter, etc.); (5-1-94)(____)
- c. ~~Junked in~~ Motor vehicles, parts, or any materials resulting from a salvage operation; (5-1-94)(____)
- d. Tires or other rubber materials or products; (5-1-94)(____)
- e. Plastics; (5-1-94)(____)
- f. Asphalt or composition roofing, or any other asphalt~~ie~~ material or product; (5-1-94)(____)
- g. Tar, tar paper, waste or heavy petroleum products, or paints; (5-1-94)(____)
- h. Lumber or timbers treated with preservatives; (5-1-94)(____)
- i. Trade waste, as defined in Section 006, except as specifically allowed ~~in~~ under Sections 606~~0~~ through 616~~7~~; (5-1-94)(____)

- j. Insulated wire, (5-1-94)()
- k. Pathogenic wastes, (5-1-94)()
- l. Hazardous wastes. (5-1-94)

02. Air Pollution Episodes. No person shall allow, suffer, cause or permit any open burning to be initiated during any stage of an air pollution episode declared by the Department in accordance with Sections 554, 557 and through 562. (5-1-94)()

03. Emergency Authority. In accordance with Title 39, Chapter 1, Idaho Code, the Department has the authority to require immediate abatement of any open burning in cases of emergency requiring immediate action to protect human health or safety. ()

604. ALTERNATIVES TO OPEN BURNING (RESERVED).
Two (2) years from the date any economical and reasonable alternative to a specific usage of open burning has been approved by the Director, that usage of open burning will no longer be allowable under Sections 606 through 616. Economical and reasonable alternative methods to open burning means that on the basis of available information and after public hearing, the Director concludes that a procedure, program, technique, or device has demonstrated similar benefits to open burning at non-prohibitive cost. (5-1-94)

605. (RESERVED) REASONABLE CONTROL OF OPEN BURNING.
Reasonable precautions shall be taken to reduce smoke emissions and impacts during open burning. Reasonable precautions may include, but are not limited to, the following: ()

01. Combustion Efficiency. Burn when fuels are dry, and the burn material is well aerated to maximize the combustion efficiency and minimize emissions. ()

02. Dispersion. Burn when atmospheric conditions are conducive to adequate smoke dispersion. Avoid burning during stagnant conditions or at night. ()

03. Smoke Management. Burn according to procedures set forth in an approved smoke management program. ()

04. Notification. Notify neighbors and persons located near the burning site prior to burning taking place if possible. ()

05. Local Area. Avoid smoke impacts to nearby human habitations or activities. ()

06. Weekends And Holidays. Avoid burning during weekends and holidays if feasible. ()

07. Road Hazards. Avoid causing visibility hazards along roadways. If a burn has the potential to cause visibility hazards on roadways, contact the local or state transportation agency prior to burning for applicable traffic control requirements. ()

08. Fire Safety. Always check with the local fire district or department for current fire safety requirements. ()

606. CATEGORIES OF ALLOWABLE BURNING.
The purpose of Sections 606 through 616 is to establish categories of open burning that are allowed when done according to prescribed conditions. Unless specifically exempted each category in Sections 606 through 616 is subject to all of the provisions of Sections 600 through 605. (5-1-94)()

607. RECREATIONAL AND WARMING FIRES.
Open outdoor fires used for the preparation of food or for recreational purposes (e.g. campfires, ceremonial fires, and barbecues), or small fires set for handwarming purposes, are allowable forms of open burning. (5-1-94)()

608. WEED CONTROL FIRES.

~~Open outdoor fires~~ Fires used for the purpose of weed abatement such as along fence lines, canal banks, and ditch banks ~~is an~~ are allowable forms of open burning. The burning is allowed only during daylight hours, and no fires shall be allowed to burn or smolder overnight. (5-1-94)(____)

609. TRAINING FIRES.

~~Open outdoor fires~~ Fires used by qualified personnel to train firefighters in the methods of fire suppression and fire fighting techniques, or to display certain fire ecology or fire behavior effects are allowable forms of open burning. Training facilities shall notify the Department prior to igniting any training fires. Training fires shall not be allowed to smolder after the training session has terminated. Training fires are exempt from Subsections 603.01.c. and 603.01.e. through 603.01.j. (5-1-94)(____)

610. INDUSTRIAL FLARES.

Industrial flares, used for the combustion of flammable gases are allowable forms of open burning. Industrial flares are subject to permitting requirements in Sections 200 through 223. (5-1-94)(____)

611. RESIDENTIAL DOMESTIC HOUSEHOLD SOLID WASTE DISPOSAL FIRES.

~~Domestic household solid waste disposal fires are allowed unless prohibited by local governmental ordinances or rules. Domestic household solid waste includes solid waste produced by the day-to-day operation of a domestic household and excludes any of the materials specifically prohibited from burning in Subsection 603.01. The burning must be conducted on the property where the solid waste was generated. The burning is allowed only during daylight hours, and no fires shall be allowed to burn or smolder overnight.~~ (____)

01. Fires Allowed. ~~Open outdoor fires used to dispose of solid waste (e.g. rubbish, tree leaves, yard trimmings, gardening waste, etc.) excluding garbage produced by the operation of a domestic household is an allowable form of open burning when the following provisions are met:~~ **Vegetative Solid Waste.** Fires used to dispose of vegetative waste (tree leaves, gardening waste, or yard trimmings) are allowed. (5-1-94)(____)

a: ~~No scheduled house to house solid waste collection service is available; and~~ (5-1-94)

b: ~~The burning is conducted on the property where the solid waste was generated.~~ (5-1-94)

02. Fires Exempt. ~~Open outdoor fires used to dispose of tree leaves, gardening waste or yard trimmings are exempt from Subsection 611.01.a. when conducted in accordance with local governmental ordinances or rules which allow for the open burning of tree leaves, gardening waste or yard trimming during certain periods of the year.~~ **Non-Vegetative Solid Waste.** Fires used to dispose of non-vegetative waste are allowed only when scheduled house-to-house solid waste collection service is not reasonably available. (5-1-94)(____)

612. LANDFILL DISPOSAL SITE FIRES.

The use of ~~open outdoor~~ fires for the disposal of solid waste at any solid waste landfill disposal site or facility is an allowable form of open burning only if conducted in accordance with IDAPA 58.01.06, "Solid Waste Management Rules and Standards" or the Solid Waste Facilities Act, Chapter 74, Title 39, Idaho Code. (3-19-99)(____)

613. ORCHARD FIRES.

The use of heating devices to protect orchard crops from frost damage and the use of ~~open outdoor~~ fires to dispose of orchard clippings are allowable forms of open burning when the following provisions ~~of Section 613~~ are met: (5-1-94)(____)

01. Open-Pot Heaters. The use of stackless open-pot heaters is prohibited. (5-1-94)

02. Heating Device Opacity. ~~No~~ Orchard heating device with visible emissions exceeding forty percent (40%) opacity at normal operating conditions shall not be used. Opacity shall be determined by the procedures contained in Section 625. (4-5-00)(____)

03. Heating Device Emissions. All heaters purchased after September 21, 1970, shall emit no more than one (1.0) gram per minute of solid carbonaceous matter at normal operating conditions as certified by the

manufacturer. At the time of purchase, the seller shall certify in writing to the purchaser that all new equipment is in compliance with Section 614~~3~~. (5-1-94)(____)

04. Orchard Clippings. The open burning of orchard clippings shall be conducted on the property where the clippings were generated. (5-1-94)

614. PRESCRIBED FIRE MANAGEMENT BURNING.

The use of ~~open outdoor~~ fires to obtain the objectives of prescribed fire management burning, as defined in Section 006, is an allowable form of open burning when the provisions of Section 614 are met. Prescribed fire reduces the risk and severity of unwanted wildfire, prepares sites for reforestation, removes undesirable competing vegetation, expedites nutrient cycling, controls or eliminates pathogens, and improves rangeland vegetation. The use of prescribed fire is recognized as a forest practice in the rules pertaining to the Idaho Forest Practices Act, Chapter 13, Title 38, Idaho Code. The State Board of Land Commissioners has the authority to adopt rules for the use of prescribed fires on forest land. The Idaho Department of Lands is responsible for administering and enforcing the Idaho Forest Practices Act, Chapter 13, Title 38, Idaho Code, and rules pertaining to the use of prescribed fire. (5-1-94)(____)

01. Burning Permits Or Prescribed Fire Plans. (5-1-94)

a. Whenever a burning permit or prescribed fire plan is required ~~by the Department of Lands, U.S.D.A. Forest Service~~ pursuant to the Idaho Forestry Act, Chapter 1, and the Idaho Forest Practices Act, Chapter 13, Title 38, Idaho Code, or ~~by~~ any other state, ~~or~~ federal, or local agency responsible for ~~land~~ fire management, any person who conducts or allows prescribed burning shall meet all permit and/or prescribed fire plan conditions and terms which control smoke. A burning permit, used to protect public health, safety, and welfare, is specified in the Idaho Forestry Act, Chapter 1, Title 38, Idaho Code. A prescribed fire plan means a written plan establishing the criteria necessary to meet management objectives, and to start, control, and extinguish a prescribed fire including any elements to reduce smoke emissions and impacts. (5-1-94)(____)

b. The Department will seek ~~interagency agreements~~ to assure permits or prescribed fire plans issued by agencies referred to in Subsection 614.01.a. provide adequate consideration for controlling smoke from prescribed burning. (5-1-94)(____)

02. Smoke Management ~~Plans~~ Programs For Prescribed Burning. (5-1-94)(____)

ba. The Department will ~~develop and work with~~ state, federal, and other agencies responsible for fire management to put into effect ~~a~~ Smoke Management Plan Programs for ~~P~~prescribed ~~B~~burning consistent with the purpose of Sections 600 through 616~~7~~. (5-1-94)(____)

ab. ~~Whenever a permit or plan is not required by the Department of Lands, U.S.D.A. Forest Service, or any other state or federal agency responsible for land management, a~~ Any person who conducts or allows prescribed burning shall meet all conditions set forth in a Smoke Management Plan Program for ~~P~~prescribed ~~B~~burning, except as provided by Subsection 614.02.c., and be in compliance with rules of the Forest Practices Act, Chapter 13, Title 38, Idaho Code. (5-1-94)(____)

c. Any person conducting or allowing prescribed burning, and not meeting all conditions set forth in a Smoke Management Program for prescribed burning, must adhere to the time periods for burning set by the Department and made available through the Department's toll-free number. Prescribed burning must also be in compliance with rules of the Forest Practices Act, Title 38, Chapter 13, Idaho Code. (____)

03. ~~Rights-Of-Way Fires.~~ ~~The open burning of woody debris generated during the clearing of rights of way shall be open burned according to Sections 38-101 and 38-401, Idaho Code, IDAPA 20 Title 16 and Sections 606 through 616 of these rules.~~ (5-1-94)

615. DANGEROUS MATERIAL FIRES.

~~Open outdoor~~ Fires used or permitted by a public or military fire chief to dispose of materials (including military ordnance) which present a danger to life, valuable property or the public welfare, or for the purpose of prevention of a fire hazard when no practical alternative method of disposal or removal is available are allowable forms of open

burning.

(5-1-94)()

616. INFECTIOUS WASTE BURNING.

Upon the order of a public health officer, ~~open outdoor~~ fires used to dispose of diseased animals or infested material ~~is~~ are an allowable form of open burning. ~~Infectious waste burning is~~ and exempt from Subsection 603.01.k.

(5-1-94)()

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 the Smoke Management and Crop Residue Disposal Act, Chapter 48, Title 22, Idaho Code, and the rules promulgated pursuant thereto, IDAPA 02.06.16, "Crop Residue Disposal Rules". ()

~~6178.~~ -- 624. (RESERVED).

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 - WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS

DOCKET NO. 58-0102-0201 (FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Department of Environmental Quality (DEQ) has proposed rulemaking. The action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

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

August 22, 2002, 6:30 p.m.
Department of Environmental Quality Conference Center
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: This rulemaking has been undertaken to adopt and implement a public wastewater operator certification program as required by Section 39-105(3)(i), Idaho Code. The purpose of this program is to ensure that operators of public wastewater treatment facilities have the technical expertise and certification to operate wastewater facilities in a manner to protect human health and the source waters of the state. The rules will provide consistency and standardization in nine areas: (1) definition of a public wastewater facility to identify facilities and operators affected by the rule, (2) a classification system for operators and wastewater collection systems and wastewater treatment facilities, (3) operator qualifications, (4) certification renewal requirements, (5) ongoing professional growth requirements, (6) re-certification, (7) enforcement provisions for noncompliance, (8) resources needed to implement the new rules, and (9) ongoing stakeholder involvement. The proposed rule also includes reciprocity criteria, confidentiality language, contracting options, grandparenting rights, a wastewater land application endorsement for operators of wastewater land application systems, and periodic program and rule reviews.

The new rules will affect wastewater treatment and collections operators, the Idaho Water and Wastewater Operator Certification Board, wastewater permit programs, wastewater collection system owners, wastewater treatment facility owners, the Association of Idaho Cities, Pacific Northwest Pollution Control Association, operator trainers, other special interest groups, and the general public.

This proposed rule regulates activities not regulated by the federal government but mandated by Idaho statute. 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, the Idaho Department of Environmental Quality (DEQ) intends to present the final proposal to the Board of Environmental Quality in the fall of 2002 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2003 session of the Idaho Legislature.

FEE SUMMARY: The rules will allow reasonable fees to be charged for application, examination and annual renewals. The fees will be used to help fund the ongoing costs of administering the wastewater certification program. Indirect fees will result from continuing education requirements. Imposition of the fees is authorized by Section 39-119, Idaho Code.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during a negotiation conducted pursuant to Section 67-5220, Idaho Code, and IDAPA 58.01.23, Sections 812 through 815. The negotiation was open to the public. Participants in the negotiation included Association of Idaho Cities, Idaho Water/Wastewater Operator Certification Board, Pacific Northwest Pollution Control Assoc., wastewater collection systems, wastewater treatment facility operators, sewer district representatives, members of the public, and DEQ staff. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Volume 02-1, January 2, 2002, page 225 and 226.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at

www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rule, contact Nancy Bowser at (208)373-0502 or nbowser@deq.state.id.us.

Anyone can 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 September 6, 2002.

DATED this 19th day of June, 2002.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pgradwoh@deq.state.id.us

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0102-0201

002. TITLE AND SCOPE.

01. Title. These rules shall be cited as Rules of the Department of Environmental Quality, IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements". (4-5-00)

02. Scope. These rules designate uses which are to be protected in and of the waters of the state and establish standards of water quality protective of those uses. Restrictions are placed on the discharge of wastewaters and on human activities which may adversely affect public health and water quality in the waters of the state. In addition, unique and outstanding waters of the state are recognized. These rules do not provide any legal basis for an additional permit system, nor can they be construed as granting to the Department any authority not identified in the Idaho Code. (~~7-1-93~~)()

003. DEFINITIONS.

For the purpose of the rules contained in IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements," the following definitions apply: (4-5-00)

01. Acute. Involving a stimulus severe enough to rapidly induce a response; in aquatic toxicity tests, a response measuring lethality observed in ninety-six (96) hours or less is typically considered acute. When referring to human health, an acute effect is not always measured in terms of lethality. (3-20-97)

02. Acute Criteria. Unless otherwise specified in these rules, the maximum instantaneous or one (1) hour average concentration of a toxic substance or effluent which ensures adequate protection of sensitive species of aquatic organisms from acute toxicity resulting from exposure to the toxic substance or effluent. Acute criteria will adequately protect the designated aquatic life use if not exceeded more than once every three (3) years. The terms "acute criteria" and "criterion maximum concentration" (CMC) are equivalent. (3-15-02)

03. Acute Toxicity. The existence of mortality or injury to aquatic organisms resulting from a single or

short-term (i.e., ninety-six (96) hours or less) exposure to a substance. As applied to toxicity tests, acute toxicity refers to the response of aquatic test organisms to a concentration of a toxic substance or effluent which results in a LC-50. (3-20-97)

04. Beneficial Use. Any of the various uses which may be made of the water of Idaho, including, but not limited to, domestic water supplies, industrial water supplies, agricultural water supplies, navigation, recreation in and on the water, wildlife habitat, and aesthetics. The beneficial use is dependent upon actual use, the ability of the water to support a non-existing use either now or in the future, and its likelihood of being used in a given manner. The use of water for the purpose of wastewater dilution or as a receiving water for a waste treatment facility effluent is not a beneficial use. (8-24-94)

05. Available. Based on public wastewater system size, complexity, and variation in raw waste, a certified wastewater operator must be on site or able to be contacted as needed to initiate the appropriate action for normal or emergency conditions in a timely manner. ()

056. Aquatic Species. Any plant or animal that lives at least part of its life in the water column or benthic portion of waters of the state. (8-24-94)

067. Background. The biological, chemical or physical condition of waters measured at a point immediately upstream (up-gradient) of the influence of an individual point or nonpoint source discharge. If several discharges to the water exist or if an adequate upstream point of measurement is absent, the department will determine where background conditions should be measured. (8-24-94)

078. Basin Advisory Group. No less than one advisory group named by the Director, in consultation with the designated agencies, for each of the state's six (6) major river basins which shall generally advise the Director on water quality objectives for each basin, work in a cooperative manner with the Director to achieve these objectives, and provide general coordination of the water quality programs of all public agencies pertinent to each basin. Each basin advisory group named by the Director shall reflect a balanced representation of the interests in the basin and shall, where appropriate, include representatives from each of the following: agriculture, mining, nonmunicipal point source discharge permittees, forest products, local government, livestock, Indian tribes (for areas within reservation boundaries), water-based recreation, and environmental interests. (3-20-97)

089. 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 cost-effective and practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals. (3-20-97)

0910. Bioaccumulation. The process by which a compound is taken up by, and accumulated in the tissues of an aquatic organism from the environment, both from water and through food. (8-24-94)

101. Biochemical Oxygen Demand (BOD). The measure of the amount of oxygen necessary to satisfy the biochemical oxidation requirements of organic materials at the time the sample is collected; unless otherwise specified, this term will mean the five (5) day BOD incubated at twenty (20) degrees C. (8-24-94)

112. Biological Monitoring or Biomonitoring. The use of a biological entity as a detector and its response as a measure to determine environmental conditions. Toxicity tests and biological surveys, including habitat monitoring, are common biomonitoring methods. (8-24-94)

123. Board. The Idaho Board of Environmental Quality. (7-1-93)

14. Certificate. Documentation of competency issued by the Director stating that the person to be certified has met requirements for a specific classification of the public wastewater operator certification program. ()

135. Chronic. Involving a stimulus that lingers or continues for a relatively long period of time, often one-tenth (.01) of the life span or more. Chronic should be considered a relative term depending on the life span of an organism. The measurement of a chronic effect can be reduced growth, reduced reproduction, etc., in addition to

lethality. (8-24-94)

146. Chronic Criteria. Unless otherwise specified in these rules, the four (4) day average concentration of a toxic substance or effluent which ensures adequate protection of sensitive species of aquatic organisms from chronic toxicity resulting from exposure to the toxic substance or effluent. Chronic criteria will adequately protect the designated aquatic life use if not exceeded more than once every three (3) years. The terms “chronic criteria” and “criterion continuous concentration” (CCC) are equivalent. (3-15-02)

157. Chronic Toxicity. The existence of mortality, injury, reduced growth, impaired reproduction, or any other adverse effect on aquatic organisms resulting from a long-term (i.e., one-tenth (0.1) or more of the organism’s life span) exposure to a substance. As applied to toxicity tests, chronic toxicity refers to the response of aquatic organisms to a concentration of a toxic substance or effluent which results in an IC-25. (8-24-94)

168. Compliance Schedule Or Schedule Of Compliance. A schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard. (8-24-94)

19. Continuing Education Unit (CEU). An alternate unit (to semester or quarter systems) of formal credit assignment to post-secondary training activities, which is based upon regionally or nationally established and recognized education criteria. ()

~~170.~~ **Criterion Continuous Concentration (CCC).** Unless otherwise specified in these rules, the four (4) day average concentration of a toxic substance or effluent which ensures adequate protection of sensitive species of aquatic organisms from chronic toxicity resulting from exposure to the toxic substance or effluent. The CCC will adequately protect the designated aquatic life use if not exceeded more than once every three (3) years. The terms “criterion continuous concentration” and “chronic criteria” are equivalent. (3-15-02)

~~181.~~ **Criterion Maximum Concentration (CMC).** Unless otherwise specified in these rules, the maximum instantaneous or one (1) hour average concentration of a toxic substance or effluent which ensures adequate protection of sensitive species of aquatic organisms from acute toxicity resulting from exposure to the toxic substance or effluent. The CMC will adequately protect the designated aquatic life use if not exceeded more than once every three (3) years. The terms “criterion maximum concentration” and “acute criteria” are equivalent. (3-15-02)

~~192.~~ **Daily Mean.** The average of at least two (2) appropriately spaced measurements, acceptable to the department, calculated over a period of one (1) day: (3-20-97)

a. Confidence bounds around the point estimate of the mean may be required to determine the sample size necessary to calculate a daily mean; (8-24-94)

b. If any measurement is greater or less than five-tenths (0.5) times the average, additional measurements over the one-day period may be needed to obtain a more representative average; (3-20-97)

c. In calculating the daily mean for dissolved oxygen, values used in the calculation shall not exceed the dissolved oxygen saturation value. If a measured value exceeds the dissolved oxygen saturation value, then the dissolved oxygen saturation value will be used in calculating the daily mean. (8-24-94)

203. Deleterious Material. Any nontoxic substance which may cause the tainting of edible species of fish, taste and odors in drinking water supplies, or the reduction of the usability of water without causing physical injury to water users or aquatic and terrestrial organisms. (8-24-94)

~~214.~~ **Department.** The Idaho Department of Environmental Quality. (7-1-93)

~~225.~~ **Design Flow.** The critical flow used for steady-state wasteload allocation modeling. (8-24-94)

~~236.~~ **Designated Agency.** The department of lands for timber harvest activities, oil and gas exploration and development, and mining activities; the soil conservation commission for grazing and agricultural activities; the

transportation department for public road construction; the department of agriculture for aquaculture; and the Department's division of environmental quality for all other activities. (3-20-97)

247. Designated Beneficial Use Or Designated Use. Those beneficial uses assigned to identified waters in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements," Sections 110 through 160, whether or not the uses are being attained. (4-5-00)

258. Desirable Species. Species indigenous to the area or those introduced species identified as desirable by the Idaho Department of Fish and Game. (3-15-02)

269. Director. The Director of the Idaho Department of Environmental Quality or his authorized agent. (7-1-93)

2730. Discharge. When used without qualification, any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state. (8-24-94)

2831. Disinfection. A method of reducing the pathogenic or objectionable organisms by means of chemicals or other acceptable means. (7-1-93)

2932. Dissolved Oxygen (DO). The measure of the amount of oxygen dissolved in the water, usually expressed in mg/l. (7-1-93)

303. Dissolved Product. Petroleum product constituents found in solution with water. (8-24-94)

314. Dynamic Model. A computer simulation model that uses real or derived time series data to predict a time series of observed or derived receiving water concentrations. Dynamic modeling methods include continuous simulation, Monte Carlo simulations, lognormal probability modeling, or other similar statistical or deterministic techniques. (8-24-94)

325. E. coli (Escherichia coli). A common fecal and intestinal organism of the coliform group of bacteria found in warm-blooded animals. (4-5-00)

336. Effluent. Any wastewater discharged from a treatment facility. (7-1-93)

347. Effluent Biomonitoring. The measurement of the biological effects of effluents (e.g., toxicity, biostimulation, bioaccumulation, etc.). (8-24-94)

358. EPA. The United States Environmental Protection Agency. (7-1-93)

369. Ephemeral Waters. A stream, reach, or water body that flows only in direct response to precipitation in the immediate watershed and whose channel is at all times above the water table. (4-5-00)

3740. Existing Beneficial Use Or Existing Use. Those beneficial uses actually attained in waters on or after November 28, 1975, whether or not they are designated for those waters in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements". (8-24-94)

3841. Facility. As used in Section 850 only, any building, structure, installation, equipment, pipe or pipeline, well pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock or aircraft, area, place or property from which an unauthorized release of hazardous materials has occurred. (8-24-94)

3942. Fecal Coliform. The portion of the coliform group of bacteria present in the gut and feces of warm-blooded animals, usually expressed as number of organisms/one hundred (100) ml of sample. (7-1-93)

403. Four Day Average. The mean of the twenty-four (24) hour average values calculated over a period of ninety-six (96) consecutive hours. (3-20-97)

414. Free Product. A petroleum product that is present as a nonaqueous phase liquid. Free product

includes the presence of petroleum greater than one-tenth (0.1) inch as measured on the water surface for surface water or the water table for ground water. (7-1-93)

425. Full Protection, Full Support, Or Full Maintenance Of Designated Beneficial Uses Of Water. Compliance with those levels of water quality criteria listed in Sections 200, 210, 250, 251, 252, 253, and 275 (if applicable) or where no major biological group such as fish, macroinvertebrates, or algae has been modified by human activities significantly beyond the natural range of the reference streams or conditions approved by the Director in consultation with the appropriate basin advisory group. (3-15-02)

436. Geometric Mean. The geometric mean of "n" quantities is the "nth" root of the product of the quantities. (7-1-93)

447. Ground Water. Subsurface water comprising the zone of saturation. (8-24-94)

458. Harmonic Mean Flow. The number of daily flow measurements divided by the sum of the reciprocals of the flows (i.e., the reciprocal of the mean of reciprocals). (8-24-94)

469. Hazardous Material. A material or combination of materials which, when discharged in any quantity into state waters, presents a substantial present or potential hazard to human health, the public health, or the environment. Unless otherwise specified, published guides such as Quality Criteria for Water (1976) by EPA, Water Quality Criteria (Second Edition, 1963) by the state of California Water Quality Control Board, their subsequent revisions, and more recent research papers, regulations and guidelines will be used in identifying individual and specific materials and in evaluating the tolerances of the identified materials for the beneficial uses indicated. (7-1-93)

50. Health Hazard. Any condition which creates, or may create, a danger to the public as determined by the Department. Health hazards may consist of, but are not limited to, design, construction, operational, structural, collection, storage, distribution, monitoring, treatment or water quality elements. ()

4751. Hydrologic Unit Code (HUC). A unique eight (8) digit number identifying a subbasin. A subbasin is a United States Geological Survey cataloging unit comprised of water body units. (4-5-00)

4852. Hydrologically-Based Design Flow. A statistically derived receiving water design flow based on the selection and identification of an extreme value (e.g., 1Q10, 7Q10). The underlying assumption is that the design flow will occur X number of times in Y years, and limits the number of years in which one or more excursions below the design flow can occur. (8-24-94)

4953. Hypolimnion. The deepest zone in a thermally-stratified body of water. It is fairly uniform in temperature and lies beneath a zone of water which exhibits a rapid temperature drop with depth of at least one (1) degree C per meter. (3-20-97)

504. Inhibition Concentration-25 (IC-25). A point estimate of the toxicant concentration that would cause a twenty-five percent (25%) reduction in a non-lethal biological measurement of the test organisms, such as reproduction or growth. Determined using curve fitting with an assumption of a continuous dose-response relationship. An IC-25 is approximately the analogue of NOEC. (8-24-94)

515. Instantaneous Concentration. A concentration of a substance measured at any moment (instant) in time. (8-24-94)

526. Inter-Departmental Coordination. Consultation with those agencies responsible for enforcing or administering the practices listed as approved best management practices in Subsection 350.03. (7-1-93)

537. Intermittent Waters. A stream, reach, or water body which has a period of zero (0) flow for at least one (1) week during most years. Where flow records are available, a stream with a 7Q2 hydrologically-based flow of less than one-tenth (0.1) cfs is considered intermittent. Streams with natural perennial pools containing significant aquatic life uses are not intermittent. (4-5-00)

548. Land Application. A process or activity involving application of wastewater, surface water, or semi-liquid material to the land surface for the purpose of disposal, pollutant removal, or ground water recharge. (8-24-94)

559. LC-50. The toxicant concentration killing fifty percent (50%) of exposed organisms at a specific time of observation (e.g., ninety-six (96) hours). (3-20-97)

560. Load Allocation (LA). The portion of a receiving water's loading capacity that is attributed either to one (1) of its existing or future nonpoint sources of pollution or to natural background sources. (8-24-94)

5761. Loading Capacity. The greatest amount of pollutant loading that a water can receive without violating water quality standards. (8-24-94)

5862. Lower Water Quality. A measurable adverse change in a chemical, physical, or biological parameter of water relevant to a beneficial use, and which can be expressed numerically. Measurable change is determined by a statistically significant difference between sample means using standard methods for analysis and statistical interpretation appropriate to the parameter. Statistical significance is defined as the ninety-five percent (95%) confidence limit when significance is not otherwise defined for the parameter in standard methods or practices. (3-20-97)

5963. Lowest Observed Effect Concentration (LOEC). The lowest concentration of a toxicant or an effluent that results in observable adverse effects in the aquatic test population. (8-24-94)

604. Man-Made Waterways. Canals, flumes, ditches, and similar features, constructed for the purpose of water conveyance. (7-1-93)

615. Maximum Weekly Maximum Temperature (MWMT). The weekly maximum temperature (WMT) is the mean of daily maximum temperatures measured over a consecutive seven (7) day period. The MWMT is the single highest WMT that occurs during a given year. (3-15-02)

626. Milligrams Per Liter (mg/l). Milligrams of solute per liter of solution, equivalent to parts per million, assuming unit density. (7-1-93)

637. Mixing Zone. A defined area or volume of the receiving water surrounding or adjacent to a wastewater discharge where the receiving water, as a result of the discharge, may not meet all applicable water quality criteria or standards. It is considered a place where wastewater mixes with receiving water and not as a place where effluents are treated. (7-1-93)

648. National Pollutant Discharge Elimination System (NPDES). Point source permitting program established pursuant to Section 402 of the federal Clean Water Act. (8-24-94)

659. Natural Background Conditions. No measurable change in the physical, chemical, biological, or radiological conditions existing in a water body without human sources of pollution within the watershed. (3-15-02)

6670. Nephelometric Turbidity Units (NTU). A measure of turbidity based on a comparison of the intensity of the light scattered by the sample under defined conditions with the intensity of the light scattered by a standard reference suspension under the same conditions. (8-24-94)

671. Nonpoint Source Activities. Activities on a geographical area on which pollutants are deposited or dissolved or suspended in water applied to or incident on that area, the resultant mixture being discharged into the waters of the state. Nonpoint source activities on ORWs do not include issuance of water rights permits or licenses, allocation of water rights, operation of diversions, or impoundments. Nonpoint sources activities include, but are not limited to: (3-20-97)

- a. Irrigated and nonirrigated lands used for: (7-1-93)
- i. Grazing; (7-1-93)

- ii. Crop production; (7-1-93)
- iii. Silviculture; (7-1-93)
- b. Log storage or rafting; (7-1-93)
- c. Construction sites; (7-1-93)
- d. Recreation sites; (3-20-97)
- e. Septic tank disposal fields. (8-24-94)
- f. Mining; (3-20-97)
- g. Runoff from storms or other weather related events; and (3-20-97)
- h. Other activities not subject to regulation under the federal national pollutant discharge elimination system. (3-20-97)

6872. No Observed Adverse Effect Level (NOAEL). A threshold dose of a toxic substance or an effluent below which no adverse biological effects are observed, as identified from chronic or subchronic human epidemiology studies or animal exposure studies. (8-24-94)

6973. No Observed Effect Concentration (NOEC). The highest concentration of a toxic substance or an effluent at which no adverse effects are observed on the aquatic test organisms. Determined using hypothesis testing with the assumption of a noncontinuous threshold model of the dose-response relationship. (8-24-94)

704. Nuisance. Anything which is injurious to the public health or an obstruction to the free use, in the customary manner, of any waters of the state. (7-1-93)

745. Nutrients. The major substances necessary for the growth and reproduction of aquatic plant life, consisting of nitrogen, phosphorus, and carbon compounds. (7-1-93)

726. One Day Minimum. The lowest daily instantaneous value measured. (3-20-97)

737. One Hour Average. The mean of at least two (2) appropriately spaced measurements, as determined by the Department, calculated over a period of one (1) hour. When three (3) or more measurements have been taken, and if any measurement is greater or less than five-tenths (0.5) times the mean, additional measurements over the one-hour period may be needed to obtain a more representative mean. (3-20-97)

78. Operating Experience. The number of years spent in performance of duties at a wastewater system. ()

749. Operator. For purposes of Sections 851 and 852, Any person presently or who was at any time during a release in control of, or having responsibility for, the daily operation of the petroleum storage tank (PST) system. (7-1-93)()

80. Operator Certifying Entity. An organization that contracts with the Department to provide public wastewater operator certification services. ()

7581. Outstanding Resource Water (ORW). A high quality water, such as water of national and state parks and wildlife refuges and water of exceptional recreational or ecological significance, which has been designated by the legislature and subsequently listed in this chapter. ORW constitutes an outstanding national or state resource that requires protection from point and nonpoint source activities that may lower water quality. (3-20-97)

7682. Outstanding Resource Water Mixing Zone. An area or volume of an ORW where pollutants are

allowed to mix with the ORW receiving water at a location distinct from the sampling point where compliance with ORW quality standards is measured. An ORW mixing zone will be downstream from the discharge of a tributary or a segment immediately upstream which contains man caused pollutants as a result of nonpoint source activities occurring on that tributary or segment. As a result of the discharge, the mixing zone may not meet all water quality standards applicable to the ORW, but shall still be protected for existing beneficial uses. The Department, after consideration of input from interested parties, will determine the size, configuration and location of mixing zones which are necessary to meet the requirements of this chapter. (7-1-93)

7783. Owner. For purposes of Sections 851 and 852, Any person who owns or owned a petroleum storage tank (PST) system any time during a release and the current owner of the property where the PST system is or was located. (7-1-93)(____)

84. Owner/Operator of Wastewater Treatment/Wastewater Collection System. For purposes of Sections 403 through 412, the person, company, corporation, district, association or other organizational entity which holds legal title to the public wastewater system, who provides, or intends to provide wastewater collection/transport and/or treatment service to system users and is ultimately responsible for the public wastewater system operation. (____)

785. Person. An individual, public or private corporation, partnership, association, firm, joint stock company, joint venture, trust, estate, state, municipality, commission, political subdivision of the state, state or federal agency, department or instrumentality, special district, interstate body or any legal entity, which is recognized by law as the subject of rights and duties. (3-20-97)

7986. Petroleum Products. Products derived from petroleum through various refining processes. (7-1-93)

807. Petroleum Storage Tank (PST) System. Any one or combination of storage tanks or other containers, including pipes connected thereto, dispensing equipment, and other connected ancillary equipment, and stationary or mobile equipment, that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. (7-1-93)

818. 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. (7-1-93)

829. Pollutant. Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, cellar dirt; and industrial, municipal and agricultural waste, gases entrained in water; or other materials which, when discharged to water in excessive quantities, cause or contribute to water pollution. Provided however, biological materials shall not include live or occasional dead fish that may accidentally escape into the waters of the state from aquaculture facilities. (3-20-97)

8390. Potable Water. A water which is free from impurities in such amounts that it is safe for human consumption without treatment. (7-1-93)

8491. Primary Treatment. Processes or methods that serve as the first stage treatment of wastewater, intended for removal of suspended and settleable solids by gravity sedimentation; provides no changes in dissolved and colloidal matter in the sewage or wastes flow. (7-1-93)

8592. Project Plans. Documents which describe actions to be taken under a proposed activity. These documents include environmental impact statements, environmental assessments, and other land use or resource management plans. (7-1-93)

93. Public Wastewater System/Public Wastewater Treatment System/Public Wastewater Collection System/Wastewater System. For purposes of Sections 403 through 412, a public wastewater treatment

system or a public wastewater collection system includes those treatment systems that are owned by a city, county, state or federal unit of government, a non profit corporation, district, association, political subdivision or other public entity, that generate or collect two thousand five hundred (2,500) or more gallons a day, or that have been constructed in whole or in part with public funds. This does not include any wastewater treatment facility operated and maintained exclusively by a single family residence or any wastewater system consisting solely of a gravity flow, non-mechanical septic tank and subsurface treatment and distribution system, or industrial wastewater systems under private ownership. ()

8694. Receiving Waters. Those waters which receive pollutants from point or nonpoint sources. (7-1-93)

8795. Recharge. The process of adding water to the zone of saturation. (7-1-93)

8896. Recharge Water. Water that is specifically utilized for the purpose of adding water to the zone of saturation. (7-1-93)

97. Reciprocity. A system by which operator certificates issued by any other operator certification program are recognized as valid and equal to Idaho's Certification Program provision. ()

898. Reference Stream Or Condition. A water body which represents the minimum conditions necessary to fully support the applicable designated beneficial uses as further specified in these rules, or natural conditions with few impacts from human activities and which are representative of the highest level of support attainable in the basin. In highly mineralized areas or in the absence of such reference streams or water bodies, the Director, in consultation with the basin advisory group and the technical advisors to it, may define appropriate hypothetical reference conditions or may use monitoring data specific to the site in question to determine conditions in which the beneficial uses are fully supported. (3-20-97)

909. Release. Any unauthorized spilling, leaking, emitting, discharging, escaping, leaching, or disposing into soil, ground water, or surface water. (8-24-94)

910. Resident Species. Those species that commonly occur in a site including those that occur only seasonally or intermittently. This includes the species, genera, families, orders, classes, and phyla that: (8-24-94)

a. Are usually present at the site; (8-24-94)

b. Are present only seasonally due to migration; (8-24-94)

c. Are present intermittently because they periodically return or extend their ranges into the site; (8-24-94)

d. Were present at the site in the past but are not currently due to degraded conditions, and are expected to be present at the site when conditions improve; and (8-24-94)

e. Are present in nearby bodies of water but are not currently present at the site due to degraded conditions, and are expected to be present at the site when conditions improve. (8-24-94)

101. Responsible Charge (RC). For purposes of Sections 403 through 412, responsible charge means, active, daily on-site and/or on-call responsibility for the performance of operations or active, on-going, on-site and on-call direction of employees and assistants. ()

9102. Responsible Persons In Charge. Any person who: (8-24-94)

a. By any acts or omissions, caused, contributed to or exacerbated an unauthorized release of hazardous materials; (8-24-94)

b. Owns or owned the facility from which the unauthorized release occurred and the current owner of the property where the facility is or was located; or (8-24-94)

c. Presently or who was at any time during an unauthorized release in control of, or had responsibility for, the daily operation of the facility from which an unauthorized release occurred. (8-24-94)

9103. Saturated Zone. Zone or layer beneath the earth's surface in which all of the pore spaces of rock or soil are filled with water. (7-1-93)

9104. Secondary Treatment. Processes or methods for the supplemental treatment of wastewater, usually following primary treatment, to affect additional improvement in the quality of the treated wastes by biological means of various types which are designed to remove or modify organic matter. (7-1-93)

9105. Seven Day Mean. The average of the daily mean values calculated over a period of seven (7) consecutive days. (3-20-97)

9106. Sewage. The water-carried human or animal waste from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present. (8-24-94)

9107. Short-Term Or Temporary Activity. An activity which is limited in scope and is expected to have only minimal impact on water quality as determined by the Director. Short-term or temporary activities include, but are not limited to, those activities described in Subsection 080.02. (3-20-97)

9108. Silviculture. Those activities associated with the regeneration, growing and harvesting of trees and timber including, but not limited to, disposal of logging slash, preparing sites for new stands of trees to be either planted or allowed to regenerate through natural means, road construction and road maintenance, drainage of surface water which inhibits tree growth or logging operations, fertilization, application of herbicides or pesticides, all logging operations, and all forest management techniques employed to enhance the growth of stands of trees or timber. (3-20-97)

9109. Sludge. The semi-liquid mass produced by partial dewatering of potable or spent process waters or wastewater. (7-1-93)

1010. Special Resource Water. Those specific segments or bodies of water which are recognized as needing intensive protection: (7-1-93)

a. To preserve outstanding or unique characteristics; or (7-1-93)

b. To maintain current beneficial use. (7-1-93)

1011. Specialized Best Management Practices. Those practices designed with consideration of geology, land type, soil type, erosion hazard, climate and cumulative effects in order to fully protect the beneficial uses of water, and to prevent or reduce the pollution generated by nonpoint sources. (3-3-87)

1012. State. The state of Idaho. (7-1-93)

1013. State Water Quality Management Plan. The state management plan developed and updated by the Department in accordance with Sections 205, 208, and 303 of the Clean Water Act. (3-20-97)

1014. Steady-State Model. A fate and transport model that uses constant values of input variables to predict constant values of receiving water quality concentrations. (8-24-94)

115. Substitute Responsible Charge Operator. A public wastewater operator holding a valid certificate at a class equal to or greater, than the public wastewater system classification, designated by the system owner to replace and to perform the duties of the responsible charge operator when the responsible charge operator is not available or accessible. ()

10516. Subsurface Disposal. Disposal of effluent below ground surface, including, but not limited to, drainfields or sewage beds. (7-1-93)

10617. Suspended Sediment. Organic and inorganic particulate matter which has been removed from its site of origin and measured while suspended in surface water. (7-1-93)

10718. Technology-Based Effluent Limitation. Treatment requirements under Section 301(b) of the Clean Water Act that represent the minimum level of control that must be imposed in a permit issued under Section 402 of the Clean Water Act. (8-24-94)

10819. Total Maximum Daily Load (TMDL). The sum of the individual wasteload allocations (WLAs) for point sources, load allocations (LAs) for nonpoint sources, and natural background. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. (8-24-94)

10920. Toxicity Test. A procedure used to determine the toxicity of a chemical or an effluent using living organisms. A toxicity test measures the degree of response of an exposed test organism to a specific chemical or effluent. (8-24-94)

11021. Toxic Substance. Any substance, material or disease-causing agent, or a combination thereof, which after discharge to waters of the State and upon exposure, ingestion, inhalation or assimilation into any organism (including humans), either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral abnormalities, malignancy, genetic mutation, physiological abnormalities (including malfunctions in reproduction) or physical deformations in affected organisms or their offspring. Toxic substances include, but are not limited to, the one hundred twenty-six (126) priority pollutants identified by EPA pursuant to Section 307(a) of the federal Clean Water Act. (8-24-94)

11122. Treatment. A process or activity conducted for the purpose of removing pollutants from wastewater. (7-1-93)

11223. Treatment System. Any physical facility or land area for the purpose of collecting, treating, neutralizing or stabilizing pollutants including treatment by disposal plants, the necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishing thereof and their appurtenances. A treatment system may also be known as a treatment facility. (7-1-93)()

11324. Trihalomethane (THM). THM means one of the family of organic compounds named as derivatives of methane, wherein three (3) of the four (4) hydrogen atoms in the molecular structure of methane are substituted by one (1) of the chemical elements chlorine, bromine or iodine. (7-1-93)

11425. Twenty-Four Hour Average. The mean of at least two (2) appropriately spaced measurements, as determined by the Department, calculated over a period of twenty-four (24) consecutive hours. When three (3) or more measurements have been taken, and if any measurement is greater or less than five-tenths (0.5) times the mean, additional measurements over the twenty-four (24)-hour period may be needed to obtain a more representative mean. (3-20-97)

11526. Unique Ecological Significance. The attribute of any stream or water body which is inhabited or supports an endangered or threatened species of plant or animal or a species of special concern identified by the Idaho Department of Fish and Game, which provides anadromous fish passage, or which provides spawning or rearing habitat for anadromous or desirable species of lake dwelling fishes. (8-24-94)

127. User. Any person served by a public wastewater system. ()

128. Validated Examination. An exam that is independently reviewed by subject matter experts to ensure that the exam is based on an operator job analysis and is relevant and related to the classification of the system or facility. ()

129. Waiver. For purposes of Subsection 408.09 (Professional Growth Requirement), "waiver" means the deferral of the annual continuing education units (CEUs) required for operator certification renewal for any

certified operator deployed out of state or country due to active military service, when such deployment makes it impossible for the operator to accrue the required CEU units by the certification renewal date (March 1). ()

~~146~~**30. Wasteload Allocation (WLA).** The portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. (8-24-94)

~~147~~**31. Wastewater.** Unless otherwise specified, sewage, industrial waste, agricultural waste, and associated solids or combinations of these, whether treated or untreated, together with such water as is present. (7-1-93)

132. Wastewater Land Application Endorsement. A non-renewable, one (1) time examination to determine competency of an operator working with a wastewater land application system. This examination may be taken in conjunction with the certification examination equal to or greater than the classification of the wastewater system or subsequent to having already taken and passed the certification examination equal to or greater than the classification of the wastewater system. ()

133. Wastewater Operator. The person who is employed, retained, or appointed to conduct the tasks associated with routine day to day operation and maintenance of a public wastewater system in order to safeguard the public health and environment. ()

~~148~~**34. Water Body Unit.** Includes all named and unnamed tributaries within a drainage and is considered a single unit unless designated otherwise. (4-5-00)

~~149~~**35. Water Pollution.** Any alteration of the physical, thermal, chemical, biological, or radioactive properties of any waters of the state, or the discharge of any pollutant into the waters of the state, which will or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to fish and wildlife, or to domestic, commercial, industrial, recreational, aesthetic, or other beneficial uses. (8-24-94)

~~120~~**36. Water Quality-Based Effluent Limitation.** An effluent limitation that refers to specific levels of water quality that are expected to render a body of water suitable for its designated or existing beneficial uses. (8-24-94)

~~124~~**37. Water Quality Limited Water Body.** After monitoring, evaluation of required pollution controls, and consultation with the appropriate basin and watershed advisory groups, a water body identified by the Department, which does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards after the application of required pollution controls. A water body identified as water quality limited shall require the development of a TMDL or other equivalent process in accordance with Section 303 of the Clean Water Act and Sections 39-3601 et seq., Idaho Code. (3-20-97)

~~122~~**38. Waters And Waters Of The State.** All the accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state. (7-1-93)

1239. Watershed. The land area from which water flows into a stream or other body of water which drains the area. (3-20-97)

12440. Watershed Advisory Group. An advisory group appointed by the Director, with the advice of the appropriate Basin Advisory Group, which will recommend to the Department those specific actions needed to control point and nonpoint sources of pollution affecting water quality limited water bodies within the watershed. Members of each watershed advisory group shall be representative of the industries and interests affected by the management of that watershed, along with representatives of local government and the land managing or regulatory agencies with an interest in the management of that watershed and the quality of the water bodies within it. (3-20-97)

12541. Whole-Effluent Toxicity. The aggregate toxic effect of an effluent measured directly with a toxicity test. (8-24-94)

(BREAK IN CONTINUITY OF SECTIONS)

403. CLASSIFICATION OF WASTEWATER SYSTEMS.

01. Classification Requirement. All public wastewater systems will be classified based on indicators of potential health risks. ()

a. Classification rating forms for systems will be completed by the public wastewater system owner or designee for every public wastewater treatment system and wastewater collection system developed in accordance with the criteria in Subsection 403.02. The Department will review the rating forms and classify the systems. ()

b. The Department will review system classifications at five (5) year intervals and make revisions to reflect changed conditions. ()

02. Classification Criteria. Public wastewater treatment systems and wastewater collection systems shall be classified under a system that uses the following criteria: ()

a. Complexity, size, volume and variability in raw waste for treatment systems using guidelines established by the Department. ()

b. Complexity and size of collection systems. ()

c. Other criteria deemed necessary to completely classify systems. ()

404. WASTEWATER SYSTEM OPERATOR CERTIFICATION REQUIREMENTS.

01. System Operator Certification Requirement. Owners of all public wastewater systems must place the direct supervision of their wastewater system(s), including each treatment facility and each collection system, under the responsible charge of an operator who holds a valid certification equal to or greater than the classification of the wastewater system and/or collection system. An operator in responsible charge of both a wastewater treatment system and a collection system shall hold two (2) certificates, one (1) for wastewater treatment and one (1) for collection. ()

02. Responsible Charge Operator Certification Requirement. An operator in responsible charge of a public wastewater system in Idaho must hold a valid certification equal to or greater than the classification of the wastewater system(s), including each treatment facility, where present, and each collection system as determined by the Department. ()

03. Substitute Responsible Charge Operator. At such times as the responsible charge operator is not available, a substitute responsible charge operator shall be designated to replace the responsible charge operator. ()

04. Wastewater Operator Certification. All other operating personnel at public wastewater systems including each treatment facility and collection system must hold a valid certificate. ()

05. Compliance Deadline. All public wastewater systems addressed in these rules shall be in compliance with these rules within two (2) years of April 15, 2003. ()

06. Qualifications For Certification. To qualify for a certificate an applicant must meet requirements of employment, education, experience, and examination as described in Section 406. Applicants may also receive certification through grandparenting as described in Section 405 or through reciprocity upon evaluation of his or her qualifications and comparison of Idaho certification rules to those of another state on a case-by-case basis. ()

07. Administration Of The Certification Program. Administration of all aspects of the public wastewater system operator certification program in Idaho shall be the responsibility of the Department. ()

08. Contractor Activities. All administrative activities contracted to an operator certifying entity will be carried out in accordance with these rules. ()

09. Optional Wastewater Operator Certification. Any operator of a wastewater treatment system not required to meet this rule may choose to become certified in accordance with the criteria in Sections 405, 406 and 407. Upon issuance of a certificate, the operator is subject to certification renewal requirements referenced in Section 408. ()

405. GRANDPARENTING.

01. Grandparenting Certificate. A grandparenting certificate may only be issued to an existing wastewater operator in responsible charge of an existing public wastewater system. The grandparenting certificate will be site specific and non-transferable and can only be issued to a wastewater operator of a system that has demonstrated his or her competency to the Director and which, because of state law changes to meet these rules, a system must have a certified wastewater operator for the first time. ()

02. Application Limitations. The system must apply for grandparenting within two (2) years of April 15, 2003. Applicants shall be subject to an application fee to cover processing costs. ()

03. Certification Limitations. Upon receiving a grandparenting certificate the wastewater operator shall be required to meet renewal requirements including but not limited to continuing education and renewal fee requirements. ()

04. Wastewater System Classification Limitations. If the classification of the wastewater system changes to a higher classification then the grandparenting certification is no longer valid. ()

05. One System Limitation. A wastewater operator who is the wastewater operator in responsible charge of more than one (1) public wastewater system shall not be grandparented. ()

06. Grandparent Professional Growth Requirement. In the first certification renewal cycle, every grandparented operator must complete and show documentation of completion of a one-time training requirement. The one-time training shall include all information covered by the qualifying certification exam for the certification class the operator holds. Following the first renewal cycle, professional growth requirements revert to the professional growth requirements described in Subsection 408.09. ()

406. MINIMUM WASTEWATER OPERATOR REQUIREMENTS FOR CERTIFICATION. Every applicant shall meet the criteria in Subsections 406.01, 406.02, and 406.03 to qualify for a certification classification in lagoons, wastewater treatment, wastewater collections and, where applicable, in wastewater land application. Applicants shall be subject to an application fee to cover examination and processing costs. ()

01. Employment Requirement. Except for an Operator-In-Training (OIT) Classification, applicants for certification must be currently employed or working in the wastewater field. ()

02. Examination Requirement. Applicants must pass a written validated examination with a score of seventy percent (70%) or better. The examination will reflect different levels of knowledge, ability and judgment required for the established certification classes. Examinations will be administered in accordance with established examination procedures. A wastewater land application operator operating a wastewater land application system is required to take and pass a written wastewater land application endorsement examination. ()

03. Education And Experience Requirements. ()

a. Basic Education and Experience Certification Requirements. ()

i. To qualify for an Operator-In-Training Certificate, an operator must have a high school diploma or

GED and pass an OIT exam. After passing an OIT exam, a "one-time" non-renewable certificate of "Operator-In-Training" will be issued. This certificate will be valid for three (3) years only. After working one (1) year in the field and with no further testing required, the Operator-In-Training will be issued a Class I Certificate upon proof of twelve (12) months of operating experience in a Class I or higher public wastewater treatment system or public wastewater collection system. ()

ii. To qualify for a Lagoon certificate, an operator must have a high school diploma or GED and twelve (12) months of acceptable experience operating a Lagoon system. ()

iii. To qualify for a Class I certificate, an operator must have a high school diploma or GED and one (1) year of acceptable operating experience of a Class I or higher system and/or treatment facility. ()

iv. To qualify for a Class II certificate, an operator must have a high school diploma or GED and three (3) years of acceptable operating experience of a Class I or higher system and/or treatment facility. ()

v. To qualify for a Class III certificate, an operator must have a high school diploma or GED and two (2) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable operating experience of a Class II or higher system and/or treatment facility, including two (2) years active, daily, on-site charge of personnel or a major segment of a system or facility in the same or next lower class. ()

vi. To qualify for a Class IV certificate, an operator must have a high school diploma or GED; four (4) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable operating experience of a Class III or higher system and/or treatment facility, including two (2) years of active, daily, on-site charge of personnel or a major segment of a system or facility in the same or next lower class. ()

vii. To qualify for a Wastewater Land Application Endorsement, an operator must have a high school diploma or GED and the minimum operating experience appropriate to the classification of the wastewater system. ()

b. Substituting Education for Experience. Applicants may substitute education for operating and responsible charge experience as specified below: ()

i. For Class I or Lagoon certificate, no substitution for operating experience shall be permitted. ()

ii. For Class II, a maximum of one and one-half (1½) years of post high school education in the environmental control field, engineering or related science may be substituted for one and one-half (1½) years of operating experience. ()

iii. For Class III and IV, a maximum of two (2) years of post high school education in the environmental control field, engineering or related science may be substituted for two (2) years of operating experience; however, the applicant must still have one (1) year of active, daily, on-site charge of personnel or a major segment of a system or facility in the same or next lower class. ()

iv. Education applied to operating experience shall not also be applied to education requirement. ()

v. One (1) year of education above the high school level may be substituted for one (1) year experience, up to maximum of fifty percent (50%) of required operating or active, daily, on-site charge of personnel or a major segment of a system or facility in the same or next lower class. ()

c. Substituting Experience for Education. Where applicable, operating and responsible charge experience or operating and active, daily, on-site charge of personnel or a major segment of a system or facility in the same or next lower class experience may be substituted for education as specified below: ()

i. One (1) year of operating experience may be substituted for two (2) years of grade school with no limitation or one (1) year high school with no limitation. ()

ii. For Class III and IV, additional responsible charge experience (that exceeding the two (2) year class requirements) may be substituted for post high school education on a two (2) for one (1) basis: two (2) years additional responsible charge = one (1) year post high school education. ()

iii. Related experience may be substituted for experience up to one-half (1/2) of the operating experience requirement for Class II, III and IV. Experience that may be substituted includes but is not limited to the following: ()

- (1) Experience as an environmental or operations consultant; ()
- (2) Experience in an environmental or engineering branch of federal, state, county, or local government; ()
- (3) Experience as a wastewater collection system operator; ()
- (4) Experience as a wastewater treatment plant operator; ()
- (5) Experience as a water distribution system operator and/or manager; ()
- (6) Experience as a water treatment plant operator; or ()
- (7) Experience in waste treatment operation and maintenance. ()

d. Equivalency Policy for Education or Experience Substitutions. Substitutions for education or experience requirements needed to meet minimum requirements for certification will be evaluated upon the following equivalency policies: ()

- i. High School - High School diploma, a GED, or other equivalent. ()
- ii. College - Thirty-five (35) credits equals one (1) year (limited to curricula in environmental engineering, environmental sciences, water/wastewater technology, and/or related fields). ()
- iii. Continuing Education Units (CEU) for relevant operator training courses, seminars, related college courses, and other training activities. Ten (10) classroom hours equals one (1) CEU; forty-five (45) CEUs equals one (1) year of college. ()

407. RECIPROCITY.

The Director may waive examination requirements for applicants holding certificates or licenses issued by other States which have equivalent certification requirements. Applicants shall be subject to an application fee to cover processing costs. A certificate of the appropriate wastewater operator class will be issued. ()

408. CERTIFICATES AND RENEWALS.

01. Certificate Issuance. Upon satisfying the requirements of Section 406, a certificate will be issued to the applicant designating his or her level of operating competency. ()

02. Certificate Renewal. Certificates shall be subject to payment of renewal fees and professional growth requirements. ()

a. A certification renewal period will be two (2) years starting March 1 and continuing for twenty-four (24) months through February 28 (29). ()

b. The Department shall develop policy during the first year this rule is in effect to schedule payment of wastewater certification renewal fees such that funds collected from certificate renewals is consistent from year to

year. ()

03. Grandparent Certificate Issuance Limitation. A grandparent certification shall not be issued within seventy-five (75) days of the certification renewal deadline in Subsection 408.02 to allow the grandparented operator sufficient time to meet the professional growth requirement referenced in Subsection 408.09. ()

04. Invalidation Of Certificates. Certificates for which the renewal card applications are not received within sixty (60) days after the expiration date or which do not satisfy the professional growth requirement of Subsection 408.09 will be invalid. ()

05. Renewal Of Invalidated Certificates. Wastewater system operators whose certificates are invalidated may be renewed for up to two (2) years provided appropriate proof of competency is presented and reinstatement fees are paid. ()

06. Recertification. Wastewater system operators who have failed to renew or qualify for renewal of certificate(s) beyond two (2) years must recertify and provide appropriate proof of competency. ()

07. Certificate Issuance. Appropriate classification will be issued to wastewater system operators who, on the effective date of a mandatory program, hold valid wastewater certificates attained by examination under the voluntary program. ()

08. Certificate Signatures. Certificates shall be signed by the Chairman and Secretary of the operator certifying entity. ()

09. Professional Growth Requirement. Renewal of a certificate shall be based on demonstrations of continued professional growth in the field. A wastewater system operator shall submit satisfactory evidence of completion of approved training of a minimum one point two (1.2) CEUs as a condition for renewal of the certificate. The certification renewal period shall be two (2) years from March 1 through February 28 (29). It is the obligation of the wastewater system operator to present proof of CEUs earned along with the renewal fee. A wastewater system operator holding more than one (1) certificate issued under these wastewater rules need only complete the training required to satisfy renewal requirements for one (1) of these wastewater certificates. ()

10. Temporary Professional Growth Waiver. The Department may, at its discretion, temporarily waive the CEU requirements outlined in Subsections 405.06 and 408.09 for certified wastewater system operators who present documentation of deployment out of state or country on active military duty for a period of time that makes it impossible for the operator to meet the CEU requirements prior to the renewal deadline. Upon completion of active deployment, the operator shall have twelve (12) calendar months from the date of return to the state to make up the CEUs missed during deployment. This waiver does not alter the CEU requirements in Subsections 405.06 or 408.09 for the certification renewal cycle in progress at the time the operator returns to the state. ()

409. CONTRACTING FOR SERVICES.

Public wastewater systems that do not have a certified public wastewater system operator may contract with a certified public wastewater system operator or with a public wastewater system having certified operators to provide supervision. The contracted public wastewater system operator or contracted entity shall employ an operator certified at the grade equal to or greater than the classification of the plant or system. ()

01. Minimum Contract Requirements. For the minimum contract required in this rule to be sufficient, the contracted certified wastewater system operator or contracted entity shall: ()

a. Be available on twenty-four (24) hour call and able to respond onsite upon request. ()

b. Report the results of analyses or measurements and indicate any results or measurements out of compliance with permit conditions or maintenance conditions to the operator and owner. ()

c. Recommend corrective action when any results or measurements are out of compliance with permit conditions or maintenance conditions. ()

d. Recommend that all elements of routine operation and maintenance of the wastewater system are completed in accordance with accepted public health practice and these rules. ()

02. Proof Of Contract. Proof of the contract shall be submitted to the Department. ()

410. PENALTIES.

The Director may assess penalties in accordance with the following provisions: ()

01. General Authority. Violations of these rules shall be punishable as provided in Title 39, Chapter 1, Idaho Code. ()

02. Falsification And Forgery. Any person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed or registered, or recorded under any law of this state, or of the United States, is guilty of a felony, Section 18-3203, Idaho Code. ()

03. Civil Penalties. Pursuant to Section 39-108, Idaho Code, any person who violates these rules shall be subject to a civil penalty. Each and every violation is a separate and distinct offense and for continuing violations, each day's violation is separate and distinct. ()

411. SUSPENSION, REDUCTION OR REVOCATION.

01. Suspension, Reduction Or Revocation Of An Operator's Certificate. The Director may suspend, reduce, or revoke a wastewater operator certificate following a hearing before the Board when the following conditions are found: ()

a. It is found that the individual holding the wastewater certificate has engaged in misconduct such as fraud, falsification of the application, or falsification of operating records. ()

b. The individual holding the wastewater certificate has failed to perform his or her duties as described in the definition of "Wastewater Operator" found in Section 003 of these rules. ()

c. It is found that the individual holding the wastewater certificate has failed to use reasonable care and judgment in the performance of his duties as described in the definition of "Wastewater Operator" found in Section 003 of these rules, or the application of his knowledge and ability in the performance of his duties is unsatisfactory. ()

02. Appeals. In the event of a decision to suspend, reduce or revoke a certificate under the conditions set forth in Section 411, the holder of that certificate may appeal the decision as provided for in Sections 39-107(6) and 39-107(7), Idaho Code, and IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". ()

412. ADVISORY GROUP.

Stakeholder Involvement. Ongoing stakeholder involvement may be provided through a wastewater advisory committee at the Department. ()

4013. -- 419. (RESERVED).

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 - WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS

DOCKET NO. 58-0102-0203

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Department of Environmental Quality (DEQ) has proposed rulemaking. The action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

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

August 22, 2002, 6:30 p.m.
Department of Environmental Quality Conference Center
1410 N. Hilton, Boise, Idaho.

Before opening the record to receive oral comments, DEQ staff intends to make a brief presentation and answer questions regarding the rule.

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 adopt site-specific water quality criteria for portions of the Boise River for copper and lead. Section 275 of the Idaho water quality standards provide for developing new water quality criteria or modifying existing water quality criteria through site-specific analyses which will effectively protect designated and existing uses. Any person may develop site-specific criteria in accordance with these rules.

In the case of the Boise River, the City of Boise has commissioned tests into differences between the toxicity of copper and lead to test organisms in river water, compared to the toxicity values used in the EPA criteria documents. Results of these tests indicate that copper and lead criteria in the Boise River may be raised by about 2.6 times and 2.0 times respectively, and would still likely protect fish and other aquatic life in the Boise River.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in the fall of 2002 for adoption of a pending and temporary rule. This rule is proposed for temporary adoption due to compliance deadlines. The City of Boise is subject to comply with new effluent limits for copper and lead with the earliest deadline of February 12, 2003. If site-specific criteria modifications for copper and lead are adopted and approved by EPA, some aspects of their compliance schedule would be unnecessary or could be modified. Meeting the current compliance schedules would incur additional capital and operating expenses for the City and its ratepayers. These additional expenses may not provide a significant benefit to the environment and might be avoided if proposed site-specific water quality criteria become effective.

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.

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

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rule, contact Chris Mebane at (208)373-0502 or cmebane@deq.state.id.us.

Anyone can 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 September 6, 2002.

DATED this 19th day of June, 2002.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pgradwoh@deq.state.id.us

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0102-0203

275. SITE-SPECIFIC SURFACE WATER QUALITY CRITERIA.

01. Procedures For Establishing Site-specific Water Quality Criteria. The water quality criteria adopted in these standards may not always reflect the toxicity of a pollutant in a specific water body. These criteria also represent a limited number of the natural and human-made chemicals that exist in the environment which may pose a threat to designated or existing beneficial uses. Thus, it may be possible in some water bodies to develop new water quality criteria or modify existing criteria through site-specific analyses which will effectively protect designated and existing beneficial uses. (8-24-94)

a. The following are acceptable conditions for developing site-specific criteria: (8-24-94)

i. Resident species of a water body are more or less sensitive than those species used to develop a water quality criterion. (8-24-94)

(1) Natural adaptive processes have enabled a viable, balanced aquatic community to exist in waters where natural background levels of a pollutant exceed the water quality criterion (i.e., resident species have evolved a greater resistance to higher concentrations of a pollutant). (8-24-94)

(2) The composition of aquatic species in a water body is different from those used to derive a water quality criterion (i.e., more or less sensitive species to a pollutant are present or representative of a water body than have been used to derive a criterion). (8-24-94)

ii. Biological availability and/or toxicity of a pollutant may be altered due to differences between the physicochemical characteristics of the water in a water body and the laboratory water used in developing a water quality criterion (e.g., alkalinity, hardness, pH, salinity, total organic carbon, suspended solids, turbidity, natural complexing, fate and transport water, or temperature). (8-24-94)

iii. The affect of seasonality on the physicochemical characteristics of a water body and subsequent effects on biological availability and/or toxicity of a pollutant may justify seasonally dependent site-specific criteria. (8-24-94)

iv. Water quality criteria may be derived to protect and maintain existing ambient water quality. (8-24-94)

v. Other factors or combinations of factors that upon review of the Department may warrant modifications to the criteria. (8-24-94)

b. Any person may develop site-specific criteria in accordance with these rules. To insure that the

approach to be used in developing site-specific criteria is scientifically valid, the Department shall be involved early in the planning of any site-specific analyses so that an agreement can be reached concerning the availability of existing data, additional data needs, methods to be used in generating new data, testing procedures to be used, schedules to be followed and quality control and assurance provisions to be used. (8-24-94)

c. Site-specific criteria shall not impair designated or existing beneficial uses year-round (or seasonally for seasonal dependent criteria) and shall prevent acute and chronic toxicity outside of approved mixing zones. If site-specific criteria are seasonally dependent, the period when the criteria apply shall be clearly identified. (8-24-94)

d. Site-specific criteria, if appropriate, shall include both chronic and acute concentrations to more accurately reflect the different tolerances of resident species to the inherent variability between concentrations and toxicological characteristics of a pollutant. (8-24-94)

e. Site-specific criteria shall be clearly identified as maximum (not to be exceeded) or average values. If a criterion represents an average value, the averaging period shall be specified. The conditions, if any, when the criteria apply shall be clearly stated (e.g., specific levels of hardness, pH, water temperature, or bioavailability). Specific sampling requirements (location, frequency, etc.), if any, shall also be specified. (8-24-94)

f. A site may be limited to the specific area affected by a point or nonpoint source of pollution or, if appropriate, an expanded geographical area (e.g., ecoregion, river basin, sub-basin, etc.). For a number of different water bodies to be designated as one site, their respective aquatic communities cannot vary substantially in sensitivity to a pollutant. Site boundaries shall be geographically defined. (8-24-94)

g. Proposed site-specific water quality criteria must be approved by the Board in accordance with the Idaho Administrative Procedure Act. The Department of Environmental Quality shall determine whether to approve a request for site-specific criteria in accordance with this section and within twenty-eight (28) days after receipt of the request, and will introduce acceptable site-specific criteria for rule-making. (8-24-94)

h. The following are acceptable procedures for developing site-specific criteria for aquatic life protection. (8-24-94)

i. Site-specific analyses for the development of new water quality criteria shall be conducted in a manner which is scientifically justifiable and consistent with the assumptions and rationale in "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses," EPA 1985. This document is available for review at the Idaho Department of Environmental Quality or may be obtained from EPA or the U.S. Government Printing Office. (8-24-94)

ii. Site-specific analyses for the modification of existing water quality criteria shall be conducted in accordance with one of the following procedures, as described in the "Water Quality Standards Handbook", EPA 1983. This document is available for review at the Idaho Department of Environmental Quality or may be obtained from EPA or the U.S. Government Printing Office. (8-24-94)

(1) Recalculation Procedure. This procedure is used to account for differences in sensitivity to a pollutant between resident species and those species used in deriving the criterion. Bioassays in laboratory water may be required for untested resident species. (8-24-94)

(2) Indicator Species Procedure. This procedure is used to account for differences in biological availability and/or toxicity of a chemical between the physicochemical characteristics of the water in a water body and the laboratory water used in developing criteria. Bioassays in site water are required using resident species or acceptable nonresident species. (8-24-94)

(3) Resident Species Procedure. This procedure is used to account for differences in both resident species sensitivity and biological availability and/or toxicity of a pollutant. Bioassays in site water using resident species are required. (8-24-94)

(4) Water effects ratios as defined by EPA guidance documents. (8-24-94)

(5) Other scientifically defensible procedures such as relevant aquatic field studies, laboratory tests, biological translators, fate and distribution models, risk analyses or available scientific literature. (8-24-94)

(a) Deviations from the above described EPA procedures shall have justifications which are adequately documented and based on sound scientific rationale. (8-24-94)

(b) The data, testing procedures and application factors used to develop site-specific criteria shall reflect the nature of the pollutant (e.g., persistency, bioaccumulation potential, avoidance or attraction responses in fish, etc.), the designated and existing beneficial uses, and the most sensitive resident species of a water body. (8-24-94)

02. Water Quality Criteria For Specific Waters. Standards provided in Sections 276 through 298 for specific waters will supersede Sections 210, 250, 251, 252, and 253 when the application of the standards contained in both sections would present a conflict. (~~4-5-00~~)()

(BREAK IN CONTINUITY OF SECTIONS)

278. LOWER BOISE RIVER SUBBASIN, HUC 17050114 SUBSECTION 150.12.

01. Boise River, SW-1 And SW-5 – Salmonid Spawning And Dissolved Oxygen. The waters of the Boise River from Veterans State Park to its mouth will have dissolved oxygen concentrations of six (6) mg/l or seventy-five percent (75%) of saturation, whichever is greater, during the spawning period of salmonid fishes inhabiting those waters. (3-15-02)

02. Indian Creek, SW-3b, Mason Creek, SW-6, And Sand Hollow Creek, SW-17 - Modified Aquatic Life Use. All numeric criteria applicable to the seasonal cold water aquatic life use apply with the exception of dissolved oxygen. Dissolved oxygen concentrations are to exceed four (4) mg/l at all times. (3-15-02)

03. Fifteenmile Creek, SW-7; Tenmile Creek, SW-8, And Five Mile Creek, SW-10 - Modified Aquatic Life Use. All numeric criteria applicable to the seasonal cold water aquatic life use apply. (3-15-02)

04. Boise River, SW-5 And SW-11a – Copper And Lead Aquatic Life Criteria. The water-effect ratio (WER) values used in the equations in Subsection 210.02 for calculating copper and lead CMC and CCC values shall be two and five hundred seventy-eight thousandths (2.578) for dissolved copper and two and forty-nine thousandths (2.049) for lead. These site-specific criteria shall apply to the Boise River from the Lander St. wastewater outfall to where the channels of the Boise River become fully mixed downstream of Eagle Island. ()

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 - WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS

DOCKET NO. 58-0102-0204

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Department of Environmental Quality (DEQ) has proposed rulemaking. The action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

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

August 22, 2002, 6:30 p.m.
Department of Environmental Quality Conference Center
1410 N. Hilton, Boise, Idaho.

Before opening the record to receive oral comments, DEQ staff intends to make a brief presentation and answer questions regarding the rule.

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: This rulemaking relates to: 1) annual use designations and 2) criteria for chemical substances in surface water.

1. The Idaho water quality standards include a catalog of all the waters in the state which are to have use designations for state waters. This rulemaking adds new designations to the tables at Sections 110 through 160 and 252. The proposed use designations are based upon Department of Environmental Quality (DEQ) Beneficial Use Reconnaissance Program (BURP) data, subbasin assessments, or other data compiled by DEQ regional offices relevant to beneficial use designations. Proposed designations for the "salmonid spawning" beneficial use are supported by data that includes the presence of juvenile salmonids which suggests that salmonid spawning occurs in the vicinity. Designations for "cold water" aquatic life use without a "salmonid spawning" designation are proposed for waters in which cold water species fish or other aquatic life may be found, but no evidence of salmonid spawning has been documented. The significance between a proposed "cold water" designation with or without a "salmonid spawning" designation is primarily that colder temperature criteria may be applied to "salmonid spawning" waters during the spawning season.

Designations for waters to have water quality suitable for recreation are proposed as either "primary contact" or "secondary contact." "Primary contact" designations are appropriate for water bodies suitable for activities like swimming, kayaking, or water skiing where full immersion and incidental swallowing of some water is likely. "Secondary contact" designations are appropriate for smaller streams where full immersion and incidental swallowing of water are uncommon. The difference between water suitable for "primary contact" or "secondary contact" recreation is that more stringent bacteria criteria apply to "primary contact" waters. Several streams in the Bear Lake subbasin are additionally proposed for a "special resource water" (SRW) designation. This designation is appropriate for waters of unique ecological significance or other characteristics described in Section 056 of the water quality standards. These Bear Lake tributaries are unique in that they are among the few waters in which Bonneville cutthroat trout live in Idaho. The SRW designations are consistent with existing use designations for other Bear Lake tributaries.

2. The Clean Water Act requires that from time to time, but at least every three years, the State shall seek public participation and hold a public hearing for the purpose of reviewing applicable water quality standards including use designations, and as appropriate modifying and adopting standards. In lieu of only conducting reviews every third year, the DEQ generally conducts ongoing reviews and annually seeks comment on proposed updates to the lists of beneficial uses designated for protection in different water bodies. The act specifically requires that for any water bodies that are not designated so that water quality is suitable for aquatic life and recreation, the State is to review any new information that may have become available. If the new information indicates that the so-called "fishable" and "swimmable" use designations are attainable, the State shall revise its standards accordingly. Water bodies presently designated as having either use designated as "unattainable" are Soda Creek and Soda Creek Reservoir near the town of Soda Springs, and Blackbird, West Fork Blackbird, and Bucktail creeks near the town of

Salmon. The DEQ makes a standing request for 1) recent information regarding whether aquatic life or recreation uses are attainable for these water bodies, and 2) recommendations for other aspects of the Idaho water quality standards for future review and potential revision.

3. Currently, chemical water quality criteria are not listed in the Idaho water quality standards. Instead, the June 1993 version of 40 CFR 131.36 is incorporated by reference, with various exceptions. This has proven to be confusing or difficult for the public to look up what the applicable chemical water quality criteria are. The 1993 copy of the Code of Federal Regulations (CFR) is no longer in print or readily accessible, and current versions of the CFR are different from the 1993 version. The proposed rule would replace the incorporation by reference with the actual values. No substantive changes are proposed to how these criteria have already been incorporated into Idaho water quality standards. Minor changes are proposed to update the publication consistent with the current language of 40 CFR 131.36; these include expressing specified metals criteria as dissolved metals consistent with 40 CFR 131.36.c.4.iii and adopting the low flow provisions of 40 CFR 131.36.c.2. These low flow provisions, below which criteria would not apply, have long been used in effluent permit calculations, although they had never actually been adopted into the State water quality standards. Existing paragraphs for chlorine are deleted since it has been added to the criteria table.

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, the Idaho Department of Environmental Quality (DEQ) intends to present the final proposal to the Board of Environmental Quality in the fall of 2002 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2003 session of the Idaho Legislature.

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

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rule, contact Chris Mebane at (208)373-0502 or cmebane@deq.state.id.us.

Anyone can 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 September 6, 2002.

DATED this 19th day of June, 2002.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418
Fax No. (208)373-0481
pgradwoh@deq.state.id.us

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0102-0204

120. CLEARWATER BASIN.

Surface waters found within the Clearwater basin total ten (10) subbasins and are designated as follows: (4-5-00)

01. Palouse Subbasin. The Palouse Subbasin, HUC 17060108, is comprised of thirty-three (33) water body units.

Unit	Waters	Aquatic Life	Recreation	Other
C-1	Cow Creek - source to Idaho/Washington border	COLD	SCR	
C-2	South Fork Palouse River - Gnat Creek to Idaho/Washington border	COLD SS	SCR	
C-3	South Fork Palouse River - source to Gnat Creek	COLD SS	SCR	
C-4a	Gnat Creek - source to T40N, R05W, Sec. 26	<u>COLD</u>	<u>SCR</u>	
C-4b	Gnat Creek - T40N, R05W, Sec. 26 to mouth	<u>COLD</u>	<u>SCR</u>	
C-5	Paradise Creek - source to Idaho/Washington border	COLD	SCR	
C-6a	Missouri Flat Creek - source to T40N, R5W, Sec. 17	<u>COLD</u>	<u>SCR</u>	
C-6b	Missouri Flat Creek-T40N, R5W, Sec. 17 to Idaho/Washington border	<u>COLD</u>	<u>SCR</u>	
C-7a	Fourmile Creek - source to T40N, R5W, Sec. 5	<u>COLD</u>	<u>SCR</u>	
C-7b	Fourmile Creek - T40N, R5W, Sec. 5 to Idaho/Washington border	<u>COLD</u>	<u>SCR</u>	
C-8a	Silver Creek - source to T43, R5W, Sec. 29	<u>COLD</u>	<u>SCR</u>	
C-8b	Silver Creek - T43, R5W, Sec. 29 to Idaho/Washington border	<u>COLD</u>	<u>SCR</u>	
C-9	Palouse River - Deep Creek to Idaho/Washington border	COLD	SCR	
C-10	Palouse River - Hatter Creek to Deep Creek	COLD	SCR	
C-11a	Flannigan Creek - source to T41N, R05W, Sec. 23	COLD	SCR	
C-11b	Flannigan Creek - T41N, R05W, Sec. 23 to mouth	<u>COLD</u>	<u>SCR</u>	
C-12	Rock Creek - confluence of West and East Fork Rock Creeks to mouth	<u>COLD</u>	<u>SCR</u>	
C-13a	West Fork Rock Creek - source to T41N, R04W, Sec. 30	<u>COLD</u>	<u>SCR</u>	
C-13b	West Fork Rock Creek - T41N, R04W, Sec. 30 to mouth	<u>COLD</u>	<u>SCR</u>	
C-14a	East Fork Rock Creek - source to T41N, R 04W, Sec. 29	<u>COLD</u>	<u>SCR</u>	
C-14b	East Fork Rock Creek - T41N, R 04W, Sec. 29 to mouth	<u>COLD</u>	<u>SCR</u>	
C-15a	Hatter Creek - source to T40N, R04W, Sec. 3	COLD	SCR	
C-15b	Hatter Creek - T40N, R04W, Sec. 3 to mouth	<u>COLD</u>	<u>SCR</u>	
C-16	Palouse River - Strychnine Creek to Hatter Creek	COLD SS	PCR	DWS
C-17	Flat Creek - source to mouth	<u>COLD</u>	<u>SCR</u>	
C-18	Palouse River - source to Strychnine Creek	COLD SS	PCR	DWS

Unit	Waters	Aquatic Life	Recreation	Other
C-19	Little Sand Creek - source to mouth	COLD SS	SCR	
C-20	Big Sand Creek - source to mouth	COLD SS	SCR	
C-21	North Fork Palouse River - source to mouth	COLD SS	SCR	
C-22	Strychnine Creek - source to mouth	COLD SS	SCR	
C-23	Meadow Creek - East Fork Meadow Creek to mouth	<u>COLD</u>	<u>SCR</u>	
C-24	East Fork Meadow Creek - source to mouth	COLD SS	SCR	
C-25	Meadow Creek - source to East Fork Meadow Creek	COLD SS	SCR	
C-26	White Pine Creek - source to mouth	COLD SS	SCR	
C-27a	Big Creek - source to T42N, R03W, Sec. 08	COLD SS	SCR	
C-27b	Big Creek - source to T42N, R03W, Sec. 08 <u>to mouth</u>	<u>COLD</u>	<u>SCR</u>	
C-28	Jerome Creek - source to mouth	COLD SS	SCR	
C-29	Gold Creek - T42N, R04W, Sec. 28 to mouth	<u>COLD</u>	<u>SCR</u>	
C-30	Gold Creek - source to T42N, R04W, Sec. 28	COLD SS	SCR	
C-31a	Crane Creek - source to T42N, 04W, Sec. 28	<u>COLD</u>	<u>SCR</u>	
C-31b	Crane Creek - T42N, 04W, Sec. 08 to mouth	<u>COLD</u>	<u>SCR</u>	
C-32a	Deep Creek - source to T42, R05, Sec. 02	<u>COLD</u>	<u>SCR</u>	
C-32b	Deep Creek - T42, R05, Sec. 02 to mouth	<u>COLD</u>	<u>SCR</u>	
C-33a	Cedar Creek - source to T43N, R05W, Sec. 28	<u>COLD</u>	<u>SCR</u>	
C-33b	Cedar Creek - T43N, R05W, Sec. 28 to Idaho/Washington border	<u>COLD</u>	<u>SCR</u>	

(3-30-01)()

02. **Rock Subbasin.** The Rock Subbasin, HUC 17060109, is comprised of three (3) water body units.

Unit	Waters	Aquatic Life	Recreation	Other
C-1	South Fork Pine Creek - source to Idaho/Washington border	<u>COLD</u>	<u>SCR</u>	
C-2	North Fork Pine Creek - source to Idaho/Washington border	<u>COLD</u>	<u>SCR</u>	

Unit	Waters	Aquatic Life	Recreation	Other
C-3	Unnamed Tributaries - source to Idaho/Washington border (T44N, R05W, Sec.31 / T43N, R05W, Sec. 6)	<u>COLD</u>	<u>SCR</u>	

(4-5-00)()

(BREAK IN CONTINUITY OF SECTIONS)

04. Lower Selway Subbasin. The Lower Selway Subbasin, HUC 17060302, is comprised of fifty-five (55) water body units.

Unit	Waters	Aquatic Life	Recreation	Other
C-1	Selway River - O'Hara Creek to mouth	<u>COLD</u> <u>SS</u>	PCR	DWS SRW
C-2	Goddard Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>SCR</u>	
C-3	O'Hara Creek - confluence of West and East Fork O'Hara Creeks to mouth	<u>COLD</u> <u>SS</u>	<u>SCR</u>	
C-4	West Fork O'Hara Creek - source to mouth			
C-5	East Fork O'Hara Creek - source to mouth			
C-6	Selway River - Meadow Creek to O'Hara Creek	<u>COLD</u> <u>SS</u>	PCR	DWS SRW
C-7	Falls Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>SCR</u>	
C-8	Meadow Creek - Buck Lake Creek to mouth	<u>COLD</u> <u>SS</u>	<u>SCR</u>	
C-9	Horse Creek - source to mouth			
C-10	Fivemile Creek - source to mouth			
C-11	Little Boulder Creek - source to mouth			
C-12	Meadow Creek - East Fork Meadow Creek to Buck Lake Creek	<u>COLD</u> <u>SS</u>	<u>SCR</u>	
C-13	Butte Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>SCR</u>	
C-14	Sable Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>SCR</u>	
C-15	Simmons Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>SCR</u>	
C-16	Meadow Creek - source to East Fork Meadow Creek			

Unit	Waters	Aquatic Life	Recreation	Other
C-17	Butter Creek - source to mouth			
C-18	Three Prong Creek - source to mouth			
C-19	East Fork Meadow Creek - source to mouth			
C-20	Schwar Creek - source to mouth			
C-21	Buck Lake Creek - source to mouth			
C-22	Selway River - Moose Creek to Meadow Creek	COLD SS	PCR	DWS SRW
C-23	Otter Creek - source to mouth			
C-24	Mink Creek - source to mouth			
C-25	Marten Creek - source to mouth			
C-26	Trout Creek - source to mouth			
C-27	Moose Creek - East Fork Moose Creek to mouth			
C-28	East Fork Moose Creek - Cedar Creek to Moose Creek			
C-29	Freeman Creek - source to mouth			
C-30	Monument Creek - source to mouth			
C-31	Elbow Creek - source to mouth			
C-32	Battle Creek - source to mouth			
C-33	East Fork Moose Creek - source to Cedar Creek			
C-34	Chute Creek - source to mouth			
C-35	Dead Elk Creek - source to mouth			
C-36	Cedar Creek - source to mouth			
C-37	Maple Creek - source to mouth			
C-38	Double Creek - source to mouth			
C-39	Fitting Creek - source to mouth			
C-40	North Fork Moose Creek - Rhoda Creek to mouth			
C-41	North Fork Moose Creek - West Moose Creek to Rhoda Creek			
C-42	North Fork Moose Creek - source to West Fork Moose Creek			
C-43	West Fork Moose Creek - source to mouth			
C-44	Rhoda Creek - Wounded Doe Creek to mouth			
C-45	Wounded Doe Creek - source to mouth			
C-46	Rhoda Creek - source to Wounded Doe Creek			
C-47	Lizard Creek - Lizard Lakes to mouth			
C-48	Meeker Creek - source to mouth			
C-49	Three Links Creek - source to mouth			

Unit	Waters	Aquatic Life	Recreation	Other
C-50	Gedney Creek - West Fork Gedney Creek to mouth			
C-51	Gedney Creek - source to West Fork Gedney Creek			
C-52	West Fork Gedney Creek - source to mouth			
C-53	Glover Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>SCR</u>	
C-54	Boyd Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>SCR</u>	
C-55	Rackliff Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>SCR</u>	

(4-5-00)()

(BREAK IN CONTINUITY OF SECTIONS)

06. Middle Fork Clearwater Subbasin. The Middle Fork Clearwater Subbasin, HUC 17060304, is comprised of eleven (11) water body units.

Unit	Waters	Aquatic Life	Recreation	Other
C-1	Middle Fork Clearwater River - confluence of Lochsa and Selway River to mouth	<u>COLD</u> <u>SS</u>	PCR	DWS SRW
C-2	Clear Creek - South Fork Clear Creek to mouth			
C-3	West Fork Clear Creek - source to mouth			
C-4	South Fork Clear Creek - source to mouth			
C-5	Kay Creek - source to mouth			
C-6	Clear Creek - source to South Fork Clear Creek	<u>COLD</u> <u>SS</u>	<u>SCR</u>	
C-7	Middle Fork Clear Creek - source to mouth			
C-8	Browns Spring Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>SCR</u>	
C-9	Pine Knob Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>SCR</u>	
C-10	Lodge Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>SCR</u>	
C-11	Maggie Creek - source to mouth			

(4-5-00)()

07. South Fork Clearwater Subbasin. The South Fork Clearwater Subbasin, HUC 17060305, is comprised of eighty-two (82) water body units.

Unit	Waters	Aquatic Life	Recreation	Other
C-1	South Fork Clearwater River - Butcher Creek to mouth	COLD SS	PCR	SRW
C-2	Cottonwood Creek - Cottonwood Creek waterfall (9.0 miles upstream) to mouth	COLD SS	PCR	
C-3	Cottonwood Creek - source to Cottonwood Creek waterfall (9.0 miles upstream)	COLD SS	PCR	
C-4	Red Rock Creek - Red Rock Creek waterfall (3.6 miles upstream) to mouth			
C-5	Red Rock Creek - source to Red Rock Creek waterfall (3.6 miles upstream)			
C-6	Stockney Creek - source to mouth			
C-7	Shebang Creek - source to mouth			
C-8	South Fork Cottonwood Creek - source to mouth			
C-9	Long Haul Creek - source to mouth			
C-10	Threemile Creek - source to mouth	COLD SS	SCR	
C-11	Butcher Creek - source to mouth	<u>COLD</u>	<u>SCR</u>	
C-12	South Fork Clearwater River - Johns Creek to Butcher Creek	COLD SS	PCR	SRW
C-13	Mill Creek - source to mouth			
C-14	Johns Creek - Gospel Creek to mouth	COLD SS	SCR	
C-15	Gospel Creek - source to mouth	COLD SS	SCR	
C-16	West Fork Gospel Creek - source to mouth	COLD SS	SCR	
C-17	Johns Creek - Moores Creek to Gospel Creek	COLD SS	SCR	
C-18	Johns Creek - source to Moores Creek	COLD SS	SCR	
C-19	Moores Creek - source to mouth	COLD SS	SCR	
C-20	Square Mountain Creek - source to mouth	COLD SS	SCR	
C-21	Hagen Creek - source to mouth	COLD SS	SCR	

Unit	Waters	Aquatic Life	Recreation	Other
C-22	South Fork Clearwater River - Tenmile Creek to Johns Creek	COLD SS	PCR	SRW
C-23	Wing Creek - source to mouth	COLD SS	SCR	
C-24	Twentymile Creek - source to mouth			
C-25	Tenmile Creek - Sixmile Creek to mouth			
C-26	Tenmile Creek - Williams Creek to Sixmile Creek	COLD SS	SCR	
C-27	Tenmile Creek - source to Williams Creek	COLD SS	SCR	
C-28	Williams Creek - source to mouth	COLD SS	SCR	
C-29	Sixmile Creek - source to mouth			
C-30	South Fork Clearwater River - Crooked River to Tenmile Creek	COLD SS	PCR	SRW
C-31	Crooked River - Relief Creek to mouth	COLD SS	SCR	
C-32	Crooked River - confluence of West and East Fork Crooked Rivers to Relief Creek	COLD SS	SCR	
C-33	West Fork Crooked River - source to mouth			
C-34	East Fork Crooked River - source to mouth			
C-35	Relief Creek - source to mouth			
C-36	South Fork Clearwater River - confluence of American River and Red River to Crooked River	COLD SS	PCR	SRW
C-37	Red River- Siegel Creek to mouth	COLD SS	PCR	DWS SRW
C-38	Red River - South Fork Red River to Siegel Creek	COLD SS	PCR	DWS SRW
C-39	Moose Butte Creek - source to mouth			
C-40	South Fork Red River - Trapper Creek to mouth	COLD SS	SCR	
C-41	South Fork Red River - West Fork Red River to Trapper Creek	COLD SS	SCR	
C-42	West Fork Red River - source to mouth	COLD SS	SCR	
C-43	South Fork Red River - source to West Fork Red River	COLD SS	SCR	
C-44	Trapper Creek - source to mouth	COLD SS	SCR	

Unit	Waters	Aquatic Life	Recreation	Other
C-45	Red River - source to South Fork Red River	COLD SS	SCR	DWS SRW
C-46	Soda Creek - source to mouth	COLD SS	SCR	
C-47	Bridge Creek - source to mouth	COLD SS	SCR	
C-48	Otterson Creek - source to mouth	COLD SS	SCR	
C-49	Trail Creek - source to mouth	COLD SS	SCR	
C-50	Siegel Creek - source to mouth	COLD SS	SCR	
C-51	Red Horse Creek - source to mouth			
C-52	American River - East Fork American River to mouth	COLD SS	PCR	DWS SRW
C-53	Kirks Fork - source to mouth			
C-54	East Fork American River - source to mouth			
C-55	American River - source to East Fork American River	COLD SS	PCR	DWS SRW
C-56	Elk Creek - confluence of Big Elk and Little Elk Creeks to mouth			
C-57	Little Elk Creek - source to mouth	COLD SS	SCR	
C-58	Big Elk Creek - source to mouth	COLD SS	SCR	
C-59	Buffalo Gulch - source to mouth			
C-60	Whiskey Creek - source to mouth	COLD SS	SCR	
C-61	Maurice Creek - source to mouth			
C-62	Newsome Creek - Beaver Creek to mouth			
C-63	Bear Creek - source to mouth			
C-64	Nugget Creek - source to mouth			
C-65	Beaver Creek - source to mouth			
C-66	Newsome Creek - Mule Creek to Beaver Creek			
C-67	Mule Creek - source to mouth	COLD SS	SCR	
C-68	Newsome Creek - source to Mule Creek			
C-69	Haysfork Creek - source to mouth			

Unit	Waters	Aquatic Life	Recreation	Other
C-70	Baldy Creek - source to mouth	COLD SS	SCR	
C-71	Pilot Creek - source to mouth			
C-72	Sawmill Creek - source to mouth			
C-73	Sing Lee Creek - source to mouth			
C-74	West Fork Newsome Creek - source to mouth			
C-75	Leggett Creek - source to mouth			
C-76	Fall Creek - source to mouth			
C-77	Silver Creek - source to mouth	COLD SS	SCR	
C-78	Peasley Creek - source to mouth			
C-79	Cougar Creek - source to mouth			
C-80	Meadow Creek - source to mouth			
C-81	Sally Ann Creek - source to mouth			
C-82	Rabbit Creek - source to mouth			

(3-30-01)()

08. Clearwater Subbasin. The Clearwater Subbasin, HUC 17060306, is comprised of sixty-seven (67) water body units.

Unit	Waters	Aquatic Life	Recreation	Other
C-1	Lower Granite Dam pool	COLD	PCR	DWS
C-2	Clearwater River - Potlatch River to Lower Granite Dam pool	COLD SS	PCR	DWS SRW
C-3	Lindsay Creek - source to mouth	COLD	SCR	SRW
C-4	Lapwai Creek - Sweetwater Creek to mouth	COLD	PCR	
C-5	Sweetwater Creek - Webb Creek to mouth			
C-6	Sweetwater Creek - source to Webb Creek			
C-7	Webb Creek - source to mouth			
C-8	Lapwai Creek - Winchester Lake to Sweetwater Creek	COLD	PCR	
C-9	Winchester Lake	COLD	PCR	DWS SRW
C-10	Lapwai Creek - source to Winchester Lake	COLD SS	PCR	DWS
C-11	Mission Creek - source to mouth			

Unit	Waters	Aquatic Life	Recreation	Other
C-12	Tom Beall Creek - source to mouth			
C-13	Clearwater River - North Fork Clearwater River to mouth	COLD SS	PCR	DWS SRW
C-14	Cottonwood Creek - source to mouth	COLD SS	SCR	
C-15	Jacks Creek - source to mouth			
C-16	Big Canyon Creek - source to mouth	COLD SS	PCR	
C-17	Cold Springs Creek - source to mouth			
C-18	Little Canyon Creek - confluence of Holes and Long Hollow Creeks to mouth			
C-19	Holes Creek - source to mouth			
C-20	Long Hollow Creek - source to mouth			
C-21	Clearwater River - Lolo Creek to North Fork Clearwater River	COLD SS	PCR	DWS SRW
C-22	Clearwater River - confluence of South and Middle Fork Clearwater Rivers to Lolo Creek	COLD SS	PCR	DWS SRW
C-23	Sixmile Creek - source to mouth			
C-24	Lawyer Creek - source to mouth	COLD SS	PCR	
C-25	Sevenmile Creek - source to mouth			
C-26	Lolo Creek - Yakus Creek to mouth			
C-27	Yakus Creek - source to mouth			
C-28	Lolo Creek - source to Yakus Creek			
C-29	Eldorado Creek - source to mouth			
C-30	Yoosa Creek - source to mouth			
C-31	Jim Brown Creek - source to mouth			
C-32	Musselshell Creek - source to mouth			
C-33	Big Creek - source to mouth			
C-34	Jim Ford Creek - Jim Ford Creek waterfall (12.5 miles upstream) to mouth	COLD	PCR	
C-35	Jim Ford Creek - source to Jim Ford Creek waterfall (12.5 miles upstream)	COLD	PCR	
C-36	Grasshopper Creek - source to mouth	COLD	PCR	DWS
C-37	Winter Creek - Winter Creek waterfall (3.4 miles upstream) to mouth			

Unit	Waters	Aquatic Life	Recreation	Other
C-38	Winter Creek - source to Winter Creek waterfall (3.4 miles upstream)			
C-39	Orofino Creek - source to mouth	COLD SS	PCR	
C-40	Whiskey Creek - source to mouth			
C-41	Bedrock Creek - source to mouth			
C-42	Louse Creek - source to mouth			
C-43	Pine Creek - source to mouth			
C-44	Potlatch River - Big Bear Creek to mouth	COLD SS	PCR	DWS
C-45	Potlatch River - Corral Creek to Big Bear Creek	COLD SS	PCR	DWS
C-46	Cedar Creek - source to mouth			
C-47	Boulder Creek - source to mouth			
C-48	Potlatch River - Moose Creek to Corral Creek	COLD SS	PCR	DWS
C-49	Potlatch River - source to Moose Creek	COLD SS	PCR	DWS SRW
C-50	Little Boulder Creek - source to mouth			
C-51	East Fork Potlatch River - source to mouth			
C-52	Ruby Creek - source to mouth			
C-53	Moose Creek - source to mouth			
C-54	Corral Creek - source to mouth			
C-55	Pine Creek - source to mouth			
C-56	Big Bear Creek - confluence of West and East Fork Big Bear Creeks to mouth			
C-57	East Fork Big Bear Creek - source to mouth			
C-58	West Fork Big Bear Creek - source to mouth			
C-59	Dry Creek - source to mouth			
C-60	Little Bear Creek - source to mouth	COLD SS	SCR	
C-61	West Fork Little Bear Creek - source to mouth			
C-62	Middle Potlatch Creek - source to mouth	<u>COLD</u>	<u>SCR</u>	
C-63	Bethel Canyon - source to mouth			
C-64	Little Potlatch Creek - source to mouth	<u>COLD</u>	<u>SCR</u>	
C-65	Howard Gulch - source to mouth			

Unit	Waters	Aquatic Life	Recreation	Other
C-66	Catholic Creek - source to mouth			
C-67	Hatwai Creek - source to mouth			

(4-5-00)()

09. Upper North Fork Clearwater Subbasin. The Upper North Fork Clearwater Subbasin, HUC 17060307, is comprised of forty-nine (49) water body units.

Unit	Waters	Aquatic Life	Recreation	Other
C-1	North Fork Clearwater River - Dworshak Reservoir Dam to mouth	COLD SS	PCR	DWS SRW
C-2	North Fork Clearwater River - Skull Creek to Aquarius Campground (T40N, R07E, Sec. 05)	COLD SS	PCR	DWS SRW
C-3	North Fork Clearwater River- Washington Creek to Skull Creek	COLD SS	PCR	DWS SRW
C-4	Washington Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>SCR</u>	
C-5	North Fork Clearwater River - Orogrande Creek to Washington Creek	COLD SS	PCR	DWS SRW
C-6	Orogrande Creek - French Creek to mouth			
C-7	Orogrande Creek - source to French Creek			
C-8	French Creek - source to mouth	<u>COLD</u>	<u>SCR</u>	
C-9	North Fork Clearwater River - Weitas Creek to Orogrande Creek	COLD SS	PCR	DWS SRW
C-10	Weitas Creek - Hemlock Creek to mouth			
C-11	Hemlock Creek - source to mouth			
C-12	Weitas Creek - Windy Creek to Hemlock Creek			
C-13	Middle Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>SCR</u>	
C-14	Little Weitas Creek - source to mouth	<u>COLD</u>	<u>SCR</u>	
C-15	Weitas Creek - source to Windy Creek	<u>COLD</u> <u>SS</u>	<u>SCR</u>	
C-16	Windy Creek - source to mouth	<u>COLD</u>	<u>SCR</u>	
C-17	North Fork Clearwater River - Kelly Creek to Weitas Creek	COLD SS	PCR	DWS SRW
C-18	Fourth of July Creek - source to mouth			
C-19	Kelly Creek - Cayuse Creek to mouth			

Unit	Waters	Aquatic Life	Recreation	Other
C-20	Cayuse Creek - Gravey Creek to mouth			
C-21	Monroe Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>SCR</u>	
C-22	Gravey Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>SCR</u>	
C-23	Cayuse Creek - source to Gravey Creek			
C-24	Toboggan Creek - source to mouth	<u>COLD</u>	<u>SCR</u>	
C-25	Kelly Creek - confluence of North and Middle Fork Kelly Creek to Cayuse Creek			
C-26	South Fork Kelly Creek - source to mouth			
C-27	Middle Fork Kelly Creek - source to mouth			
C-28	North Fork Kelly Creek - source to mouth			
C-29	Moose Creek - Osier Creek to mouth			
C-30	Little Moose Creek - source to mouth			
C-31	Osier Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>SCR</u>	
C-32	Moose Creek - source to Osier Creek			
C-33	North Fork Clearwater River - Lake Creek to Kelly Creek	COLD SS	PCR	DWS SRW
C-34	Lake Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>SCR</u>	
C-35	North Fork Clearwater River - Vanderbilt Gulch to Lake Creek	COLD SS	PCR	DWS SRW
C-36	Long Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>SCR</u>	
C-37	North Fork Clearwater River - source to Vanderbilt Gulch	COLD SS	PCR	DWS SRW
C-38	Vanderbilt Gulch - source to mouth			
C-39	Meadow Creek - source to mouth			
C-40	Elizabeth Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>SCR</u>	
C-41	Cold Springs Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>SCR</u>	
C-42	Sprague Creek - source to mouth			
C-43	Larson Creek - source to mouth	<u>COLD</u>	<u>SCR</u>	
C-44	Rock Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>SCR</u>	

Unit	Waters	Aquatic Life	Recreation	Other
C-45	Quartz Creek - source to mouth			
C-46	Cougar Creek - source to mouth			
C-47	Skull Creek - Collins Creek to mouth	<u>COLD</u>	<u>SCR</u>	
C-48	Skull Creek - source to Collins Creek			
C-49	Collins Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>SCR</u>	

(4-5-00)()

10. Lower North Fork Clearwater Subbasin. The Lower North Fork Clearwater Subbasin, HUC 17060308, is comprised of thirty-four (34) water body units.

Unit	Waters	Aquatic Life	Recreation	Other
C-1	Dworshak Reservoir	COLD SS	PCR	DWS SRW
C-2	Reeds Creek - Alder Creek to Dworshak Reservoir	COLD SS	PCR	DWS
C-3	Reeds Creek - source to Alder Creek	COLD SS	PCR	DWS
C-4	Alder Creek - source to mouth			
C-5	Silver Creek - source to Dworshak Reservoir			
C-6	Benton Creek - source to Dworshak Reservoir			
C-7	North Fork Clearwater River - Aquarius Campground (T40N, R07E, Sec. 05) to Dworshak Reservoir	COLD SS	PCR	DWS SRW
C-8	Beaver Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>SCR</u>	
C-9	Isabella Creek - source to mouth			
C-10	Little North Fork Clearwater River - Foehl Creek to Dworshak Reservoir			
C-11	Little North Fork Clearwater River - Spotted Louis Creek to Foehl Creek			
C-12	Sawtooth Creek - source to mouth			
C-13	Canyon Creek - source to mouth			
C-14	Spotted Louis Creek - source to mouth			
C-15	Little North Fork Clearwater River - Rutledge Creek to Spotted Louis Creek			
C-16	Rutledge Creek - source to mouth			

Unit	Waters	Aquatic Life	Recreation	Other
C-17	Little North Fork Clearwater River - source to Rutledge Creek			
C-18	Foehl Creek - source to mouth			
C-19	Stoney Creek - Glover Creek to Dworshak Reservoir			
C-20	Floodwood Creek - source to mouth			
C-21	Glover Creek - source to mouth			
C-22	Stoney Creek - source to Glover Creek	<u>COLD</u> <u>SS</u>	<u>SCR</u>	
C-23	Isabella Creek - source to mouth			
C-24	Breakfast Creek - source to mouth			
C-25	Gold Creek - source to Dworshak Reservoir			
C-26	Weitas Creek - source to Dworshak Reservoir			
C-27	Swamp Creek - source to Dworshak Reservoir			
C-28	Cranberry Creek - source to Dworshak Reservoir			
C-29	Elk Creek - source to Dworshak Reservoir	COLD SS	PCR	DWS
C-30	Bull Run Creek - confluence of Squaw and Shattuck Creeks to mouth			
C-31	Shattuck Creek - source to mouth			
C-32	Squaw Creek - source to mouth			
C-33	Long Meadow Creek - source to Dworshak Reservoir			
C-34	Dicks Creek - source to Dworshak Reservoir			

(4-5-00)()

(BREAK IN CONTINUITY OF SECTIONS)

130. SALMON BASIN.

Surface waters found within the Salmon basin total twelve (12) subbasins and are designated as follows: (4-5-00)

02. Lower Snake-Asotin Subbasin. The Lower Snake-Asotin Subbasin, HUC 17060103, is comprised of sixteen (16) water body units.

Unit	Waters	Aquatic Life	Recreation	Other
S-1	Snake River - Asotin River (Idaho/Oregon border) to Lower Granite Dam pool	COLD	PCR	DWS

Unit	Waters	Aquatic Life	Recreation	Other
S-2	Snake River - Captain John Creek to Asotin River (Idaho/Oregon border)	COLD	PCR	DWS SRW
S-3	Snake River - Cottonwood Creek to Captain John Creek	COLD	PCR	DWS SRW
S-4	Snake River - Salmon River to Cottonwood Creek	COLD	PCR	DWS SRW
S-5	Cottonwood Creek - source to mouth			
S-6	Cave Gulch - source to mouth	<u>COLD</u>	<u>SCR</u>	
S-7	Corral Creek - source to mouth			
S-8	Middle Creek - source to mouth	<u>COLD</u>	<u>SCR</u>	
S-9	Dough Creek - source to mouth	<u>COLD</u>	<u>SCR</u>	
S-10	Billy Creek - source to mouth			
S-11	Captain John Creek - source to mouth			
S-12	Redbird Creek - source to mouth	<u>COLD</u>	<u>SCR</u>	
S-13	Tenmile Canyon - source to mouth	<u>COLD</u>	<u>SCR</u>	
S-14	Tammany Creek - Unnamed Tributary (T34N, R05W, Sec. 24) to mouth	<u>COLD</u>	<u>SCR</u>	
S-15	Unnamed Tributary - source to mouth (T34N, R05W, Sec. 24)	<u>COLD</u>	<u>SCR</u>	
S-16	Tammany Creek - source to Unnamed Tributary (T34N, R05W, Sec. 24)	<u>COLD</u>	<u>SCR</u>	

(4-5-00)()

(BREAK IN CONTINUITY OF SECTIONS)

140. SOUTHWEST IDAHO BASIN.

Surface waters found within the Southwest basin total nineteen (19) subbasins and are designated as follows:

(4-5-00)

07. Middle Owyhee Subbasin. The Middle Owyhee Subbasin, HUC 17050107, is comprised of fourteen (14) water body units.

Unit	Waters	Aquatic Life	Recreation	Other
SW-1	Owyhee River - South Fork Owyhee River to Idaho/Oregon border	COLD SS	PCR	DWS SRW
SW-2	Oregon Lake Creek - source to Idaho/Oregon border			
SW-3	Field Creek - source to Idaho/Oregon border			

Unit	Waters	Aquatic Life	Recreation	Other
SW-4	Middle Fork Owyhee River - source to Idaho/Oregon border	COLD SS	PCR	DWS SRW
SW-5	Pole Creek - source to Idaho/Oregon border			
SW-6	Squaw Creek - source to Idaho/Oregon border	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
SW-7	Cottonwood Creek - source to mouth			
SW-8	North Fork Owyhee River - source to Idaho/Oregon border	COLD SS	PCR	DWS SRW
SW-9	Pleasant Valley Creek - source to mouth	<u>COLD</u>	<u>PCR</u>	
SW-10	Noon Creek - source to mouth	COLD <u>SS</u>	PCR	
SW-11	Cabin Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
SW-12	Juniper Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
SW-13	Cherry Creek - source to Idaho/Oregon border			
SW-14	Soldier Creek - source to Idaho/Oregon border			

(4-5-00)()

(BREAK IN CONTINUITY OF SECTIONS)

160. BEAR RIVER BASIN.

Surface waters found within the Bear River basin total six (6) subbasins and are designated as follows: (4-5-00)

02. Bear Lake Subbasin. The Bear Lake Subbasin, HUC 16010201, is comprised of twenty-five (25) water body units.

Unit	Waters	Aquatic Life	Recreation	Other
B-1	Alexander Reservoir (Bear River)	COLD SS	PCR	
B-2	Bear River -railroad bridge (T14N, R45E, Sec. 21) to Alexander Reservoir	COLD SS	PCR	
B-3	Bailey Creek - source to mouth	COLD SS	SCR	
B-4	Eightmile Creek - source to mouth	COLD SS	SCR	

Unit	Waters	Aquatic Life	Recreation	Other
B-5	Pearl Creek - source to mouth	COLD SS	SCR	
B-6	Stauffer Creek - source to mouth	COLD SS	SCR	
B-7	Skinner Creek - source to mouth	COLD SS	SCR	
B-8	Co-op Creek - source to mouth	COLD SS	SCR	
B-9	Ovid Creek - confluence of North and Mill Creek to mouth			
B-10	North Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
B-11	Mill Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
B-12	Bear Lake Outlet - Lifton Station to Bear River	COLD SS	PCR	DWS SRW
B-13	Paris Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>PCR</u>	
B-14	Bloomington Creek - source to mouth	COLD SS	PCR	DWS SRW
B-15	Spring Creek - source to mouth			
B-16	Little and St. Charles Creeks - source to Bear Lake	<u>COLD</u> <u>SS</u>	<u>PCR</u>	<u>SRW</u>
B-17	Dry Canyon Creek - source to mouth			
B-18	Bear Lake	COLD SS	PCR	DWS SRW
B-19	Fish Haven Creek - source to Bear Lake	<u>COLD</u> <u>SS</u>	<u>PCR</u>	<u>SRW</u>
B-20	Montpelier Creek - source to mouth			
B-21	Snowslide Creek - source to mouth	<u>COLD</u> <u>SS</u>	<u>SCR</u>	
B-22	Georgetown Creek - source to mouth	COLD SS	PCR	DWS SRW
B-23	Soda Creek - Soda Creek Reservoir Dam to Alexander Reservoir	NONE	SCR	
B-24	Soda Creek Reservoir	NONE	SCR	
B-25	Soda Creek - source to Soda Creek Reservoir	NONE	SCR	

(4-5-00)()

(BREAK IN CONTINUITY OF SECTIONS)

210. NUMERIC CRITERIA FOR TOXIC SUBSTANCES FOR WATERS DESIGNATED FOR AQUATIC LIFE, RECREATION, OR DOMESTIC WATER SUPPLY USE.

01. ***Incorporation Of National Toxic Rule.*** Toxic substance criteria set forth in 40 CFR 131.36 (b)(1) (National Toxics Rule), as of July 1, 1993, is hereby incorporated by reference in the manner provided in Subsection 210.02, however, the standard for arsenic recreation and domestic water supply uses shall be fifty (50) ug/l. **Criteria For Toxic Substances.** The criteria of Section 210 apply to surface waters of the state as follows. (3-15-02)(____)

a. Columns B1, B2, and ~~DC2~~ are incorporated by reference for of the following table apply to waters designated for aquatic life use. (4-5-00)(____)

b. Column ~~DC2~~ is incorporated by reference for of the following table applies to waters designated for recreation use. (4-5-00)(____)

c. Column ~~DC1~~ is incorporated by reference for of the following table applies to waters designated for domestic water supply use. (4-5-00)(____)

~~02. **Exception To Incorporation Of National Toxic Rule.** 40 CFR 131.36, as of July 1, 1993, and all subparts and notes are hereby incorporated by reference, except as noted in or amended by Subsections 210.02.a. through 210.02.e. (4-5-00)~~

~~a. The reference to "paragraph (d) of" in 40 CFR 131.36(e)(2)(iii) shall be deleted. (4-5-00)~~

~~b. The second sentence of 40 CFR 131.36(b)(1), footnote C shall be deleted. (4-5-00)~~

~~c. 40 CFR 131.36(e)(1) shall be deleted and replaced with the following: "The criteria in paragraph (b) of this section apply to surface waters of the state as provided in Idaho IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements," Sections 250, through 252. (4-5-00)~~

~~d. The first sentence of 40 CFR 131.36(e)(4)(iii) shall be deleted and replaced with the following: "The criteria for metals (compounds #1-9 and 11-13 in paragraph (b) of this section) are expressed as dissolved concentrations with the following conversion factors: Arsenic(III) 1.000; Cadmium 1.136672 (ln hardness x 0.041838 for CMC and 1.101672 (ln hardness x 0.041838) for CCC; Chromium(III) 0.316 for CMC and 0.860 for CCC; Chromium(VI) 0.982 for CMC and 0.962 for CCC; Copper 0.960; Lead 1.46203 (ln hardness x 0.145712); Mercury .85 for CMC only; Nickel 0.998 for CMC and 0.997 for CCC; Silver .85 for CMC only; Zinc 0.978 for CMC and 0.986 for CCC. Compound #10 (Selenium) is expressed as total recoverable concentrations. Compound #14 (Cyanide) is expressed as Weak Acid Dissociable (WAD) concentrations." (4-5-00)~~

~~e. 40 CFR 131.36(d) shall not be incorporated by reference. (4-5-00)~~

A		B Aquatic life		Human health for consumption of:	
(Number) Compound	a CAS Number	b CMC (ug/L)	b CCC (ug/L)	Water & organisms (ug/L)	Organisms only (ug/L)
		B1	B2	C1	C2
1 Antimony	7440360			14 l	4300 l
2 Arsenic	7440382	360 e	190 e	50 d	50 d
3 Beryllium	7440417				h

A		B Aquatic life				Human health for consumption of:	
(Number) Compound	^a CAS Number	^b CMC (µg/L)		^b CCC (µg/L)		Water & organisms (µg/L)	Organisms only (µg/L)
		B1		B2		C1	C2
4	<u>Cadmium</u>	<u>7440439</u>	<u>3.7</u> i	<u>1.0</u> i		<u>h</u>	<u>h</u>
5a	<u>Chromium III</u>	<u>16065831</u>	<u>550</u> i	<u>180</u> i		<u>h</u>	<u>h</u>
5b	<u>Chromium VI</u>	<u>18540299</u>	<u>15</u> e	<u>10</u> e		<u>h</u>	<u>h</u>
6	<u>Copper</u>	<u>7440508</u>	<u>17</u> i	<u>11</u> i			
7	<u>Lead</u>	<u>7439921</u>	<u>65</u> i	<u>2.5</u> i		<u>h</u>	<u>h</u>
8	<u>Mercury</u>	<u>7439976</u>	<u>2.1</u> e	<u>0.012</u> f g		<u>0.14</u>	<u>0.15</u>
9	<u>Nickel</u>	<u>7440020</u>	<u>1400</u> i	<u>160</u> i		<u>610</u> c	<u>4600</u> c
10	<u>Selenium</u>	<u>7782492</u>	<u>18</u>	<u>5</u> f		<u>h</u>	<u>h</u>
11	<u>Silver</u>	<u>7440224</u>	<u>3.4</u> i				
12	<u>Thallium</u>	<u>7440280</u>				<u>1.7</u> c	<u>6.3</u> c
13	<u>Zinc</u>	<u>7440666</u>	<u>114</u> i	<u>105</u> i			
14	<u>Cyanide</u>	<u>57125</u>	<u>22</u> j	<u>5.2</u> j		<u>700</u> c	<u>220000</u> c
15	<u>Asbestos</u>	<u>1332214</u>				<u>7,000,000</u> <u>fibers/L</u> k	
16	<u>2, 3, 7, 8-TCDD Dioxin</u>	<u>1746016</u>				<u>0.000000013</u> l	<u>0.000000014</u> l
17	<u>Acrolein</u>	<u>107028</u>				<u>320</u>	<u>780</u>
18	<u>Acrylonitrile</u>	<u>107131</u>				<u>0.059</u> cl	<u>0.66</u> cl
19	<u>Benzene</u>	<u>71432</u>				<u>1.2</u> cl	<u>71</u> cl
20	<u>Bromoform</u>	<u>75252</u>				<u>4.3</u> cl	<u>360</u> cl
21	<u>Carbon Tetrachloride</u>	<u>56235</u>				<u>0.25</u> cl	<u>4.4</u> cl
22	<u>Chlorobenzene</u>	<u>108907</u>				<u>680</u> c	<u>21000</u> c
23	<u>Chlorodibromomethane</u>	<u>124481</u>				<u>0.41</u> cl	<u>34</u> cl
24	<u>Chloroethane</u>	<u>75003</u>					
25	<u>2-Chloroethylvinyl Ether</u>	<u>110758</u>					
26	<u>Chloroform</u>	<u>67663</u>				<u>5.7</u> cl	<u>470</u> cl
27	<u>Dichlorobromomethane</u>	<u>75274</u>				<u>0.27</u> cl	<u>22</u> cl
28	<u>1,1-Dichloroethane</u>	<u>75343</u>					
29	<u>1,2-Dichloroethane</u>	<u>107062</u>				<u>0.38</u> cl	<u>99</u> cl
30	<u>1,1-Dichloroethylene</u>	<u>75354</u>				<u>0.057</u> cl	<u>3.2</u> cl
31	<u>1,2-Dichloropropane</u>	<u>78875</u>					

A		B Aquatic life				Human health for consumption of:				
<u>(Number) Compound</u>		<u>^a CAS Number</u>	<u>^b CMC (µg/L)</u>	<u>^b CCC (µg/L)</u>	<u>Water & organisms (µg/L)</u>		<u>Organisms only (µg/L)</u>			
			<u>B1</u>	<u>B2</u>	<u>C1</u>		<u>C2</u>			
<u>32</u>	<u>1,3-Dichloropropylene</u>	<u>542756</u>			<u>10</u>	<u>c</u>	<u>1700</u>	<u>c</u>		
<u>33</u>	<u>Ethylbenzene</u>	<u>100414</u>			<u>3100</u>	<u>c</u>	<u>29000</u>	<u>c</u>		
<u>34</u>	<u>Methyl Bromide</u>	<u>74839</u>			<u>48</u>	<u>c</u>	<u>4000</u>	<u>c</u>		
<u>35</u>	<u>Methyl Chloride</u>	<u>74873</u>				<u>h</u>		<u>h</u>		
<u>36</u>	<u>Methylene Chloride</u>	<u>75092</u>			<u>4.7</u>	<u>cl</u>	<u>1600</u>	<u>cl</u>		
<u>37</u>	<u>1,1,2,2-Tetrachloroethane</u>	<u>79345</u>			<u>0.17</u>	<u>cl</u>	<u>11</u>	<u>cl</u>		
<u>38</u>	<u>Tetrachloroethylene</u>	<u>127184</u>			<u>0.8</u>	<u>l</u>	<u>8.85</u>	<u>l</u>		
<u>39</u>	<u>Toluene</u>	<u>108883</u>			<u>6800</u>	<u>c</u>	<u>200000</u>	<u>c</u>		
<u>40</u>	<u>1,2-Trans-Dichloroethylene</u>	<u>156605</u>								
<u>41</u>	<u>1,1,1-Trichloroethane</u>	<u>71556</u>				<u>h</u>		<u>h</u>		
<u>42</u>	<u>1,1,2-Trichloroethane</u>	<u>79005</u>			<u>0.6</u>	<u>cl</u>	<u>42</u>	<u>cl</u>		
<u>43</u>	<u>Trichloroethylene</u>	<u>79016</u>			<u>2.7</u>	<u>l</u>	<u>81</u>	<u>l</u>		
<u>44</u>	<u>Vinyl Chloride</u>	<u>75014</u>			<u>2</u>	<u>l</u>	<u>525</u>	<u>l</u>		
<u>45</u>	<u>2-Chlorophenol</u>	<u>95578</u>								
<u>46</u>	<u>2,4-Dichlorophenol</u>	<u>120832</u>			<u>93</u>	<u>c</u>	<u>790</u>	<u>c</u>		
<u>47</u>	<u>2,4-Dimethylphenol</u>	<u>105679</u>								
<u>48</u>	<u>2-Methyl-4,6-Dinitrophenol</u>	<u>534521</u>			<u>13.4</u>		<u>765</u>			
<u>49</u>	<u>2,4-Dinitrophenol</u>	<u>51285</u>			<u>70</u>	<u>c</u>	<u>14000</u>	<u>c</u>		
<u>50</u>	<u>2-Nitrophenol</u>	<u>88755</u>								
<u>51</u>	<u>4-Nitrophenol</u>	<u>100027</u>								
<u>52</u>	<u>3-Methyl-4-Chlorophenol</u>	<u>59507</u>								
<u>53</u>	<u>Pentachlorophenol</u>	<u>87865</u>	<u>20</u>	<u>m</u>	<u>13</u>	<u>m</u>	<u>0.28</u>	<u>cl</u>	<u>8.2</u>	<u>cl</u>
<u>54</u>	<u>Phenol</u>	<u>108952</u>			<u>21000</u>	<u>c</u>	<u>4600000</u>	<u>c</u>		
<u>55</u>	<u>2,4,6-Trichlorophenol</u>	<u>88062</u>			<u>2.1</u>	<u>cl</u>	<u>6.5</u>	<u>cl</u>		
<u>56</u>	<u>Acenaphthene</u>	<u>83329</u>								
<u>57</u>	<u>Acenaphthylene</u>	<u>208968</u>								
<u>58</u>	<u>Anthracene</u>	<u>120127</u>			<u>9600</u>	<u>c</u>	<u>110000</u>	<u>c</u>		
<u>59</u>	<u>Benzidine</u>	<u>92875</u>			<u>0.00012</u>	<u>cl</u>	<u>0.00054</u>	<u>cl</u>		

A		B Aquatic life		Human health for consumption of:				
(Number) Compound	^a CAS Number	^b CMC (µg/L)	^b CCC (µg/L)	Water & organisms (µg/L)		Organisms only (µg/L)		
		B1	B2	C1		C2		
60	Benzo(a)Anthracene	56553			0.0028	l	0.031	l
61	Benzo(a)Pyrene	50328			0.0028	l	0.031	l
62	Benzo(b)Fluoranthene	205992			0.0028	l	0.031	l
63	Benzo(ghi)Perylene	191242						
64	Benzo(k)Fluoranthene	207089			0.0028	l	0.031	l
65	Bis(2-Chloroethoxy) Methane	111911						
66	Bis(2-Chloroethyl)Ether	111444			0.031	cl	1.4	cl
67	Bis(2-Chloroisopropyl) Ether	108601			1400	c	170000	c
68	Bis(2-Ethylhexyl) Phthalate	117817			1.8	cl	5.9	cl
69	4-Bromophenyl Phenyl Ether	101553						
70	Butylbenzyl Phthalate	85687						
71	2-Chloronaphthalene	91587						
72	4-Chlorophenyl Phenyl Ether	7005723						
73	Chrysene	218019			0.0028	l	0.031	l
74	Dibenzo(a,h)Anthracene	53703			0.0028	l	0.031	l
75	1,2-Dichlorobenzene	95501			2700	c	17000	c
76	1,3-Dichlorobenzene	541731			400		2600	
77	1,4-Dichlorobenzene	106467			400		2600	
78	3,3'-Dichlorobenzidine	91941			0.04	cl	0.077	cl
79	Diethyl Phthalate	84662			23000	c	120000	c
80	Dimethyl Phthalate	131113			313000		2900000	
81	Di-n-Butyl Phthalate	84742			2700	c	12000	c
82	2,4-Dinitrotoluene	121142			0.11	l	9.1	l
83	2,6-Dinitrotoluene	606202						
84	Di-n-Octyl Phthalate	117840						
85	1,2-Diphenylhydrazine	122667			0.040	cl	0.54	cl

A		B Aquatic life		Human health for consumption of:				
<u>(Number) Compound</u>		<u>^a CAS Number</u>	<u>^b CMC (µg/L)</u>	<u>^b CCC (µg/L)</u>	<u>Water & organisms (µg/L)</u>		<u>Organisms only (µg/L)</u>	
			<u>B1</u>	<u>B2</u>	<u>C1</u>		<u>C2</u>	
86	Fluoranthene	206440			300	c	370	c
87	Fluorene	86737			1300	c	14000	c
88	Hexachlorobenzene	118741			0.00075	cl	0.00077	cl
89	Hexachlorobutadiene	87683			0.44	cl	50	cl
90	Hexachloro-cyclopentadiene	77474			240	c	17000	c
91	Hexachloroethane	67721			1.9	cl	8.9	cl
92	Ideno (1,2,3-cd) Pyrene	193395			0.0028	!	0.031	!
93	Isophorone	78591			8.4	cl	600	cl
94	Naphthalene	91203						
95	Nitrobenzene	98953			17	c	1900	c
96	N-Nitrosodimethylamine	62759			0.00069	cl	8.1	cl
97	N-Nitrosodi-n-Propylamine	621647						
98	N-Nitrosodiphenylamine	86306			5.0	cl	16	cl
99	Phenanthrene	85018						
100	Pyrene	129000			960	c	11000	c
101	1,2,4-Trichlorobenzene	120821						
102	Aldrin	309002	3		0.00013	cl	0.00014	cl
103	alpha-BHC	319846			0.0039	cl	0.013	cl
104	beta-BHC	319857			0.014	cl	0.046	cl
105	gamma-BHC (Lindane)	58899	2	0.08	0.019	!	0.063	!
106	delta-BHC	319868						
107	Chlordane	57749	2.4	0.0043	0.0057	cl	0.00059	cl
108	4,4'-DDT	50293	1.1	0.001	0.00059	cl	0.00059	cl
109	4,4'-DDE	72559			0.00059	cl	0.00059	cl
110	4,4'-DDD	72548			0.00083	cl	0.00084	cl
111	Dieldrin	60571	2.5	0.0019	0.00014	cl	0.00014	cl
112	alpha-Endosulfan	959988	0.22	0.056	0.93	c	2.0	c

A		B Aquatic life				Human health for consumption of:			
(Number) Compound	^a CAS Number	^b CMC (µg/L)	^b CCC (µg/L)	Water & organisms (µg/L)		Organisms only (µg/L)			
		B1	B2	C1		C2			
113	<u>beta-Endosulfan</u>	<u>33213659</u>	<u>0.22</u>	<u>0.056</u>	<u>0.93</u>	<u>c</u>	<u>2.0</u>	<u>c</u>	
114	<u>Endosulfan Sulfate</u>	<u>1031078</u>			<u>0.93</u>	<u>c</u>	<u>2.0</u>	<u>c</u>	
115	<u>Endrin</u>	<u>72208</u>	<u>0.18</u>	<u>0.0023</u>	<u>0.76</u>	<u>c</u>	<u>0.81</u>	<u>c</u>	
116	<u>Endrin Aldehyde</u>	<u>7421934</u>			<u>0.76</u>	<u>c</u>	<u>0.81</u>	<u>c</u>	
117	<u>Heptachlor</u>	<u>76448</u>	<u>0.52</u>	<u>0.0038</u>	<u>0.00021</u>	<u>cl</u>	<u>0.00021</u>	<u>cl</u>	
118	<u>Heptachlor Epoxide</u>	<u>1024573</u>	<u>0.52</u>	<u>0.0038</u>	<u>0.00010</u>	<u>cl</u>	<u>0.00011</u>	<u>cl</u>	
119	<u>Polychlorinated Biphenyls PCBs:</u>	<u>n</u>		<u>0.014</u>	<u>n</u>	<u>0.00017</u>	<u>o</u>	<u>0.00017</u>	<u>o</u>
120	<u>Toxaphene</u>	<u>8001352</u>	<u>0.73</u>	<u>0.0002</u>	<u>0.00073</u>	<u>cl</u>	<u>0.00075</u>	<u>cl</u>	
121	<u>Chlorine</u>		<u>19</u>	<u>k</u>					

Note to table: Table values are from 57 FR 60910, December 22, 1992 (National Toxics Rule) except as noted.

Table Footnotes

a. Chemical Abstracts Service (CAS) registry numbers which provide a unique identification for each chemical.

b. See Definitions, Section 003 of these rules.

c. This criterion has been revised to reflect The Environmental Protection Agency's q1* or RfD, as contained in the Integrated Risk Information System (IRIS) as of December 22, 1992. The fish tissue bioconcentration factor (BCF) from the 1980 Ambient Water Quality Criteria document was retained in each case.

d. Inorganic form only. The criterion for arsenic is the MCL in effect as of April 5, 2000.

e. Criteria for these metals are expressed as a function of the water effect ratio, WER, as defined in Subsection 210.03.b.ii.. CMC = column B1 value X WER. CCC = column B2 value X WER.

f. Criterion expressed as total recoverable (unfiltered) concentrations.

g. If the CCC for total mercury is exceeded more than once in a three (3) year period in ambient water, the edible portion of aquatic species of concern must be analyzed to determine whether the concentration of methyl mercury exceeds the FDA action level (one (1.0) mg/kg). If the FDA action level is exceeded, the Director must notify the EPA regional administrator, initiate a review and as appropriate, revision of its mercury criterion in these water quality standards, and take other appropriate action such as the issuance of fish consumption advisory for the affected area.

h. No numeric human health criteria has been established for this contaminant. However, permit authorities should address this contaminant in NPDES permit actions using the narrative criteria for toxics from Section 200 of these rules.

A		B Aquatic life		Human health for consumption of:	
(Number) Compound	^a CAS Number	^b CMC (µg/L) B1	^b CCC (µg/L) B2	Water & organisms (µg/L) C1	Organisms only (µg/L) C2
<p>i. Aquatic life criteria for these metals are expressed as a function of total hardness (mg/L as calcium carbonate), the pollutant's water effect ratio (WER) as defined in Subsection 210.03.b.ii and multiplied by an appropriate dissolved conversion factor as defined in Subsection 210.02. For comparative purposes only, the values displayed in this table are shown as dissolved metal and correspond to a total hardness of one hundred (100) mg/L and a water effect ratio of one (1.0).</p>					
<p>j. Criteria are expressed as weak acid dissociable (WAD) cyanide.</p>					
<p>k. Total chlorine residual concentrations.</p>					
<p>l. This criterion is based on carcinogenicity of 10⁻⁶ risk.</p>					
<p>m. Aquatic life criteria for pentachlorophenol are expressed as a function of pH, and are calculated as follows. Values displayed above in the table correspond to a pH of seven and eight tenths (7.8). $CMC = \exp(1.005(pH)-4.830)$ $CCC = \exp(1.005(pH)-5.290)$</p>					
<p>n. PCBs are a class of chemicals which include Aroclors, 1242, 1254, 1221, 1232, 1248, 1260, and 1016, CAS numbers 53469219, 11097691, 11104282, 11141165, 12672296, 11096825 and 12674112 respectively. The aquatic life criteria apply to this set of PCBs.</p>					
<p>o. This criterion applies to total PCBs. (e.g. the sum of all congener, isomer, or Aroclor analyses).</p>					

02. Factors For Calculating Hardness Dependent Metals Criteria. Hardness dependent metals criteria are calculated using values from the following table in the equations: ()

a. $CMC = WER \exp\{m_A[\ln(\text{hardness})] + b_A\} \times \text{Acute Conversion Factor}$. ()

b. $CCC = WER \exp\{m_C[\ln(\text{hardness})] + b_C\} \times \text{Chronic Conversion Factor}$. ()

Metal	m_A	b_A	m_C	b_C	^a Acute Conversion Factor	^a Chronic Conversion Factor
Arsenic	b	b	b	b	1.0	1.0
Cadmium	1.1228	-3.828	0.7852	-3.490	0.944	0.909
Chromium (III)	0.819	3.688	0.8190	1.561	0.316	0.860
Copper	0.9422	-1.464	0.8545	-1.465	0.960	0.960
Lead	1.273	-1.460	1.273	-4.705	0.791	0.791
Nickel	0.846	3.3612	0.8460	1.1645	0.998	0.997
Selenium	b	b	b	b	0.922	b
Silver	1.72	-6.52	c	c	0.85	c
Zinc	0.8473	0.8604	0.8473	0.7614	0.978	0.986

Note to table: The term "exp" represents the base e exponential function.

Footnotes to table:

a. Conversion factors (CF) are from "Stephan, C. E. 1995. Derivation of conversion factors for the calculation of dissolved freshwater aquatic life criteria for metals. U.S. Environmental Protection Agency, Environmental Research Laboratory – Duluth." The conversion factors for cadmium and lead are hardness-dependent and can be calculated for any hardness (see limitations in Subsection 210.03.b.i) using the following equations. For comparative purposes, the conversion factors for a total hardness of one hundred (100) mg/L are shown in the table.

Cadmium

Acute: $CF=1.136672-[(\ln \text{hardness})(0.041838)]$

Chronic: $CF=1.101672-[(\ln \text{hardness})(0.041838)]$

Lead (Acute and Chronic): $CF=1.46203-[(\ln \text{hardness})(0.145712)]$

b. Not applicable

c. No chronic criteria are available for silver.

03. Applicability. The criteria established in Section 210 are subject to the general rules of applicability in the same way and to the same extent as are the other numeric chemical criteria when applied to the same use classifications including mixing zones, and low flow design discharge conditions below which numeric standards can be exceeded in flowing waters. ()

a. For all waters for which the Department has determined mixing zones to be applicable, the criteria apply at the appropriate locations specified within or at the boundary of the mixing zone of the mixing zones; otherwise the criteria apply through the waterbody including at the end of any discharge pipe, canal or other discharge point. ()

b. Low flow design discharge conditions. Numeric chemical standards can only be exceeded in perennial streams due to permitted discharges when flows are less than the following values:

<u>Aquatic Life</u>		<u>Human Health</u>	
<u>CMC ("acute" criteria)</u>	<u>1Q10 or 1B3</u>	<u>Non-carcinogens</u>	<u>30Q5</u>
<u>CCC ("chronic" criteria)</u>	<u>7Q10 or 4B3</u>	<u>Carcinogens</u>	<u>Harmonic mean flow</u>

()

i. Where "1Q10" is the lowest one-day flow with an average recurrence frequency of once in ten (10) years determined hydrologically; ()

ii. Where "1B3" is biologically based and indicates an allowable exceedence of once every three (3) years. It may be determined by EPA's computerized method (DFLOW model); ()

iii. Where "7Q10" is the lowest average seven (7) consecutive day low flow with an average recurrence frequency of once in ten (10) years determined hydrologically; ()

iv. Where "4B3" is biologically based and indicates an allowable exceedence for four (4) consecutive days once every three (3) years. It may be determined by EPA's computerized method (DFLOW model); ()

v. Where "30Q5" is the lowest average thirty (30) consecutive day low flow with an average recurrence frequency of once in five (5) years determined hydrologically; and ()

vi. Where the harmonic mean flow is a long term mean flow value calculated by dividing the number of daily flows analyzed by the sum of the reciprocals of those daily flows. ()

c. Application of metals criteria. ()

i. For purposes of calculating aquatic life criteria for metals from the equations in Subsection 210.02, the minimum hardness allowed for use in those equations shall not be less than twenty-five (25) mg/l, as calcium carbonate, even if the actual ambient hardness is less than twenty-five (25) mg/l as calcium carbonate. The maximum hardness allowed for use in those equations shall not be greater than four hundred (400) mg/l, as calcium carbonate, even if the actual ambient hardness is greater than four hundred (400) mg/l as calcium carbonate. ()

ii. The hardness values used for calculating aquatic life criteria for metals at design discharge conditions shall be representative of the ambient hardnesses for a receiving water that occur at the design discharge conditions given in Subsection 210.03.b. ()

iii. Except as otherwise noted, the aquatic life criteria for metals (compounds #1 through #13 in the criteria table of Subsection 210.02) are expressed as dissolved metal concentrations. Unless otherwise specified by the Department, dissolved concentrations are considered to be concentrations recovered from a sample which has passed through a forty-five hundredths (0.45) micron filter. For the purposes of calculating aquatic life criteria for metals from the equations in footnote e in the criteria table in Subsection 210.01, the water effect ratio is computed as a specific pollutant's acute or chronic toxicity values measured in water from the site covered by the standard, divided by the respective acute or chronic toxicity value in laboratory dilution water. The water-effect ratio shall be assigned a value of one (1.0), except where the Department assigns a different value that protects the designated uses of the water body from the toxic effects of the pollutant, and is derived from suitable tests on sampled water representative of conditions in the affected water body, consistent with the design discharge conditions established in Subsection 210.03.b. For purposes of Subsection 210.03.c.iii., the term acute toxicity value is the toxicity test results, such as the concentration lethal one-half (1/2) of the test organisms (i.e., LC50) after ninety-six (96) hours of exposure (e.g., fish toxicity tests) or the effect concentration to one-half of the test organisms, (i.e., EC50) after forty-eight (48) hours of exposure (e.g., daphnia toxicity tests). For purposes of Subsection 210.03.c.iii., the term chronic value is the result from appropriate hypothesis testing or regression analysis of measurements of growth, reproduction, or survival from life cycle, partial life cycle, or early life stage tests. The determination of acute and chronic values shall be according to current standard protocols (e.g., those published by the American Society for Testing and Materials (ASTM)) or other comparable methods. For calculation of criteria using site-specific values for both the hardness and the water effect ratio, the hardness used in the equations in Subsection 210.02 shall be as required in Subsection 210.03.b. Water hardness shall be calculated from the measured calcium and magnesium ions present, and the ratio of calcium to magnesium shall be approximately the same in laboratory toxicity testing water as in the site water, or be similar to average ratios of laboratory waters used to derive the criteria. ()

034. National Pollutant Discharge Elimination System Permitting. For the purposes of NPDES permitting, interpretation and implementation of metals criteria listed in Subsection 210.02 should be governed by the following standards, that are hereby incorporated by reference, in addition to ~~the provisions of 40 CFR 131.36~~ other scientifically defensible methods deemed appropriate by the Department; provided, however, any identified conversion factors within these documents are not incorporated by reference. Metals criteria conversion factors are identified in Subsection 210.02: ~~of~~ this rule. (4-5-00)()

- a. "Guidance Document on Dissolved Criteria -- Expression of Aquatic Life Criteria," EPA, October 1993. (4-5-00)
- b. "Guidance Document on Dynamic Modeling and Translators," EPA, August 1993. (4-5-00)
- c. "Guidance Document on Clean Analytical Techniques and Monitoring," EPA, October 1993. (4-5-00)
- d. "Interim Guidance on Determination and Use of Water-Effect Ratios for Metals," EPA, February 1994. (4-5-00)

045. Development of Toxic Substance Criteria. (4-5-00)

a. Aquatic Life Communities Criteria. Numeric criteria for the protection of aquatic life uses not identified in these rules for toxic substances, may be derived by the Department from the following information: (4-5-00)

- i. Site-specific criteria developed pursuant to Section 275; (4-5-00)
- ii. Effluent biomonitoring, toxicity testing and whole-effluent toxicity determinations; (4-5-00)
- iii. The most recent recommended criteria defined in EPA's Aquatic Toxicity Information Retrieval (ACQUIRE) database. When using EPA recommended criteria to derive water quality criteria to protect aquatic life uses, the lowest observed effect concentrations (LOECs) shall be considered; or (4-5-00)
- iv. Scientific studies including, but not limited to, instream benthic assessment or rapid bioassessment. (4-5-00)
- b. Human Health Criteria. (4-5-00)**
 - i. When numeric criteria for the protection of human health are not identified in these rules for toxic substances, quantifiable criteria may be derived by the Department from the most recent recommended criteria defined in EPA's Integrated Risk Information System (IRIS). When using EPA recommended criteria to derive water quality criteria to protect human health, a fish consumption rate of six point five (6.5) grams/day, a water ingestion rate of two (2) liters/day and a cancer risk level of 106 shall be utilized. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

250. SURFACE WATER QUALITY CRITERIA FOR AQUATIC LIFE USE DESIGNATIONS.

01. General Criteria. The following criteria apply to all aquatic life use designations. Surface waters are not to vary from the following characteristics due to human activities: (3-15-02)

- a.** Hydrogen Ion Concentration (pH) values within the range of six point five (6.5) to nine point zero (9.0); (3-30-01)
- b.** The total concentration of dissolved gas not exceeding one hundred and ten percent (110%) of saturation at atmospheric pressure at the point of sample collection; (7-1-93)
- ~~**e.** Total chlorine residual. (8-24-94)~~
- ~~**f.** One (1) hour average concentration not to exceed nineteen (19) ug/l. (8-24-94)~~
- ~~**ii.** Four (4) day average concentration not to exceed eleven (11) ug/l. (8-24-94)~~

02. Cold Water. Waters designated for cold water aquatic life are not to vary from the following characteristics due to human activities: (3-15-02)

- a.** Dissolved Oxygen Concentrations exceeding six (6) mg/l at all times. In lakes and reservoirs this standard does not apply to: (7-1-93)
 - i. The bottom twenty percent (20%) of water depth in natural lakes and reservoirs where depths are thirty-five (35) meters or less. (7-1-93)
 - ii. The bottom seven (7) meters of water depth in natural lakes and reservoirs where depths are greater than thirty-five (35) meters. (7-1-93)
 - iii. Those waters of the hypolimnion in stratified lakes and reservoirs. (7-1-93)
- b.** Water temperatures of twenty-two (22) degrees C or less with a maximum daily average of no greater than nineteen (19) degrees C. (8-24-94)

c. Temperature in lakes shall have no measurable change from natural background conditions. Reservoirs with mean detention times of greater than fifteen (15) days are considered lakes for this purpose. (3-15-02)

d. Ammonia. The following criteria are not to be exceeded dependent upon the temperature, T (degrees C), and pH of the water body: (3-15-02)

i. Acute Criterion (Criterion Maximum Concentration (CMC)). The one (1) hour average concentration of total ammonia nitrogen (in mg N/L) is not to exceed, more than once every three (3) years, the value calculated using the following equation:

$$CMC = \frac{0.275}{1 + 10^{7.204 - pH}} + \frac{39.0}{1 + 10^{pH - 7.204}}$$

(3-15-02)

ii. Chronic Criterion (Criterion Continuous Concentration (CCC)). (3-15-02)

(1) The thirty (30) day average concentration of total ammonia nitrogen (in mg N/L) is not to exceed, more than once every three (3) years, the value calculated using the following equations: (3-15-02)

(a) When fish early life stages are likely present:

$$CCC = \left(\frac{0.0577}{1 + 10^{7.688 - pH}} + \frac{2.487}{1 + 10^{pH - 7.688}} \right) \bullet MIN(2.85, 1.45 \cdot 10^{0.028(25 - T)})$$

(3-15-02)

(b) When fish early life stages are likely absent:

$$CCC = \left(\frac{0.0577}{1 + 10^{7.688 - pH}} + \frac{2.487}{1 + 10^{pH - 7.688}} \right) \bullet 1.45 \cdot 10^{0.028(25 - T)}$$

(3-15-02)

(2) The highest four-day (4) average within the thirty-day (30) period should not exceed two point five (2.5) times the CCC. (3-15-02)

(3) Because the Department presumes that many waters in the state may have both spring-spawning and fall-spawning species of fish present, early life stages of fish may be present throughout much of the year. Accordingly, the Department will apply the CCC for when fish early life stages are present at all times of the year unless: (3-15-02)

(a) Time frames during the year are identified when early life stages are unlikely to be present, and (3-15-02)

(b) The Department is provided all readily available information supporting this finding such as the fish species distributions, spawning periods, nursery periods, and the duration of early life stages found in the water body; and (3-15-02)

(c) The Department determines early life stages are likely absent. (3-15-02)

e. Turbidity, below any applicable mixing zone set by the Department, shall not exceed background turbidity by more than fifty (50) NTU instantaneously or more than twenty-five (25) NTU for more than ten (10) consecutive days. (8-24-94)

f. Salmonid spawning: waters designated for salmonid spawning are to exhibit the following characteristics during the spawning period and incubation for the particular species inhabiting those waters: (7-1-93)

- i. Dissolved Oxygen. (8-24-94)
 - (1) Intergravel Dissolved Oxygen. (8-24-94)
 - (a) One (1) day minimum of not less than five point zero (5.0) mg/l. (8-24-94)
 - (b) Seven (7) day average mean of not less than six point zero (6.0) mg/l. (8-24-94)
 - (2) Water-Column Dissolved Oxygen. (8-24-94)
 - (a) One (1) day minimum of not less than six point zero (6.0) mg/l or ninety percent (90%) of saturation, whichever is greater. (8-24-94)
- ii. Water temperatures of thirteen (13) degrees C or less with a maximum daily average no greater than nine (9) degrees C. (8-24-94)

g. Bull Trout Temperature Criteria. Water temperatures for the waters identified under Subsection 250.02.g.i. shall not exceed thirteen degrees Celsius (13C) maximum weekly maximum temperature (MWMT) during June, July and August for juvenile bull trout rearing, and nine degrees Celsius (9C) daily average during September and October for bull trout spawning. For the purposes of measuring these criteria, the values shall be generated from a recording device with a minimum of six (6) evenly spaced measurements in a twenty-four (24) hour period. The MWMT is the mean of daily maximum water temperatures measured over the annual warmest consecutive seven (7) day period occurring during a given year. (3-30-01)

- i. The bull trout temperature criteria shall apply to all tributary waters, not including fifth order main stem rivers, located within areas above fourteen hundred (1400) meters elevation south of the Salmon River basin-Clearwater River basin divide, and above six hundred (600) meters elevation north of the Salmon River basin-Clearwater River basin divide, in the fifty-nine (59) Key Watersheds listed in Table 6, Appendix F of Governor Batt's State of Idaho Bull Trout Conservation Plan, 1996, or as designated under Sections 110 through 160 of this rule. (3-23-98)
- ii. No thermal discharges will be permitted to the waters described under Subsection 250.02.g.i. unless socially and economically justified as determined by the Department, and then only if the resultant increase in stream temperature is less than five-tenths degrees Celsius (0.5C). (4-5-00)

h. Kootenai River sturgeon temperature criteria. Water temperatures within the Kootenai River from Bonners Ferry to Shorty's Island, shall not exceed a seven (7) day moving average of fourteen degrees celsius (14C) based on daily average water temperatures, during May 1 through July 1. (3-23-98)

03. Seasonal Cold Water. Between the summer solstice and autumn equinox, waters designated for seasonal cold water aquatic life are not to vary from the following characteristics due to human activities. For the period from autumn equinox to summer solstice the cold water criteria will apply: (3-15-02)

- a.** Dissolved Oxygen Concentrations exceeding six (6) mg/l at all times. In lakes and reservoirs this standard does not apply to: (4-5-00)
 - i. The bottom twenty percent (20%) of water depth in natural lakes and reservoirs where depths are thirty-five (35) meters or less. (4-5-00)
 - ii. The bottom seven (7) meters of water depth in natural lakes and reservoirs where depths are greater than thirty-five (35) meters. (4-5-00)
 - iii. Those waters of the hypolimnion in stratified lakes and reservoirs. (4-5-00)

b. Water temperatures of twenty-six (26) degrees C or less as a daily maximum with a daily average of no greater than twenty-three (23) degrees C. (3-30-01)

c. Temperature in lakes shall have no measurable change from natural background conditions. Reservoirs with mean detention times of greater than fifteen (15) days are considered lakes for this purpose. (3-15-02)

d. Ammonia. Concentration of ammonia are not to exceed the criteria defined at Subsection 250.02.d. (3-15-02)

04. Warm Water. Waters designated for warm water aquatic life are to exhibit the following characteristics: (4-5-00)

a. Dissolved oxygen concentrations exceeding five (5) mg/l at all times. In lakes and reservoirs this standard does not apply to: (7-1-93)

i. The bottom twenty percent (20%) of the water depth in natural lakes and reservoirs where depths are thirty-five (35) meters or less. (7-1-93)

ii. The bottom seven (7) meters of water depth in natural lakes and reservoirs where depths are greater than thirty-five (35) meters. (7-1-93)

iii. Those waters of the hypolimnion in stratified lakes and reservoirs. (7-1-93)

b. Water temperatures of thirty-three (33) degrees C or less with a maximum daily average not greater than twenty-nine (29) degrees C. (8-24-94)

c. Temperature in lakes shall have no measurable change from natural background conditions. Reservoirs with mean detention times of greater than fifteen (15) days are considered lakes for this purpose. (3-15-02)

d. Ammonia. The following criteria are to be met dependent upon the temperature, T (degrees C), and pH of the water body: (3-15-02)

i. Acute Criterion (Criterion Maximum Concentration (CMC)). The one (1) hour average concentration of total ammonia nitrogen (in mg N/L) is not to exceed, more than once every three (3) years, the value calculated using the following equation:

$$CMC = \frac{0.411}{1 + 10^{7.204 - pH}} + \frac{58.4}{1 + 10^{pH - 7.204}}$$

(3-15-02)

ii. Chronic Criterion (Criterion Continuous Concentration (CCC)). Concentrations of ammonia are not to exceed the criteria defined at Subsection 250.02.d.ii. (3-15-02)

05. Modified. Water quality criteria for modified aquatic life will be determined on a case-by-case basis reflecting the chemical, physical, and biological levels necessary to attain the existing aquatic life community. These criteria, when determined, will be adopted into these rules. (3-15-02)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 - WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS

DOCKET NO. 58-0102-0205

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Department of Environmental Quality (DEQ) has proposed rulemaking. The action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

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

August 22, 2002, 6:30 p.m.
Department of Environmental Quality Conference Center
1410 N. Hilton, Boise, Idaho

Before opening the record to receive oral comments, DEQ staff intends to make a brief presentation and answer questions regarding the rule.

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: On June 20, 2002, the Idaho Board of Environmental Quality directed DEQ to proceed with rulemaking to amend the Idaho Water Quality Standards in response to a Petition to Initiate Rulemaking filed by the Idaho Association of Commerce and Industry. This proposed change to the Idaho Water Quality Standards adds a section to specify various methods to be used for evaluating whether water quality based effluent limits are necessary in permits. This issue has been the subject of controversy in recent NPDES permits and the rule is necessary to assert the states interpretation of its water quality standards.

The proposed changes to the Idaho Water Quality Standards add a section to identify the procedures to determine how to calculate values for the effluent concentration, background concentrations of pollutants in the receiving water and hardness values of the receiving water. These values are then used in calculations to determine if permit limits are necessary and what permits limits should be used to assure that ambient water quality is protected. Methods for calculating values for effluent concentration are not addressed in federal regulations; therefore, this proposed rule may be broader in scope than federal law.

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 the fall of 2002 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2003 session of the Idaho Legislature.

NEGOTIATED RULEMAKING: Due to the nature of this rulemaking, negotiations were not held. The Board of Environmental Quality has directed DEQ to initiate rulemaking in response to a Petition for Initiation of Rulemaking filed by the Idaho Association of Commerce and Industry.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rule, contact Chris Mebane at (208)373-0502 or cmebane@deq.state.id.us.

Anyone can 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 September 6, 2002.

DATED this 19th day of June, 2002.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pgradwoh@deq.state.id.us

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0102-0205

090. ANALYTICAL PROCEDURES.

These procedures are available for review at the Idaho Department of Environmental Quality, or may be obtained from the U.S. Environmental Protection Agency or U.S. Government Printing Office. (8-24-94)

01. Chemical And Physical Procedures. Sample collection, preservation and analytical procedures to determine compliance with these standards shall conform with the guidelines of the Environmental Protection Agency, 40 CFR, Part 136, or other methods accepted by the scientific community and deemed appropriate by the Department. (8-24-94)

02. Metals Procedures. For the purposes of NPDES permitting, sample collection, preservation and analytical procedures for metals should conform to clean or ultra-clean techniques as described in: (8-24-94)

- a. "Guidance Document on Clean Analytical Techniques and Monitoring," EPA, October 1993; or (8-24-94)
- b. "Interim Guidance on Determination and Use of Water-Effect Ratios for Metals," EPA, February 1994; or (8-24-94)
- c. Other scientifically valid methods deemed appropriate by the Department. (8-24-94)

03. Reasonable Potential To Exceed (RPE) Water Quality Standards. ()

a. For the purposes of evaluating whether water quality-based effluent limits are necessary in NPDES permits and Department certifications of NPDES permits, the Department shall utilize the following procedures for determining the reasonable potential to exceed (RPE) an instream water quality standard: ()

i. The projected effluent quality shall be determined from the upper ninety-fifth percentile confidence level of the ninety-fifth percentile effluent concentration based on a log-normal distribution. ()

ii. If representative upstream background concentration measurements in the receiving stream are available, the geometric mean of these measurements will be used for RPE calculation, unless it is determined that a different average statistic (i.e., arithmetic mean, fiftieth percentile) would be more representative of the upstream background concentration. If on-site background measurements are not available, the permittee may obtain this data or, alternatively, ambient data from similar streams may be used. ()

iii. The statistic for hardness to be utilized in metals criteria equations is the geometric mean of a valid and representative database of downstream (mixed) hardness measurements. An alternate average statistic (i.e., arithmetic mean, fiftieth percentile) may be used if this value would be more representative of the downstream hardness. If downstream hardness measurements are not available, the downstream hardness may be calculated from

a mass balance of geometric mean upstream hardness with geometric mean effluent hardness. ()

b. If it is demonstrated that the permittee has a reasonable potential to exceed any instream water quality standard, then the procedures given in Subsections 090.03.a.ii. and 090.03.a.iii. shall also be used to calculate the permittee's water quality-based effluent limits and any waste load allocation. ()

034. Biological Procedures. Biological tests to determine compliance with these standards should be based on methods as outlined in: (8-24-94)

a. "Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms," Fourth Edition, EPA, 1991; or (8-24-94)

b. "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms," Second Edition, EPA 1989; or (8-24-94)

c. "Rapid Bioassessment Protocols for Use in Streams and Rivers," EPA, 1989; or (8-24-94)

d. Other scientifically valid methods deemed appropriate by the Department. (7-1-93)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.04 - RULES FOR ADMINISTRATION OF WASTEWATER TREATMENT FACILITY GRANTS

DOCKET NO. 58-0104-0201

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Department of Environmental Quality (DEQ) has proposed rulemaking. This 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 August 23, 2002. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The proposed rules address review and approval of contracts for consulting engineers and determining eligible costs for grants. The rules clearly state the types of contracts that will be allowed, what costs contained in the contracts and other costs will be eligible, and how the contracts and costs are reviewed. Other changes were made to the rules to make them consistent with other DEQ loan and grant rules. Cities, counties, districts and associations that own and operate wastewater facilities and public drinking water systems may be interested in this rulemaking.

This rulemaking is an amendment to longstanding administrative rules that regulate activities not regulated by the federal government. 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, the Idaho Department of Environmental Quality (DEQ) intends to present the final proposal to the Board of Environmental Quality in the fall of 2002 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2003 session of the Idaho Legislature.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during a negotiation conducted pursuant to Idaho Code Section 67-5220 and IDAPA 58.01.23.812 - 815. The negotiation was open to the public. Participants in the negotiation included engineering and consulting firms, Association of Idaho Cities, Idaho Rural Water Association, engineering and consulting firms, sewer districts, members of the public, and DEQ staff. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Volume 02-4, April 3, 2002, page 21.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Bill Jerrel at (208)373-0502 or wjerrel@deq.state.id.us.

Anyone can 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 September 6, 2002.

Dated this 19th day of June, 2002.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pgradwoh@deq.state.id.us

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0104-0201

IDAPA 58
TITLE 01
Chapter 04

58.01.04 - ~~RULES GOVERNING~~ RULES FOR ADMINISTRATION
OF WASTEWATER TREATMENT FACILITY GRANTS

000. LEGAL AUTHORITY.

The Idaho State Board of Environmental Quality, pursuant to authority granted in Chapters 1 and Chapter 36, Title 39, Idaho Code, did adopt the following rules for the administration of a Wastewater Treatment Facility Grants Program in Idaho. (3-15-85)()

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 Governing~~ Rules for Administration of Wastewater Treatment Facility Grants". (12-31-91)()

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 for the construction of wastewater treatment facilities. (3-15-85)

002. WRITTEN INTERPRETATIONS.

As described in Section 67-5201(19)(b)(iv), Idaho Code, the Department of Environmental Quality may have written statements which pertain to the interpretation of these rules. If available, such written statements can be inspected and copied at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706. ()

003. INCORPORATION BY REFERENCE.

These rules do not contain documents incorporated by reference. ()

0024. POLICY.

It is the policy of the Idaho Board of Environmental Quality through the Department of Environmental Quality to administer the Wastewater Treatment Facility Grant Program for the purpose of protecting and enhancing the quality and value of the water resources of the state of Idaho by financially assisting in the prevention, control and abatement of water pollution. It is also the intent of the Board to assign a priority rating to those projects which will most significantly improve the quality of the waters of the state and most adequately protect the public health. (12-31-91)()

0035. 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. (3-15-85)()

02. Board. The Idaho State Board of Environmental Quality. (12-31-91)

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 assessment nor an environmental impact statement is required. ()

034. 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)

~~045.~~ **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, ~~and~~ the inspection and supervision of the construction, ~~and start-up of the associated facilities.~~ (3-15-85)(____)

~~056.~~ **Department.** The Idaho Department of Environmental Quality. (1-3-78)

~~067.~~ **Director.** The Director of the Idaho Department of Environmental Quality or his/~~her~~ designee. (12-31-91)(____)

~~078.~~ **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)

~~089.~~ **Eligible Costs.** Costs which are necessary for planning, designing and/or constructing wastewater treatment facilities. To be eligible, costs must also be reasonable, ~~allowable~~ and ~~allocable~~ not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 041. (10-6-88)(____)

10. Environmental Information Document (EID). Any written environmental assessment prepared by an 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 to assess the environmental impacts of the proposed project and ultimately determine if an environmental impact statement (EIS) is warranted. (____)

11. Environmental Impact Statement (EIS). A document prepared by the grantee in accordance with Environmental Review Procedures contained in Chapter 5 of the Handbook when the Department determines that the proposed drinking water construction project will significantly affect the environment as described in Appendix C of the Handbook. 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. (____)

~~0912.~~ **Facility Plan.** ~~Systematic engineering~~ evaluation by a professional engineer of feasible treatment alternatives considering demographic, topographic, hydrologic and institutional characteristics of a project area to demonstrate that the selected alternative is cost effective. (10-6-88)(____)

13. Finding Of No Significant Impact (FNSI). 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. (____)

14. Handbook. “Wastewater Facilities Loan Handbook of Procedures.” (____)

~~105.~~ **Ineligible Costs.** ~~Costs which are not necessary for the planning, design and/or construction of wastewater treatment facilities or which are not reasonable, allowable or allocable~~ described in Subsection 041.06. (10-6-88)(____)

~~146.~~ **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)

~~12-~~ **Matching Grant.** ~~A coordinated award of funds to a qualifying entity through allocation by the State from the dedicated State Water Pollution Control Fund, pursuant to Chapter 36, Title 39, Idaho Code, and from the United States Government as provided by law.~~ (3-15-85)

17. Municipality. Any county, city, special service district, nonprofit corporation or other governmental entity having authority to dispose of sewage, industrial wastes, or other wastes, or to provide for safe drinking water, any Indian tribe or authorized Indian tribal organization, or any combination of two (2) or more of the foregoing acting jointly, in connection with an eligible project. ()

18. 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). ()

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

1420. O & M Manual. A guidance and training manual delineating the optimum operation and maintenance of the wastewater treatment facility or its components. (10-6-88)

1521. Phasing. One (1) portion of a design or construction project needed to complete the total eligible project. Each phase may be made up of several engineering or construction contracts. (1-1-82)

1622. Plan Of Operation. A schedule of specific actions and completion dates for construction, start-up, operator training and operation of the wastewater treatment facility. (10-6-88)

23. 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. ()

1724. 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)

1825. Preliminary Engineering Report. An engineering report which compares wastewater treatment facility alternatives and identifies the most cost effective, environmentally sound alternative. (10-6-88)

1926. Priority List. A list of proposed projects rated by severity *of pollution problems, public health needs, population affected, and need for protection of Idaho's water resources* as described in Section 020. (3-15-85)()

207. 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; municipality. (1-1-87)

218. Rehabilitation. The repair or replacement of limited segments of interceptor or collector sewers. (1-3-78)

229. 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)

23. Scope Of Project. *Those portions of the proposed facility, including administration, engineering and physical components that constitute a complete project as determined from the most cost effective, environmentally sound wastewater treatment facility alternative identified in a preliminary engineering report and approved by the Department.* (10-6-88)

2430. Sewer Use Ordinance. An ordinance adopted pursuant to Title 42, Chapter 32, Idaho Code, or other applicable law 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. (10-6-88)

- ~~2531.~~ **State.** The state of Idaho. (3-15-85)
- ~~26.~~ **Substantial Human Habitation.** *An area with population density equal greater than two (2) occupied households per acre.* (10-6-88)
- ~~2732.~~ **Supplemental Grant.** A grant awarded to a municipality in conjunction with a loan from the wastewater facility loan ~~account~~ program. (10-6-88)(____)
- ~~2833.~~ **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)
- ~~2934.~~ **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)
- ~~305.~~ **Treatment Plant.** That portion of the wastewater treatment facility whose primary purpose is to remove pollutants from domestic and nondomestic wastewater. (3-15-85)
- ~~316.~~ **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, and operation, maintenance, and replacement of the wastewater treatment facility. (10-6-88)
- ~~327.~~ **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)
- ~~338.~~ **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)
- ~~0046.~~ -- 009. **(RESERVED).**
- 010. FINANCIAL AND MANAGEMENT CAPABILITY ANALYSIS.**
No grants shall be awarded for the design and construction phases of projects unless the applicant has demonstrated that it has the legal, institutional, managerial, and financial capability to insure construction, operation and maintenance, including equipment replacement, of the proposed wastewater treatment facility, and including the qualifying entity's share of the cost of the project. (10-6-88)(____)
- 01. Applicant Information Needed.** The applicant must submit legal, institutional, managerial and financial information on a form prescribed by the Department ~~along with an analysis of that information. In association with this requirement, the applicant must also submit to the Department a signed copy of the Certification of Financial and Management Capabilities form.~~ (10-6-88)(____)
- 02. Incorporated Nonprofit Applicants.** To fully meet the requirements of Subsection 010.01, incorporated nonprofit applicants must demonstrate that all of the following items ~~in Subsection 040.04.b.ii:~~ are included in its Articles of Incorporation and/or Bylaws: (12-31-91)(____)
- a.** The corporation is nonprofit and incorporated according to Title 30, Chapter 3, Idaho Code. (____)
- b.** Membership in the corporation is limited to property owners only, with one (1) vote per lot or parcel. (____)
- c.** Voting rights are restricted to corporation members with improved property, except that a developer will have voting rights until the corporation becomes self-sustaining. (____)

- d.** Corporation membership is not eliminated by cancellation of voting rights. ()
- e.** The purpose of the corporation is clearly defined. ()
- f.** Funds generated to operate one (1) function of a multipurpose corporation, i.e., one (1) providing both water and sewer services, will be used for that designated purpose and not transferred or commingled for another function. ()
- g.** The corporation owns the system it intends to maintain. ()
- h.** Mutually agreeable access to a system owned by the corporation is provided by the property owners. ()
- i.** Membership and share, if any, in the corporation is tied to land ownership such that successive owners must acquire the preceding owner's membership, or voting shares, if any. ()
- j.** New members in the corporation are provided copies of the Articles of Incorporation, Bylaws and covenants and contracts of the corporation. ()
- k.** No provision(s) restricts ownership of improved property. ()
- l.** The corporation is capable of raising revenue by fixing and collecting user charges. ()
- m.** The Board of Directors of the corporation has authority to raise revenue for emergency operation and maintenance without a majority vote of the membership. ()
- n.** The corporation is capable of suing and of being sued, and will maintain the capability to impose liens on the real property of those members (shareholders) who become delinquent in user charges and further has the capability to suspend services, providing such suspension will not jeopardize use by other members. ()
- o.** Operation and maintenance functions of the corporation are identified in a manual for that purpose that is or will be approved by the Department. No changes can be made to the manual without consent by the Department. ()
- p.** The conditions for dissolution of the corporation are specified in the Declaration of Covenants. Dissolution is limited to connection to municipal facilities or merger with another approved nonprofit entity having financial and management capability for the merged system. ()
- q.** Except as provided in Subsection 010.02.p., the corporation cannot discontinue operation or dispose of the sewage treatment plant without prior Department approval. ()
- r.** A third entity is identified to execute the specified operation and maintenance function(s) in the event the operating corporation is incapable of performance. ()
- s.** The corporation is able to plan and control how and at what time additional service functions will be extended or added. ()
- t.** If the Articles of Incorporation and/or Bylaws provide for proxy voting, such proxies will not be binding on a new purchaser of the property. ()
- u.** Developers will contribute to the operation and maintenance functions until such time as the nonprofit corporation is self-sustaining. Consider either a specified period or when a specified number of lots or parcels have been sold. ()
- v.** The corporation has defined service area boundaries. ()
- 03.** ~~Wastewater Facility Serving Two Or More Entities~~ **Cost Allocation.** An applicant proposing to

construct wastewater treatment facilities designed to serve two (2) or more qualifying entities must show how the costs will be allocated among the participating entities. Such applicants must provide an executed intermunicipal service agreement which, at a minimum, incorporates the following information: ~~(10-6-88)~~(____)

- a. The basis upon which the costs are allocated; and (3-15-85)
- b. The formula by which the costs are allocated; and (3-15-85)
- c. The manner in which the cost allocation system will be administered. (3-15-85)
- 04. Waiver.** The requirement in Subsection 010.03 may be waived by the Department if the applicant can demonstrate: (12-31-91)
 - a. Such an agreement is already in place; or (3-15-85)
 - b. There is documentation of a service relationship in the absence of a formal agreement; or (3-15-85)
 - c. The entity providing wastewater treatment exhibits sufficient financial strength to continue the project if one (1) or more of the entities supplying wastewater fails to participate. (3-15-85)

(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. Limited 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 and water quality criteria. (____)

01. Purpose. A priority rating system ~~will~~ shall be utilized by the Department to annually allot available funds to projects determined eligible for funding assistance ~~under the construction grants program~~ in accordance with these rules. (3-15-85)(____)

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)

- a. Public health emergency certified by the Department - fifty (50) points. (10-6-88)
- b. Documented public health hazard identified by District Boards of Health or the Department - fifteen (15) points. (3-15-85)
- c. Special resource water protection needs documented by the Department for waters identified in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, Section 102, "Water Quality Standards and Wastewater Treatment Requirements" - fifteen (15) points. (12-31-91)
- d. Potential public health hazard and/or water quality impact: (1-1-87)
 - 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 and Wastewater Treatment Requirements" - 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. (12-31-91)

03. 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~~. (~~12-31-91~~)(____)

04. 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. (3-15-85)

05. Priority Target Date. A qualifying entity whose project is on the ~~adopted~~ approved list will be contacted by the Department and a target date for submission of a completed grant application will be established. (~~3-15-85~~)(____)

06. 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 municipality that is bypassed will be notified in writing of the reasons for being bypassed. (3-15-85)

(BREAK IN CONTINUITY OF SECTIONS)

030. PROJECT FUNDING.

01. Project Step Funding. Projects may be funded in ~~three~~ four (~~3~~) steps: (~~3-15-85~~)(____)

a. Step 1. Facilities planning, which will include: (3-15-85)

i. Preliminary engineering report prepared by an engineer licensed in the state of Idaho and on a form prescribed by the Department; or (3-15-85)

ii. Facility plan prepared in accordance with ~~40 CFR 35.2030 "Grants for Construction of Treatment Works; Final and Interim Rule"~~ the Handbook. (~~3-15-85~~)(____)

b. Step 2. Design and specifications, which includes the preparation of the detailed plans and specifications necessary for the bidding and construction of the project. (1-3-78)

c. Step 3. Construction, which includes bidding and actual construction of the project. (1-3-78)

d. Step 4. A combination of Step 2 and Step 3. (3-15-85)

02. Combination Step Funding. Projects may be funded in any combination of the steps in Subsection 030.01 with the approval of the Department. (12-31-91)

03. Cost Effective Requirement. Step 2, Step 3 or Step 4 grants will not be awarded until a final cost effective environmentally sound alternative has been selected by the Step 1 facility plan or preliminary engineering report as approved by the Department. The most cost effective alternative may be selected based on the comment received from at least one (1) public hearing attended by intended users within the jurisdiction of the qualifying agency and conducted in accordance with state law. (~~3-15-85~~)(____)

~~**04. Limitation On Funding Assistance.** (~~7-1-93~~)~~

~~**a.** No qualifying entity may receive more than twenty percent (20%) of total funds available for a fiscal year unless the selected alternative is of such a nature that it cannot be phased as determined by the Department or unless there are insufficient approved applicants to utilize all of the available funds. (~~3-15-85~~)~~

~~b. The maximum nonsupplemental grant funding provided in a state grant award shall not exceed seventy five percent (75%) of total eligible costs for grants awarded after October 1, 1984. (10-6-88)~~

~~e. The maximum nonsupplemental combined grant funding for projects receiving state and EPA assistance shall not exceed seventy five percent (75%) of total eligible costs for grants awarded after October 1, 1984, except those projects utilizing innovative or alternative technology. (10-6-88)~~

054. Supplemental Grants. In conjunction with loans provided to municipalities from the wastewater facility loan ~~account~~ program, the Department may award supplemental grants in the following manners: (10-6-88)(____)

a. Planning and design projects may receive up to ninety percent (90%) funding of eligible costs; and (10-6-88)

b. Construction projects may receive up to ninety percent (90%) funding of eligible costs that exceed the amount a loan recipient is able to pay as determined by the Department's published guidelines. (10-6-88)

065. 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. (3-15-85)

076. Nondomestic Capacity Limitation. Grant funds, including supplemental grant funds, shall not be awarded for construction of treatment capacity for any single nondomestic source which is determined to be: (10-6-88)

a. Contributing ten percent (10%) or more of the organic or hydraulic loading of the sewage treatment works; or (1-1-82)

b. If the source requires installation of special treatment processes that add an increment of ten percent (10%) or more to the capital costs of the sewage treatment works; and (1-1-82)

c. Any nondomestic source discharge exceeding the provisions in Subsections 030.076.a. and 030.076.b. shall be required to purchase the entire portion of their needed treatment capacity. (12-31-91)(____)

~~08. Collector Sewer Eligibility. Eligibility for funding new collector sewers will be determined by the following criteria: (3-15-85)~~

~~a. Each area to be served must meet the definition for substantial human habitation (Subsection 003.26). Substantial human habitation is that existing as of March 21, 1974, as determined by a city block or tracts of five (5) acres or less; and (12-31-91)~~

~~b. The bulk (generally two-thirds (2/3)) of the flow design capacity is to be for sewage originating from habitations existing on March 21, 1974; and (10-6-88)~~

~~c. When population density within the collector system is less than two (2) occupied households per acre, collection systems will not be considered cost effective unless a severe pollution or public health problem is determined by the Department and collector sewers are less costly than alternatives; and (10-6-88)~~

~~d. The collector system will not provide capacity for new habitations on environmentally sensitive wetlands or prime agricultural lands unless in the latter case an adopted comprehensive plan identifies those agricultural lands as new growth areas. Collection systems for new habitations on flood plains will not be funded unless those areas are covered by an adequate flood plain management program as determined by the Department; and (10-6-88)~~

~~e. The bulk of the design capacity will convey wastewater from principal residences. Collection systems serving second or recreational homes will not be eligible for funding unless so determined by Board action to protect public health or water quality; and (10-6-88)~~

~~f. Facilities which convey sewage from individual structures or private property to the public right of way are not eligible for funding. Connections from the collector sewer to the property line are eligible. (1-1-82)~~

~~09. **Eligible Project Costs.** Costs eligible for funding shall be determined from the scope of the project and may include, but not be limited to: (3-15-85)~~

~~a. Costs of salaries, benefits, and expendable material the grantee incurs in the project except as provided in Subsection 030.08.f.; (12-31-91)~~

~~b. Costs under construction contracts bid and executed in compliance with state public works construction laws; (3-15-85)~~

~~c. Professional and consulting services; (1-1-82)~~

~~d. Facility planning directly related to the wastewater treatment facilities; (3-15-85)~~

~~e. Sewer system evaluations; (1-1-82)~~

~~f. Financial and management capability analysis; (3-15-85)~~

~~g. Preparation of construction drawings, specifications, estimates, and construction contract documents; (1-1-82)~~

~~h. Landscaping; (1-1-82)~~

~~i. Removal and relocation or replacement of utilities for which the grantee is legally obligated to pay; (1-1-82)~~

~~j. Material acquired, consumed, or expended specifically for the project; (1-1-82)~~

~~k. A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations; (1-1-82)~~

~~l. Preparation of an operation and maintenance manual; (3-15-85)~~

~~m. Preparation of a Plan of Operation; (3-15-85)~~

~~n. Start up services; (1-1-82)~~

~~o. Project identification signs; (1-1-82)~~

~~p. Architectural/engineering subagreements utilizing only lump sum or cost plus fixed fee contracts; (1-1-82)~~

~~q. Public participation for alternative selection; (3-15-85)~~

~~r. Development of user charge and financial management systems; (3-15-85)~~

~~s. Development of sewer use ordinance; (3-15-85)~~

~~t. Staffing plans and budget development; and (3-15-85)~~

~~u. Certain direct and other costs as determined eligible by the Department; and (1-1-82)~~

~~v. Costs of assessing and defending contractor claims determined unmeritorious by the Department. (3-15-85)~~

408. Eligible And Ineligible Project Costs For Supplemental Grants. Eligible and ineligible costs for supplemental grants are delineated in Idaho Department of Environmental Quality Rules, IDAPA 58.01.12, "Rules for Administration of Wastewater Treatment Facility Loans". (10-6-88)

~~**11. Ineligible Costs.** Costs which are not necessary for the construction of the wastewater treatment facilities include but are not limited to:~~ (3-15-85)

~~**a.** Basin or area wide planning not directly related to the project;~~ (1-1-82)

~~**b.** Bonus payments not legally required for completion of construction before a contractual completion date;~~ (1-1-82)

~~**c.** Personal injury compensation or damages arising out of the project;~~ (1-1-82)

~~**d.** Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws;~~ (1-1-82)

~~**e.** Costs outside the scope of the approved project;~~ (1-1-82)

~~**f.** Interest on bonds or any other form of indebtedness required to finance the project costs;~~ (1-1-82)

~~**g.** Ordinary operating expenses of local government, such as salaries and expenses of a mayor, city council members, or city attorney;~~ (1-1-82)

~~**h.** Site acquisition including sewer right of way, sewage treatment plant site, sanitation landfills, and sludge disposal areas unless it is an integral part of the treatment process or will be used for the ultimate disposal of residues resulting from such treatment;~~ (1-1-82)

~~**i.** Construction of privately owned treatment works;~~ (1-1-82)

~~**j.** Preparation of a grant application including a plan of study or project evaluation report;~~ (1-1-82)

~~**k.** Assessments or evaluation reports necessary to establish priority;~~ (10-6-88)

~~**l.** All costs related to assessment, defense and settlement of disputes through binding arbitration;~~ (10-6-88)

~~**m.** Costs of supplying required permits or waivers;~~ (10-6-88)

~~**n.** Costs incurred prior to award of the grant unless specifically approved in writing as eligible pre-award costs by the Department; and~~ (10-6-88)

~~**o.** Architectural/engineering (A/E) costs incurred prior to approval of A/E contract or those costs in excess of the contract ceiling unless preapproval has been given in writing by the Department.~~ (10-6-88)

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 ~~indemnification~~ insurance in accordance with Subsection 050.05.d. (10-6-88)()

(BREAK IN CONTINUITY OF SECTIONS)

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. (3-15-85)()

02. Application Requirements. Applications shall contain ~~a completed state grant application form~~ and the following documentation ~~approved or approvable by the Department in both content and form~~ as applicable: (3-15-85)()

~~a. All grant applications:~~ (3-15-85)

~~ia.~~ An authorizing resolution passed by a majority of the governing body authorizing an elected official or ~~chief financial~~ officer of the qualifying entity to commit funding; and (3-15-85)()

~~ib.~~ Contracts for ~~architectural/engineering services or other technical services, including justification for the firm selected and a certification of liability indemnification, as described in Subsection 050.05.d., which covers all such services rendered for all project steps whether or not such services or steps are state funded;~~ 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. (12-31-91)()

~~iii. Financial and management capability analysis as provided in Section 010.~~ (12-31-91)

~~bc.~~ Step 1 Facility Planning. Plan of study describing the work tasks to be performed in the Preliminary Engineering Report or Facility Plan, a schedule for completion of the work tasks and an estimate of man hours and costs to complete the work tasks. (10-6-88)

~~ed.~~ Step 2 Design or Step 4 Design and Construction: (3-15-85)

i. Preliminary engineering report or facility plan; and (3-15-85)

ii. Intermunicipal service agreements between all qualifying entities within the scope of the project, if applicable; and (3-15-85)

~~iii. Documented evidence of all needed easements and land acquisition.~~ (3-15-85)

~~de.~~ Step 3 Construction: (3-15-85)

i. Documented evidence of all needed easements and land acquisition; and ()

ii. Biddable plans and specifications of the approved wastewater treatment facility alternative; and (3-15-85)

iii. A plan of operation and project schedule; and (3-15-85)

~~iv.~~ A user charge, sewer use ordinance and financial management system; and (3-15-85)

~~v.~~ A staffing plan and budget. (3-15-85)

~~e.~~ Step 4 Design and Construction. Application grantees must submit all documentation specified in Subsection 040.02.~~de.~~ prior to advertising for bids on construction contracts. (12-31-91)()

~~g.~~ Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum: ()

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

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

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

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. ()

h. 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. ()

i. 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 67-2320, 50-341 and 42-3212, Idaho Code. ()

j. A statement regarding how the non-grant portion of the project will be funded. ()

03. ~~Acceptance Of Application~~ Determination Of Completeness Of Application. Applications will be ~~accepted in accordance with the state priority list target dates and no applications will be accepted for projects not rated on the priority list unless approved by the Board in instances of a public health emergency as provided in Subsection 020.02.a~~ reviewed to determine whether they contain all of the information required by Subsection 040.02. (12-31-91)()

04. ~~Basis Of Evaluation Of Applications.~~ *The evaluation by the Department for the approval of grant applications will include, but not be limited to, consideration of the following items:* (1-1-87)

~~a. Adequate justification for selected architectural/engineering services. An architect or engineer selected by the applicant must as a minimum:~~ (1-1-87)

~~i. Be procured through the selection guidelines and procedures prescribed under Section 67-2320, Idaho Code; and~~ (1-1-87)

~~ii. Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors or an architect licensed by the Idaho Board of Architectural Examiners, as applicable; and~~ (1-1-87)

~~iii. Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and~~ (10-6-88)

~~iv. Be covered by professional liability indemnification in accordance with Subsection 050.05.d.~~ (12-31-91)

~~b. Demonstration of legal, institutional, managerial and financial capability. The applicant must show legal, institutional, managerial and financial capability as provided in Section 010 including:~~ (12-31-91)

~~i. For all applicants, certification of capability using the Certification of Financial and Management Capabilities form in Section 010.~~ (12-31-91)

~~ii. To fully demonstrate financial and management capability as required under Section 010 an incorporated nonprofit applicant must show by its Articles of Incorporation and/or Bylaws that:~~ (12-31-91)

~~(1) The corporation is nonprofit and incorporated according to Chapter 03, Title 30, Idaho Code.~~ (1-1-87)

~~(2) Membership in the corporation is limited to property owners only, with one (1) vote per lot or parcel.~~ (1-1-87)

- ~~(3) Voting rights are restricted to corporation members with improved property, except that a developer will have voting rights until the corporation becomes self-sustaining. (1-1-87)~~
- ~~(4) Corporation membership is not eliminated by cancellation of voting rights. (1-1-87)~~
- ~~(5) The purpose of the corporation is clearly defined. (1-1-87)~~
- ~~(6) Funds generated to operate one (1) function of a multipurpose corporation, i.e., one providing both water and sewer services, will be used for that designated purpose and not transferred or commingled for another function. (1-1-87)~~
- ~~(7) The corporation owns the system it intends to maintain. (1-1-87)~~
- ~~(8) Mutually agreeable access to a system owned by the corporation is provided by the property owners. (1-1-87)~~
- ~~(9) Membership and share, if any, in the corporation is tied to land ownership such that successive owners must acquire the preceding owner's membership, or voting shares, if any. (1-1-87)~~
- ~~(10) New members in the corporation are provided copies of the Articles of Incorporation, Bylaws and covenants and contracts of the corporation. (1-1-87)~~
- ~~(11) No provision(s) restricts ownership of improved property. (1-1-87)~~
- ~~(12) The corporation is capable of raising revenue by fixing and collecting user charges. (1-1-87)~~
- ~~(13) The Board of Directors of the corporation has authority to raise revenue for emergency operation and maintenance without a majority vote of the membership. (1-1-87)~~
- ~~(14) The corporation is capable of suing and of being sued, and will maintain the capability to impose liens on the real property of those members (shareholders) who become delinquent in user charges and further has the capability to suspend services, providing such suspension will not jeopardize use by other members. (1-1-87)~~
- ~~(15) Operation and maintenance functions of the corporation are identified in a manual for that purpose that is or will be approved by the Department. No changes can be made to the manual without consent by the Department. (1-1-87)~~
- ~~(16) The conditions for dissolution of the corporation are specified in the Declaration of Covenants. Dissolution is limited to connection to municipal facilities or merger with another approved nonprofit entity having financial and management capability for the merged system. (1-1-87)~~
- ~~(17) Except as provided in Subsection 040.04.b.ii.(16), the corporation cannot discontinue operation or dispose of the sewage treatment plant without prior Department approval. (12-31-91)~~
- ~~(18) A third entity is identified to execute the specified operation and maintenance function(s) in the event the operating corporation is incapable of performance. (1-1-87)~~
- ~~(19) The corporation is able to plan and control how and at what time additional service functions will be extended or added. (1-1-87)~~
- ~~(20) If the Articles of Incorporation and/or Bylaws provide for proxy voting, such proxies will not be binding on a new purchaser of the property. (1-1-87)~~
- ~~(21) Developers will contribute to the operation and maintenance functions until such time as the nonprofit corporation is self-sustaining. Consider either a specified period or when a specified number of lots or parcels have been sold. (1-1-87)~~

~~(22) The corporation has defined service area boundaries. (1-1-87)~~

054. Phasing Of Project. Project phasing will be allowed through agreement between the municipality and the Department or as may be required by availability of funds. (1-1-82)

~~06. Notification Of Approval. Written notification of approval will be sent to the applicant. (1-3-78)~~

075. Notification Of ~~Disapproval~~ Incompleteness Of Application. Written notification ~~of disapproval with the reasons for denial~~ if an application is incomplete, including an explanation of missing documentation, will be sent to the applicant. The applicant may provide the missing documentation. (1-3-78)()

086. 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. ()

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

a. Necessary for planning, designing and/or constructing wastewater treatment facilities; ()

b. Reasonable; and ()

c. Costs that are not ineligible as described in Subsection 041.06. ()

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 preliminary engineering report for design and construction of wastewater treatment facilities, and any other relevant information in the application that describes the scope of the project to be funded. ()

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 67-2320, 50-341 and 42-3212, Idaho Code. ()

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

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

b. Costs under construction contracts bid and executed in compliance with state public works construction laws; ()

c. Professional and consulting services utilizing a lumpsum contract, an hourly rate contract, a time and materials contract or cost plus a fixed fee contract; ()

d. Planning directly related to the water pollution control projects; ()

e. Sewer system evaluations; ()

f. Financial and management capability analysis; ()

- g.** Preparation of construction drawings, specifications, estimates, and construction contract documents: ()
- h.** Landscaping: ()
- i.** Removal and relocation or replacement of utilities for which the qualifying entity is legally obligated to pay: ()
- j.** Material acquired, consumed, or expended specifically for the project: ()
- k.** A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations: ()
- l.** Preparation of an operation and maintenance manual: ()
- m.** Preparation of a plan of operation: ()
- n.** Start-up services: ()
- o.** Project identification signs: ()
- p.** Public participation for alternative selection: ()
- q.** Development of user charge and financial management systems: ()
- r.** Development of sewer use ordinance: ()
- s.** Staffing plans and budget development: ()
- t.** Certain direct and other costs as determined eligible by the Department: ()
- u.** Costs of assessing and defending contractor claims determined unmeritorious by the Department: ()
- 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 ()
- w.** Site acquisition costs, including sewer right of way, sewage treatment plant site, sanitation landfills and sludge disposal areas. ()
- 05. Ineligible Project Costs.** Costs which are ineligible for funding include, but are not limited to: ()
- a.** Basin or area wide planning not directly related to the project: ()
- b.** Bonus payments not legally required for completion of construction before a contractual completion date: ()
- c.** Personal injury compensation or damages arising out of the project: ()
- d.** Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws: ()
- e.** Costs outside the scope of the approved project: ()
- f.** Ordinary operating expenses of local government, such as salaries and expenses of a mayor, city council members, or city attorney: ()

- g.** Construction of privately owned wastewater treatment facilities; ()
- h.** Cost of land in excess of that needed for the proposed project. ()
- i.** Cost of refinancing existing indebtedness. ()

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. ()

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, such as construction costs. 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. ()

042. ENVIRONMENTAL REVIEW.

01. Overview Of Process. The applicant will complete an environmental information document (EID) as part of and in conjunction with an engineering report. The review will be done in accordance with Chapter 5 of the Handbook. The applicant shall also consult with the Department at an early stage in the preparation of the engineering report to determine the required level of environmental review. The environmental information document (EID) will include, as a minimum, the following: ()

- a.** Description of purpose and need for proposed action; ()
- b.** Description of the proposed alternative, including the proposed action; ()
- c.** Description of the affected environment; ()
- d.** Discussion of the environmental impacts of the proposed action; ()
- e.** The means to mitigate adverse environmental impacts; ()
- f.** Description of public participation process; ()
- g.** List of referenced documents; ()
- h.** List of agencies consulted; and ()
- i.** Mailing list of interested parties. ()

02. Department Action. Based on review of the environmental information document (EID), the Department shall take one (1) of the following actions: ()

- a.** Issue a Categorical Exclusion (CE) with supporting documentation; ()
- b.** Issue a Finding of No Significant Impact (FNSI). The Department shall first issue a draft FNSI and allow a thirty (30) day public comment period before making its final decision regarding significant impacts; or ()
- c.** Require the grantee to prepare an environmental impact statement (EIS). An EIS must be prepared when the Department determines the project will significantly affect the environment. A draft EIS must first be prepared and submitted to the Department. The applicant must also arrange for a thirty (30) day public comment period and a public hearing regarding the EIS. A final EIS following the public comment period must be submitted to

the Department for approval. ()

03. Use Of Environmental Reviews Prepared By Other Agencies. If an environmental review for the project has been conducted by another state, federal, or local agency, the Department may, in its discretion, issue its own determination by adopting the document of the other agency. ()

04. Validity Of Review. Environmental reviews are valid for five (5) years. 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: ()

a. Reaffirm the earlier decision; or ()

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. ()

~~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 thirty (30) days in which to officially accept the grant offer on prescribed forms furnished by the State. The thirty (30) day acceptance period commences from the date indicated on the grant offer notice. If the applicant does not accept the grant offer within the thirty (30) day period the grant funds may be offered to the next project of priority. (3-15-85)

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, 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 has complied with all agreement conditions and has prudently managed the project. The Director may, as a condition of payment, require that a grantee 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)

04. Estimate Of Reasonable Cost. Each grant project contract will include ~~an estimate of the reasonable~~ 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.~~ (1-3-78)()

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 and consistent with the Step covered by the grant offer; and (12-31-91)

b. Special clauses as determined necessary by the Department for the successful investigation, design, construction and management of the project; and (3-15-85)

c. Terms consistent with applicable state and federal laws pertaining to engineering reports, design and construction; and (3-15-85)

d. Requirement for the prime ~~architectural~~ engineering firm(s) and their principals retained for ~~architectural~~ engineering services to carry professional liability ~~indemnification~~ insurance to protect the public from

the ~~architect's~~engineer's negligent acts and errors of omission of a professional nature. The total aggregate of the ~~architect's~~engineer's professional liability shall be one hundred thousand dollars (\$100,000) or twice the amount of the ~~architect's~~engineer's fee, whichever is greater. Professional liability ~~indemnification 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. (10-6-88)(____)

e. The project shall be bid, contracted and constructed according to the current edition of Idaho Standards for Public Works Construction unless the grantee otherwise has approved and adopted acceptable public works construction standards approved by the Department. (10-6-88)(____)

(BREAK IN CONTINUITY OF SECTIONS)

060. PAYMENTS.

~~01. State Payment For Matching Grants. In matching grants, the grantee will send payment requests to the Department concurrently with the payment requests to the federal agency and the State will make payment in a proportionate amount of the eligible cost incurred.~~ (3-15-85)

~~021. Payments For Separate State Grants. In separate state grants, notification that Requests for payment is warranted will be submitted to the Department on a form provided according to the latest approved payment schedule by submission of reports showing expenditures upon which state payments in a proportional amount of eligible costs will be made the Department. The Department will pay for those costs that are determined to be eligible.~~ (1-1-82)(____)

~~032. Limitations On Advance Payments. Advanced payment will not be made on a project unless a written request from the grantee for a waiver is approved by the Board.~~ (10-6-88)

~~043. 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)

~~054. 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)

~~065. 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)

~~076. Final Project Audit Review To Determine Actual Eligible Costs. The final project audit by the federal agency will determine the actual eligible costs for state federal matching grants and the final project audit by the Department will may conduct a final project review to determine the actual eligible costs for separate state grants. The financial records of the grantee may be reviewed by the Department. The review may be deferred until the review of the design/construction loan is performed.~~ (1-1-82)(____)

~~087. Final Payment. The final payment consisting of five percent (5%) of the total state grant or state share of a federal/state matching grant will not be made until final inspection, if the grant provides funding for construction, final approval of the engineering, completion of the environmental review process and preliminary audit final project review have been completed or deferred.~~ (10-6-88)(____)

(BREAK IN CONTINUITY OF SECTIONS)

080. SUSPENSION OR TERMINATION OF GRANT.

01. Causes. The Director may suspend or terminate any grant for failure by the grantee or its agents, including ~~his~~ ~~its~~ ~~architectural~~ engineering firm(s), contractor(s) or subcontractor(s) to perform. A grant may be suspended or terminated for good cause including, but not limited to, the following: (3-15-85)(____)

a. Commission of fraud, embezzlement, theft, forgery, bribery, misrepresentation, conversion, malpractice, misconduct, malfeasance, misfeasance, falsification or unlawful destruction of records, or receipt of stolen property, or any form of tortious conduct; or (3-15-85)

b. Commission of any crime for which the maximum sentence includes the possibility of one (1) or more years imprisonment or any crime involving or affecting the project; or (3-6-85)

c. Violation(s) of any term of agreement of the grant offer or contract agreement; or (3-15-85)

d. Any willful or serious failure to perform within the scope of the project, plan of operation and project schedule, terms of architectural/engineering subagreements, or contracts for construction; or (3-15-85)

e. Debarment of a contractor or subcontractor for good cause by any federal or state agency from working on public work projects funded by that agency. (3-15-85)

02. Notice. The Director will notify the grantee in writing and by certified mail of the intent to suspend or terminate the grant. The notice of intent shall state: (3-15-85)

a. Specific acts or omissions which form the basis for suspension or termination; and (3-15-85)

b. That the grantee may be entitled to appeal the suspension or termination pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (3-15-02)

03. Determination. A determination will be made by the Board pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (3-15-02)

04. Reinstatement Of Suspended Grant. Upon written request by the grantee and evidence that the causes(s) for suspension no longer exist, the Director may, if funds are available reinstate the grant. (3-15-85)

05. Reinstatement Of Terminated Grant. No terminated grant shall be reinstated. (3-15-85)

(BREAK IN CONTINUITY OF SECTIONS)

996. ADMINISTRATIVE ~~PROVISIONS~~ APPEALS.

Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (3-15-02)(____)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.05 - RULES AND STANDARDS FOR HAZARDOUS WASTE

DOCKET NO. 58-0105-0201

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Department of Environmental Quality (DEQ) has proposed rulemaking. The action is authorized by Chapters 44 and 58, Title 39, Idaho Code. In addition, 40 CFR 271.21(e) and Section 39-4404, Idaho Code, require DEQ to adopt amendments to federal law as proposed under this docket.

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 August 21, 2002. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: Idaho's Rules and Standards for Hazardous Waste are updated annually to maintain consistency with the U.S. Environmental Protection Agency's federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). This proposed rulemaking updates Idaho's rules so that they are consistent with revisions to the federal RCRA regulations as of July 1, 2002. Additional changes include a clarification to the definition of Director at Subsection 003.04, a technical correction to Section 005 due to a corresponding federal regulatory revision, and a grammatical correction to the title of Section 900.

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 November 2002 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2003 session of the Idaho Legislature.

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

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the proposed rulemaking, contact John Brueck at (208)373-0502 or jbrueck@deq.state.id.us.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before August 28, 2002.

Dated this 19th day of June, 2002.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418
Fax No. (208)373-0481
pgradwoh@deq.state.id.us

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0105-0201

002. INCORPORATION BY REFERENCE OF FEDERAL REGULATIONS.

Any reference in these rules to requirements, procedures, or specific forms contained in the Code of Federal Regulations (CFR), Title 40, Parts 124, 260-266, 268, 270, 273, and 279 shall constitute the full adoption by reference of that part and Subparts as they appear in 40 CFR, revised as of July 1, 2002, including any notes and appendices therein, unless expressly provided otherwise in these rules. ~~(3-15-02)~~(____)

01. Exceptions. Nothing in 40 CFR Parts 260 - 266, 268, 270, 273, 279 or Part 124 as pertains to permits for Underground Injection Control (U.I.C.) under the Safe Drinking Water Act, the Dredge or Fill Program under Section 404 of the Clean Water Act, the National Pollution Discharge Elimination System (NPDES) under the Clean Water Act or Prevention of Significant Deterioration Program (PSD) under the Clean Air Act is adopted or included by reference herein. (7-2-97)

02. Availability Of Referenced Material. The federal regulations adopted by reference throughout these rules are maintained at the following locations: (7-2-97)

a. Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, or U.S. Government Bookstore, Room 194, Federal Bldg., 915 Second Ave., Seattle, WA 98174, (206)553-4270; and (7-2-97)

b. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, ID 83720-0051, (208)334-3316; and (7-2-97)

c. Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502. (7-2-97)

003. DEFINITIONS.

For the purpose of these rules and any materials incorporated herein by reference, the following definitions apply unless their application would be inconsistent with the Hazardous Waste Management Act, or unless these rules expressly provide for different definitions. (3-1-93)

01. Board. The Idaho Board of Environmental Quality. (6-10-88)

02. CFR. The United States Code of Federal Regulations. (3-1-93)

03. Department. The Idaho Department of Environmental Quality. (6-10-88)

04. Director. When used in the context of 40 CFR, the definition shall be the Director of the Idaho Department of Environmental Quality, or his designee, as the context requires. When used in the context of these rules, the definition shall be the U. S. Environmental Protection Agency Region 10 Regional Administrator. ~~(12-31-91)~~(____)

05. Environmental Appeals Board. When used in the context of 40 CFR, the definition shall be the Idaho Board of Environmental Quality except as set forth in Section 39-4413(2), Idaho Code, or except where noted in these rules. When used in the context of these rules, the definition shall be the U.S. Environmental Appeals Board. (3-15-02)

06. U.S. Environmental Protection Agency or EPA, EPA Headquarters, or EPA. When used in the context of 40 CFR, the definition shall be the Idaho Department of Environmental Quality, except when used to refer to an EPA Identification number, EPA hazardous waste number, EPA forms, publications or guidance, and EPA Acknowledgment of Consent, and where noted in these rules. Under the latter circumstances, the definition shall be the U.S. Environmental Protection Agency and the Headquarters of the U.S. Environmental Protection Agency as appropriate. When used in the context of these rules, the definition shall be the U.S. Environmental Protection

Agency. (3-15-02)

- 07. HWFSA.** The Hazardous Waste Facility Siting Act of 1985, Sections 39-5801 et seq., Idaho Code. (3-1-93)
- 08. HWMA.** The Hazardous Waste Management Act of 1983, Sections 39-4401 et seq., Idaho Code. (3-1-93)
- 09. IDAPA.** The Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code. (3-1-93)
- 10. RCRA.** When used in the context of 40 CFR, the definition shall be the comparable sections of the Hazardous Waste Management Act of 1983, Sections 39-4401 et seq., Idaho Code. When used in the context of these rules, the definition shall be The Resource Conservation and Recovery Act, 42 U.S. Code, Sections 6901 et seq. (7-1-97)
- 11. Regional Administrator Or Administrator.** When used in the context of 40 CFR, the definition shall be the Director of the Idaho Department of Environmental Quality, or his designee, except where noted in these rules. When used in the context of these rules, the definition shall be the U.S. Environmental Protection Agency Administrator or Region 10 Regional Administrator as appropriate. (3-15-02)
- 12. TSD.** Treatment, storage or disposal. (6-10-88)
- 13. United States Or U.S.** When used in the context of 40 CFR, the definition shall be the state of Idaho, except where noted in these rules. When used in the context of these rules, the definition shall be the United States. (7-1-97)

004. HAZARDOUS WASTE MANAGEMENT SYSTEM.

40 CFR Part 260 and all Subparts, except 40 CFR 260.2, are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2007~~2~~. For purposes of 40 CFR 260.10, in the definition of hazardous waste constituent, "Administrator" shall be defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 260.20, "Federal Register" shall be defined as the Idaho Administrative Bulletin. (~~3-15-02~~)(_____)

005. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

40 CFR Part 261 and all Subparts, ~~except the parenthetical, "(except as provided under 40 CFR 261.4(a)(17))," in the second sentence of 40 CFR 261.2(e)(3), and~~ except the language "in the Region where the sample is collected" in 40 CFR 261.4(e)(3)(iii), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2007~~2~~. For purposes of 40 CFR 261.10 and 40 CFR 261.11, "Administrator" shall be defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 261 Appendix IX, "EPA" shall be defined as the U.S. Environmental Protection Agency. (~~3-15-02~~)(_____)

01. Excluded Wastes. Chemically Stabilized Electric Arc Furnace Dust (CSEAFD) generated by EnviroSAFE Services of Idaho, Inc. (ESII) at ESII's facility in Grand View, Idaho using the Super Detox(R) treatment process as modified by ESII and that is disposed of in a Subtitle D or Subtitle C landfill is excluded from the lists of hazardous waste provided ESII implements a program that meets the following conditions: (3-16-96)

a. Verification Testing Requirements. Sample Collection and analyses, including quality control procedures, conducted pursuant to Subsections 005.01.b. and 005.01.c., must be performed according to SW-846 methodologies and the RCRA Part B permit, including future revisions. (3-16-96)

b. Initial Verification Testing. (3-16-96)

i. For purposes of Subsections 005.01.b., "new source" shall mean any generator of Electric Arc Furnace Dust (EAFD), EPA and Idaho Department of Environmental Quality Hazardous Waste No. KO61, whose waste has not previously been processed by ESII using the Super Detox(R) treatment process resulting in processed EAFD which has been subjected to initial verification testing and has demonstrated compliance with the delisting levels specified in Subsection 005.01.d. (3-16-96)

- ii. Prior to the initial treatment of any new source of EAFD, ESII must notify the Department in writing. The written notification shall include: (3-16-96)
- (1) The waste profile information; and (3-16-96)
 - (2) The name and address of the generator. (3-16-96)
- iii. The first four (4) consecutive batches treated must be sampled in accordance with Subsection 005.01.a. Each of the four (4) samples shall be analyzed to determine if the CSEAFD generated meets the delisting levels specified in Subsection 005.01.d. (3-16-96)
- iv. If the initial verification testing demonstrates that the CSEAFD samples meet the delisting levels specified in Subsection 005.01.d., ESII shall submit the operational and analytical test data, including quality control information, to the Department, in accordance with Subsection 005.01.f. Subsequent to such data submittal, the CSEAFD generated from EAFD originating from the new source shall be considered delisted. (3-16-96)
- v. CSEAFD generated by ESII from EAFD originating from a new source shall be managed as hazardous waste in accordance with Subtitle C of RCRA until: (3-16-96)
- (1) Initial verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.01.d.; and (3-16-96)
 - (2) The operational and analytical test data is submitted to the Department pursuant to Subsection 005.01.b.iv. (3-16-96)
- vi. For purposes of Subsections 005.01.b. and 005.01.c., "batch" shall mean the CSEAFD which results from a single treatment episode in a full scale mixing vessel. (3-16-96)
- c. Subsequent Verification Testing.** (3-16-96)
- i. Subsequent to initial verification testing, ESII shall collect a representative sample, in accordance with Subsection 005.01.a., from each batch of CSEAFD generated by ESII. ESII may, at its discretion, conduct subsequent verification testing on composite samples. In no event shall a composite sample consist of representative samples from more than twenty (20) batches of CSEAFD. (3-16-96)
 - ii. The samples shall be analyzed prior to disposal of each batch of CSEAFD to determine if the CSEAFD meets the delisting levels specified in Subsection 005.01.d. (3-16-96)
 - iii. Each batch of CSEAFD generated by ESII shall be subjected to subsequent verification testing no later than thirty (30) days after it is generated by ESII. (3-16-96)
 - iv. If the levels of constituents measured in a sample, or composite sample, of CSEAFD do not exceed the levels set forth in Subsection 005.01.d., then any batch of CSEAFD which contributed to the sample that does not exceed the levels set forth in Subsection 005.01.d. is non-hazardous and may be managed and/or disposed of in a Subtitle D or Subtitle C landfill. (3-16-96)
 - v. If the constituent levels in a sample, or composite sample, exceed any of the delisting levels set forth in Subsection 005.01.d., then ESII must submit written notification of the results of the analysis to the Department within fifteen (15) days from receiving the final analytical results, and any CSEAFD which contributed to the sample must be: (3-16-96)
- (1) Retested, and retreated if necessary, until it meets the levels set forth in Subsection 005.01.d.; or (3-16-96)
 - (2) Managed and disposed of in accordance with Subtitle C of RCRA. (3-16-96)
- vi. Each batch of CSEAFD shall be managed as hazardous waste in accordance with Subtitle C of

RCRA until subsequent verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.01.d. (3-16-96)

d. Delisting Levels. (3-16-96)

i. All leachable concentrations for these metals must not exceed the following levels (mg/l):

antimony	0.06
arsenic	0.50
barium	7.60
beryllium	0.010
cadmium	0.050
chromium	0.33
lead	0.15
mercury	0.009
nickel	1
selenium	0.16
silver	0.30
thallium	0.020
vanadium	2
zinc	70

(3-16-96)

ii. Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR Part 261.24. (3-16-96)

e. Modification of Treatment Process. (3-16-96)

i. If ESII makes a decision to modify the Super Detox(R) treatment process from the description of the process as set forth in ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995, ESII shall notify the Department in writing prior to implementing the modification. (3-16-96)

ii. After ESII's receipt of written approval from the Department, and subject to any conditions included with the approval, ESII may implement the proposed modification. (3-16-96)

iii. If ESII modifies its treatment process without first receiving written approval from the Department, this exclusion of waste will be void from the time the process was modified. (3-16-96)

iv. ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995 is available at the Department of Environmental Quality, Permits and Enforcement, 1410 N. Hilton, Boise, Idaho 83706. (3-16-96)

f. Records and Data Retention and Submittal. (3-16-96)

i. Records of disposal site, operating conditions and analytical data from verification testing must be compiled, summarized, and maintained at ESII's Grand View facility for a minimum of five (5) years from the date

the records or data are generated. (3-16-96)

ii. The records and data maintained by ESII must be furnished upon request to the Department or EPA. (3-16-96)

iii. Failure to submit requested records or data within ten (10) business days of receipt of a written request or failure to maintain the required records and data on site for the specified time, will be considered by the Department, at its discretion, sufficient basis to revoke the exclusion to the extent directed by the Department. (3-16-96)

iv. All records or data submitted to the Department must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the records or data submitted: "Under civil and/or criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate, and complete. As to any identified sections of this document for which I cannot personally verify the truth and accuracy, I certify as the ESII official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete. In the event that any of this information is determined by the Department in its sole discretion to be false, inaccurate, or incomplete, and upon conveyance of this fact to ESII, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by the Department and that ESII will be liable for any actions taken in contravention of ESII's RCRA and CERCLA obligations premised upon ESII's reliance on the void exclusion." (3-16-96)

g. Facility Merger and Name Change. On May 4, 2001, the Department was notified of a stock transfer that resulted in ESII's facility merging with American Ecology. This created a name change from EnviroSAFE Services of Idaho, Inc. (ESII) to US Ecology Idaho, Inc. effective May 1, 2001. All references to EnviroSAFE Services of Idaho, Inc. or ESII now refer to US Ecology Idaho, Inc. (3-15-02)

006. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.

01. Incorporation By Reference. 40 CFR Part 262 and all Subparts, except for the language "for the Region in which the generator is located" in 40 CFR 262.42(a)(2) and 40 CFR 262.42(b), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2007. For purposes of 40 CFR 262.55, 262.56, and 262.57(b), "Administrator" shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. Copies of advance notification, annual reports, and exception reports, required under those sections, shall also be provided to the Director. For purposes of 40 CFR 262.51, 262.53, 262.54(g)(1), and 262.85(g), EPA shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR Part 262 Subparts E, F, H, and 40 CFR 262.41(a)(4), "United States or U.S." shall be defined as the United States. (~~3-15-02~~)()

02. Generator Emergency Notification. In addition to the emergency notification required by 40 CFR 265.56(d)(2), 262.34(d)(5)(iv)(C), (see 40 CFR 262.34(a)(4)), 263.30(c)(1), and 264.56(d)(2), the emergency coordinator must also immediately notify the State Communications Center by telephone, 1-800-632-8000, to file an identical report. (3-15-02)

007. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

40 CFR Part 263 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2007. For purposes of 40 CFR 263.20(g), 263.20(g)(1), 263.20(g)(4), 263.21(a)(4), and 263.22(d), "United States" shall be defined as the United States. (~~3-15-02~~)()

008. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.

40 CFR Part 264 and all Subparts (excluding 40 CFR 264.1(f), 264.149, 264.150, 264.301(l), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f) and 264.1080(g)) are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2007. For purposes of 40 CFR Subsection 264.12(a), "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 264.1082(c)(4)(ii), "EPA" shall be defined as the U.S. Environmental Protection Agency. (~~3-15-02~~)()

009. INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.

40 CFR Part 265, and all Subparts (excluding Subpart R, 40 CFR 265.1(c)(4), 265.149, 265.150, 265.1030(c), 265.1050(f), 265.1080(e), 265.1080(f), and 265.1080(g)) are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 200~~7~~₂. For purposes of 40 CFR Subsection 265.12(a), "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 265.1083(c)(4)(ii), "EPA" shall be defined as the U.S. Environmental Protection Agency. (~~3-15-02~~)()

010. STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE FACILITIES.

40 CFR Part 266 and all Subparts (excluding Subparts A and B) are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 200~~7~~₂. (~~3-15-02~~)()

011. LAND DISPOSAL RESTRICTIONS.

40 CFR Part 268 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 200~~7~~₂, except for 40 CFR 268.1(e)(3), 268.5, 268.6, 268.13, 268.42(b), and 268.44(a) through (g). The authority for implementing the provisions of these excluded sections remains with the EPA. However, the requirements of Sections 39-4403(17) and 39-4423, Idaho Code, shall be applied in all cases where these requirements are more stringent than the federal standards. If the Administrator of the EPA grants a case-by-case variance pursuant to 40 CFR 268.5, that variance will simultaneously create the same case-by-case variance to the equivalent requirement of these rules. For purposes of 40 CFR 268.(2)(j) "EPA" shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR 268.40(b), "Administrator" shall be defined as U.S. Environmental Protection Agency Administrator. (~~3-15-02~~)()

012. HAZARDOUS WASTE PERMIT PROGRAM.

40 CFR Part 270 and all Subparts, except 40 CFR 270.12(a) and 40 CFR 270.14(b)(18), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 200~~7~~₂. For purposes of 40 CFR 270.2, 270.5, 270.10(e)(2), 270.10(e)(3), 270.10(f)(2), 270.10(f)(3), 270.10(g), 270.11(a)(3), 270.32(a), 270.32(b)(2), 270.32(c), 270.51, 270.72(a)(5), and 270.72(b)(5), "EPA" and "Administrator" or "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator respectively. (~~3-15-02~~)()

013. PROCEDURES FOR DECISION-MAKING (STATE PROCEDURES FOR RCRA OR HWMA PERMIT APPLICATIONS).

40 CFR Part 124, Subparts A and B are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 200~~7~~₂, except that the fourth sentence of 40 CFR 124.31(a), the third sentence of 40 CFR 124.32(a), and the second sentence of 40 CFR 124.33(a) are expressly omitted from the incorporation by reference of each of those subsections. For purposes of 40 CFR 124.6(e), 124.10(b), and 124.10(c)(1)(ii) "EPA" and "Administrator" or "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator, respectively. (~~3-15-02~~)()

(BREAK IN CONTINUITY OF SECTIONS)

015. STANDARDS FOR THE MANAGEMENT OF USED OIL.

01. Incorporation By Reference. 40 CFR Part 279 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 200~~7~~₂. (~~3-15-02~~)()

02. Used Oil As A Dust Suppressant. 40 CFR Part 279 contains a prohibition on the use of used oil as a dust suppressant at 279.82(a), however, States may petition EPA to allow the use of used oil as a dust suppressant. Members of the public may petition the State to make this application to EPA. This petition to the State must: (2-11-94)

- a.** Be submitted to the Idaho Department of Environmental Quality, 1410 North Hilton, Boise, Idaho

83706-1255; and

(2-11-94)

b. Demonstrate how the requirements of 40 CFR 279.82(b) will be met.

(2-11-94)

016. STANDARDS FOR UNIVERSAL WASTE MANAGEMENT.

40 CFR Part 273 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2007~~2~~. For purposes of 40 CFR 273.32(a)(3), "EPA" shall be defined as the U.S. Environmental Protection Agency.

~~(3-15-02)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

900. EXPENDITURES FROM HAZARDOUS WASTE EMERGENCY ACCOUNTS.

The Director may declare a hazardous waste emergency if the public health, safety or the environment are threatened by a release or threat of release of a hazardous waste or a substance which has become a hazardous waste. Following a hazardous waste emergency declaration, the Department may spend or obligate to be spent up to two hundred thousand dollars (\$200,000) from the Hazardous Waste Emergency Account to obtain equipment and materials, conduct investigations, test samples, and employ personnel as necessary or eliminate or mitigate the immediate threat and stabilize the situation. The Director may authorize the expenditure or obligation of more than two hundred thousand dollars (\$200,000) from this account in any given situation upon a finding by the Board that a greater expenditure or obligation is prudent and necessary to protect the public health, safety or environment.

~~(3-19-99)~~(____)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.11 - GROUND WATER QUALITY RULE

DOCKET NO. 58-0111-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment (sine die) of the First Regular Session of the Fifty-seventh Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This rule is an amendment to long-standing rules that regulate activities not regulated by the federal government. The action is authorized by Sections 39-105, 39-107, 39-120, and 39-126 Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reasons for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, Volume 02-5, May 1, 2002, pages 76 through 81. The Department of Environmental Quality (DEQ) received one public comment but did not revise the proposed rule. DEQ's Rulemaking and Public Comment Summary, which contains a complete consideration of the issues raised by the public and an explanation of the reasons for adopting the rule as initially proposed, is included in the rulemaking record. The rulemaking record can be obtained by contacting the undersigned.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rule, contact Susan Burke at (208)373-0502 or sburke@deq.state.id.us.

Dated this 19th day of June, 2002.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton, Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pgradwoh@deq.state.id.us

IDAPA 58, TITLE 01, Chapter 11

GROUND WATER QUALITY RULE

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-5, May 1, 2002, pages 76 through 81.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.12 - RULES FOR ADMINISTRATION OF WATER POLLUTION CONTROL LOANS

DOCKET NO. 58-0112-0201

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Department of Environmental Quality (DEQ) has proposed rulemaking. This 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 August 23, 2002. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The proposed rules address review and approval of contracts for consulting engineers and determining eligible costs for loans. The rules clearly state the types of contracts that will be allowed, what costs contained in the contracts and other costs will be eligible, and how the contracts and costs are reviewed. Other changes were made to the rules to make them consistent with other DEQ loan and grant rules. Cities, counties, districts and associations that own and operate wastewater facilities and public drinking water systems may be interested in this rulemaking.

This rulemaking is an amendment to longstanding administrative rules that regulate activities not regulated by the federal government. 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, the Idaho Department of Environmental Quality (DEQ) intends to present the final proposal to the Board of Environmental Quality in the fall of 2002 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2003 session of the Idaho Legislature.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during a negotiation conducted pursuant to Idaho Code Section 67-5220 and IDAPA 58.01.23.812 - 815. The negotiation was open to the public. Participants in the negotiation included engineering and consulting firms, Association of Idaho Cities, Idaho Rural Water Association, engineering and consulting firms, sewer districts, members of the public, and DEQ staff. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Volume 02-4, April 3, 2002.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Bill Jerrel at (208)373-0502 or wjerrel@deq.state.id.us.

Anyone can 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 September 6, 2002.

Dated this 19th day of June, 2002.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418
Fax No. (208)373-0481
pgradwoh@deq.state.id.us

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0112-0201

000. LEGAL AUTHORITY.

The Idaho Board of Environmental Quality, pursuant to authority granted in Chapters 1 and 36, Title 39, Idaho Code, did adopt the following rules for the administration of a Water Pollution Control Loan Program in Idaho.

(~~3-30-01~~)()

(BREAK IN CONTINUITY OF SECTIONS)

002. WRITTEN INTERPRETATIONS.

As described in Section 67-5201(19)(b)(iv), Idaho Code, the Department of Environmental Quality may have written statements which pertain to the interpretation of these rules. If available, such written statements can be inspected and copied at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706. ()

0023. POLICY.

It is the policy of the Idaho Board of Environmental Quality through the Idaho Department of Environmental Quality, to administer the Water Pollution Control Loan Program for the purpose of protecting and enhancing the quality and value of the water resources of the state of Idaho by financially assisting in the prevention, control and abatement of water pollution. It is also the intent of the Board of Environmental Quality to assign a priority rating to those projects which will most significantly improve the quality of the waters of the state and most adequately protect the public health. (3-30-01)

0034. INCORPORATION BY REFERENCE.

These rules do not contain documents incorporated by reference. (3-30-01)

0045. DEFINITIONS.

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

01. 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)

02. Board. The Idaho State Board of Environmental Quality. (12-31-91)

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 assessment nor an environmental impact statement is required. ()

034. 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)

045. 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. (1-1-89)

- ~~056.~~ **Department.** The Idaho Department of Environmental Quality. (1-1-89)
- ~~067.~~ **Director.** The Director of the Idaho Department of Environmental Quality or his/her designee. (~~12-31-91~~)(____)
- ~~078.~~ **Eligible 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. (3-30-01)
- ~~089.~~ **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; *allowable* and *allocable* not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 041. (~~3-30-01~~)(____)
- 10. Environmental Information Document (EID).** Any written environmental assessment prepared by an applicant or consultant 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 environmental impact statement (EIS) is warranted. (____)
- 11. Environmental Impact Statement (EIS).** A document prepared by the grantee in accordance with Environmental Review Procedures contained in Chapter 5 of the Handbook when the Department determines that the proposed construction project will significantly affect the environment as described in Appendix C of the Handbook. 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. (____)
- ~~0912.~~ **Facility Plan.** Systematic evaluation by a professional engineer of feasible treatment alternatives considering demographic, topographic, hydrologic and institutional characteristics of a project area to demonstrate that the scheduled alternative is cost effective. (~~1-1-89~~)(____)
- 103. Financial Management System.** Uniform method of recording, summarizing and analyzing financial information about the water pollution control loan applicant. (3-30-01)
- 14. Finding Of No Significant Impact (FNSI).** 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. (____)
- 15. Handbook.** "Wastewater Facilities Loan Account Handbook of Procedures." (____)
- ~~146.~~ **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)
- ~~127.~~ **Ineligible Costs.** Costs which are *not necessary for the planning, designing and/or construction of wastewater treatment facilities or implementation of water pollution control projects or which are not reasonable, allowable or allocable* described in Section 041.05. (~~3-30-01~~)(____)
- 138. 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)
- 149. Municipality.** Any county, city, special service district, nonprofit corporation or other governmental entity having authority to dispose of sewage, industrial wastes, or other wastes, or to provide for safe drinking water, any Indian tribe or authorized Indian tribal organization, or any combination of two (2) or more of the foregoing acting jointly, in connection with an eligible project. (3-30-01)
- ~~1520.~~ **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)

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

~~22.~~ **Nonpoint Source Pollution.** Water pollution that comes from varied, nonspecific, and diffuse sources and can be associated with the general land disturbing activity that causes the pollution. (3-30-01)

~~23.~~ **Nonpoint Source Project Sponsor.** Any county, city, special service district, nonprofit corporation, or other governmental entity, or a combination thereof. (3-30-01)

~~24.~~ **O & M 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)

~~25.~~ **Plan Of Operation.** A schedule of ~~specifications~~ specific actions and completion dates for construction, start-up and operation of the wastewater treatment facility or for implementation of water pollution control projects. (~~3-30-01~~)()

206. 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. (3-30-01)

~~27.~~ **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)

~~22.~~ ~~**Preliminary Engineering Report.** A report which compares wastewater treatment facility alternatives and identifies the most cost effective, environmentally sound alternative.~~ (~~1-1-89~~)

238. Priority List. An integrated list of proposed wastewater treatment facility and nonpoint source pollution control projects rated ~~by severity of water quality pollution problems, public health needs, population affected, and need for protection of Idaho's water resources~~ as described in Section 020. (~~3-30-01~~)()

29. Rehabilitation. The repair or replacement of limited segments of interceptor or collector sewers. ()

~~2430.~~ **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)

~~25.~~ ~~**Scope Of Project.** Those portions of the proposed project, including administration, engineering and physical components that constitute a complete project as determined from the most cost effective, environmentally sound alternative identified in a preliminary engineering report or water pollution control project plan and approved by the Department.~~ (~~3-30-01~~)

~~2631.~~ **Sewer Use Ordinance.** An ordinance adopted pursuant to Title 42, Chapter 32, Idaho Code, or other applicable law 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. (1-1-89)

~~2732.~~ **State.** The state of Idaho. (12-31-91)

~~2833.~~ **Supplemental Grants.** A grant awarded to a municipality in conjunction with a loan from the water pollution control loan account. (3-30-01)

2934. 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)

305. Unified Watershed Assessment. Federal watershed assessment that encompasses the State list of impaired waters. (3-30-01)

316. 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)

327. 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)

338. 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)

349. 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)

3540. 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)

0056. -- 009. (RESERVED).

010. FINANCIAL AND MANAGEMENT CAPABILITY ANALYSIS.

No loans shall be awarded for projects unless the applicant has demonstrated and certified that it has the legal, technical, managerial, and financial capabilities as provided for in ~~IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems,"~~ these rules to ensure construction, operation and maintenance, and to repay principal and interest which would be due on a loan. (3-30-01)(____)

01. Information Needed. Before an application will be considered complete, the applicant must submit all necessary information on a form prescribed by the Department along with an analysis of that information. The information shall include, but not be limited to, demographic information of the applicant, estimated construction or implementation costs, annual operating costs, and information regarding the financing of the project, including the legal debt limit of the applicant and the existence and amount of any outstanding bonds or other indebtedness which may affect the project; and (3-30-01)

02. Incorporated Nonprofit Applicants. (7-1-93)

a. In addition to all other information required to be submitted by these rules, an incorporated nonprofit applicant must demonstrate to the satisfaction of the Department by its articles of incorporation and/or bylaws, that: (3-30-01)

i. The corporation is nonprofit and lawfully incorporated pursuant to Chapter 3, Title 30, Idaho Code; and (1-1-89)

ii. The corporation is authorized to incur indebtedness to construct, improve or repair wastewater treatment facilities and/or implement water pollution control projects; and (3-30-01)

iii. The corporation is authorized to secure indebtedness by pledging corporation property, including any revenues raised through a user charge system; and (1-1-89)

iv. The corporation exists either perpetually or for a period long enough to repay a wastewater treatment facility loan or water pollution control project loan; and (3-30-01)

v. The corporation is capable of raising revenues sufficient to repay a loan. (3-30-01)

b. The Department may impose conditions on the making of a wastewater treatment facility loan or water pollution control project to an incorporated nonprofit applicant which are necessary to carry out the provisions of these rules and the provisions of Chapter 36, Title 39, Idaho Code. (3-30-01)

03. Cost Allocation. An applicant proposing to construct wastewater treatment facilities designed to serve two (2) or more qualifying entities must show how the costs will be allocated among the participating entities. Such applicants must provide an executed intermunicipal service agreement which, at a minimum, incorporates the following information: (1-1-89)

a. The basis upon which the costs are allocated; and (1-1-89)

b. The formula by which the costs are allocated; and (1-1-89)

c. The manner in which the cost allocation system will be implemented. (1-1-89)

04. Waivers. The requirement in Subsection 010.03 may be waived by the Department if the applicant can demonstrate: (12-31-91)

a. Such an agreement is already in place; or (1-1-89)

b. There is documentation of a service relationship in the absence of a formal agreement; or (1-1-89)

c. The entity providing wastewater treatment exhibits sufficient financial strength to continue the project if one (1) or more of the entities supplying wastewater fails to participate. (1-1-89)

(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 and water quality criteria. ()

01. Purpose. An integrated priority rating system ~~will~~ 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. (~~3-30-01~~)()

02. Water Quality Project Ranking. Under the integrated priority rating system, point source and eligible nonpoint source water pollution control projects shall first be primarily ranked based on the following factors: (3-30-01)

a. Project eliminates an officially declared or designated water-borne public health hazard or public health emergency. (3-30-01)

b. Project addresses watershed restoration as identified in the Unified Watershed Assessment and

Restoration Priorities for Idaho. (3-30-01)

c. Project addresses watershed protection as identified in the Rules of the Department of Environmental Quality, IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements," or IDAPA 58.01.11, "Ground Water Quality Rule". (3-30-01)

d. Project addresses preventing watershed degradation. (3-30-01)

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 limited to the following: nexus/benefit to the municipality; project water quality effectiveness; readiness to proceed; cost effectiveness, etc. (3-30-01)

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 ~~and adoption~~. (~~3-30-01~~)(____)

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 ~~adopted~~ 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. (~~3-30-01~~)(____)

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. A project that is bypassed will be notified in writing of the reasons for being bypassed. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

030. PROJECT FUNDING.

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 (i.e., 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 *planning, which will include:* (1-1-89)
- i. Preliminary engineering report prepared by an engineer licensed in the state of Idaho and on a form prescribed by the Department; or* (1-1-89)
- ii. For projects built with funds made available from EPA capitalization funds, a facility plan prepared in accordance with 40 CFR 35.2030, "Grants for Construction of Treatment Works; Final and Interim Rule" the Handbook.* (1-1-89)(____)
- 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 not be awarded until a final cost effective alternative has been selected by the Step 1 facility plan *or preliminary engineering report* as 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. (3-30-01)(____)
- 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)
- h.** *Collector Sewer Eligibility. Eligibility for funding new collector sewers will be determined by the following criteria:* (1-1-89)
- i. If the existing sewage disposal systems create a public health hazard, are contaminating groundwater or are violating point source discharge requirements.* (1-1-89)
- ii. When population density within the collector system is less than two (2) occupied households per acre, collection systems will not be considered cost effective unless a severe pollution or public health problem is determined by the Department and collector sewers are less costly than alternatives.* (1-1-89)
- iii. The collector system will not provide capacity for new habitations on environmentally sensitive wetlands or prime agricultural lands unless, in the latter case, an adopted comprehensive plan identifies those agricultural lands as new growth areas. Collection systems for new habitations on flood plains will not be funded unless those areas are covered by an adequate flood plain management program as determined by the Department.* (1-1-89)
- iv. Financing of collector systems may be provided only from funds in the Water Pollution Control Loan Account in excess of funds received directly from EPA capitalization grant funds unless the Governor exercises his authority to reserve EPA capitalization grant funds for collector systems.* (3-30-01)
- 03. Eligible Project Costs.** Costs eligible for funding shall be determined from the scope of the project

and may include, but not be limited to: (1-1-89)

~~**a:** Costs of salaries, benefits, and expendable material the qualified entity incurs in the project except ordinary operating expenses of local government such as salaries and expenses of a mayor, city council members or a city attorney.~~ (1-1-89)

~~**b:** Costs under construction contracts bid and executed in compliance with state public works construction laws;~~ (1-1-89)

~~**c:** Professional and consulting services;~~ (1-1-89)

~~**d:** Planning directly related to the water pollution control projects;~~ (3-30-01)

~~**e:** Sewer system evaluations;~~ (1-1-89)

~~**f:** Financial and management capability analysis;~~ (1-1-89)

~~**g:** Preparation of construction drawings, specifications, estimates, and construction contract documents;~~ (1-1-89)

~~**h:** Landscaping;~~ (1-1-89)

~~**i:** Removal and relocation or replacement of utilities for which the qualifying entity is legally obligated to pay;~~ (1-1-89)

~~**j:** Material acquired, consumed, or expended specifically for the project;~~ (1-1-89)

~~**k:** A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations;~~ (1-1-89)

~~**l:** Preparation of an operation and maintenance manual;~~ (1-1-89)

~~**m:** Preparation of a plan of operation;~~ (1-1-89)

~~**n:** Start-up services;~~ (1-1-89)

~~**o:** Project identification signs;~~ (1-1-89)

~~**p:** Public participation for alternative selection;~~ (1-1-89)

~~**q:** Development of user charge and financial management systems;~~ (1-1-89)

~~**r:** Development of sewer use ordinance;~~ (1-1-89)

~~**s:** Staffing plans and budget development;~~ (1-1-89)

~~**t:** Certain direct and other costs as determined eligible by the Department;~~ (1-1-89)

~~**u:** Costs of assessing and defending contractor claims determined unmeritorious by the Department;~~ (1-1-89)

~~**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~~ (1-1-89)

~~**w:** Site acquisition costs, including sewer right of way, sewage treatment plant site, sanitation landfills and sludge disposal areas.~~ (3-30-01)

- ~~04. Ineligible Project Costs. Costs which are ineligible for funding include, but are not limited to:~~ (1-1-89)
- ~~a. Basin or area wide planning not directly related to the project;~~ (1-1-89)
 - ~~b. Bonus payments not legally required for completion of construction before a contractual completion date;~~ (1-1-89)
 - ~~c. Personal injury compensation or damages arising out of the project;~~ (1-1-89)
 - ~~d. Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws;~~ (1-1-89)
 - ~~e. Costs outside the scope of the approved project;~~ (1-1-89)
 - ~~f. Ordinary operating expenses of local government, such as salaries and expenses of a mayor, city council members, or city attorney;~~ (1-1-89)
 - ~~g. Construction of privately owned wastewater treatment facilities;~~ (1-1-89)
 - ~~h. Cost of land in excess of that needed for the proposed project.~~ (3-30-01)
 - ~~i. Cost of refinancing existing indebtedness.~~ (1-1-89)

031. LIMITATION OF PRELOAN ENGINEERING REVIEWS.

Preloan engineering documents prepared by consulting engineers will be reviewed by Department staff only when accompanied by a certificate that the consulting engineer carries professional liability ~~indemnification~~ insurance in accordance with Subsection 050.05.d. (12-31-91)()

(BREAK IN CONTINUITY OF SECTIONS)

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. (1-1-89)()

02. Application Requirements. Applications shall contain ~~a completed state loan application form and~~ the following documentation, as applicable, ~~approved or approvable by the Department in both form and content:~~ (1-1-89)()

~~a. All loan applications;~~ (1-1-89)

~~i.~~ A lawful resolution passed by the governing body authorizing an elected official or ~~chief financial~~ officer of the qualifying entity to execute a loan contract and sign subsequent loan disbursement requests; (1-1-89)()

~~ii.~~ Contracts for ~~architectural~~ engineering or other technical services, ~~including justification for the firm selected and a certification of liability indemnification, as described in Subsection 050.05.d., which covers all such services rendered for all project phases, whether or not such services or phases are state funded; 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.~~ (3-30-01)()

~~iii. Preliminary plan of system revenue and loan repayment schedule; and~~ (1-1-89)

~~iv.~~ A legal opinion from the loan applicant's lawyer stating that the loan applicant has complied with all applicable federal, state and local laws including, if applicable, laws relating to the issuance of bonds and the incurrence of debt. The costs of such an opinion can be included as eligible project costs. (1-1-89)

~~c.~~ Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum: ()

~~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; and ()

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

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

~~iv.~~ Be covered by professional liability insurance in accordance with Subsection 050.05.d. of these rule. A certification of liability insurance shall be included in the application; and ()

~~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 ()

~~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 67-2320, 50-341 and 42-3212, Idaho Code. ()

~~bf.~~ Step 1 - Facility Planning. Plan of study describing the work tasks to be performed in the preliminary engineering report or facility plan if required in accordance with Subsection 030.02, a schedule for completion of the work tasks and an estimate of man hours and costs to complete the work tasks. (3-30-01)()

~~eg.~~ Step 2 - Design, or Step 4 - Design and Construction: (1-1-89)

~~i.~~ Preliminary engineering report or facility plan as appropriate, including a final environmental document and decision in accordance with Section 041; and (1-1-89)()

~~ii.~~ Financial and management capability analysis as provided in Subsection 010.01; and (12-31-91)

~~iii.~~ Intermunicipal service agreements between all qualifying entities within the scope of the project, if applicable; and (1-1-89)

~~iv.~~ Documented evidence of all necessary easements and land acquisition. (1-1-89)

~~dh.~~ Step 3 - Construction: (1-1-89)

~~i.~~ Documented evidence of all necessary easements and land acquisition; and ()

~~ii.~~ Biddable plans and specifications of the approved wastewater treatment facility alternative; and (1-1-89)

~~iii.~~ A plan of operation and project schedule; and (1-1-89)

~~iiiv.~~ A user charge system, sewer use ordinance and financial management system; and (1-1-89)

- iv. A staffing plan and budget. (1-1-89)
- ~~ei.~~ 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. (~~12-31-91~~)()
- ~~i.~~ Nonpoint Source Implementation Funding. ()
- ~~i.~~ Information demonstrating that the project is consistent with and implements the Idaho Nonpoint Source Management Plan. ()
- ~~ii.~~ Data that substantiates a nonpoint source pollution problem or issue exists. ()
- ~~iii.~~ A project implementation plan or workplan. ()
- ~~iv.~~ Project commitment documentation that demonstrates the ability for loan repayment. ()
- ~~v.~~ Documentation that the project owner, manager or sponsoring agency will maintain the project for the life of the project. ()
- ~~vi.~~ A demonstration that there will be adequate tracking and evaluation of the effectiveness of the water quality improvements being funded by either the project owner/manager or the sponsoring agency throughout the life of the project. ()
- ~~vii.~~ A description of the nexus/benefit to a municipality and a letter of support from one (1) or more affected municipalities. ()
- ~~03.~~ **Acceptance Of Application.** ~~Applications will be accepted in accordance with the state integrated priority list target dates and no applications will be accepted for projects not rated on the integrated priority list unless approved by the Director and the integrated priority list is amended. Incomplete applications lacking information may be returned to the applicant. Once complete information is provided, the application may be resubmitted.~~ **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. (~~3-30-01~~)()
- ~~04.~~ **Notification Of Approval.** ~~Written notification of application acceptance will be sent to the applicant.~~ (1-1-89)
- ~~054.~~ **Notification Of Disapproval Incompleteness Of Application.** ~~Written notification of application rejection with the reasons for denial if an application is incomplete, including an explanation of missing documentation will be sent to the applicant. The applicant may provide the missing documentation.~~ (~~1-1-89~~)()
- ~~065.~~ **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. ()
- 01. Eligible Costs.** Eligible costs are those determined by the Department to be: ()
- a.** Necessary for planning, designing and/or constructing wastewater treatment facilities or implementation of water pollution control projects; ()
- b.** Reasonable; and ()
- c.** Costs that are not ineligible as described in Subsection 041.05. ()

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, the project implementation plan or work plan for nonpoint source projects, and any other relevant information in the application that describes the scope of the project to be funded. ()

03. Reasonable Costs. Costs 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 67-2320, 50-341 and 42-3212, Idaho Code. ()

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

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

b. Costs under construction contracts bid and executed in compliance with state public works construction laws; ()

c. Professional and consulting services utilizing a lumpsum contract, a negotiated hourly rate contract, a time and materials contract, or cost plus a fixed fee contract; ()

d. Planning directly related to the water pollution control projects; ()

e. Sewer system evaluations; ()

f. Financial and management capability analysis; ()

g. Preparation of construction drawings, specifications, estimates, and construction contract documents; ()

h. Landscaping; ()

i. Removal and relocation or replacement of utilities for which the qualifying entity is legally obligated to pay; ()

j. Material acquired, consumed, or expended specifically for the project; ()

k. A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations; ()

l. Preparation of an operation and maintenance manual; ()

m. Preparation of a plan of operation; ()

n. Start-up services; ()

o. Project identification signs; ()

p. Public participation for alternative selection; ()

q. Development of user charge and financial management systems; ()

r. Development of sewer use ordinance; ()

- s.** Staffing plans and budget development; ()
- t.** Certain direct and other costs as determined eligible by the Department; ()
- u.** Costs of assessing and defending contractor claims determined unmeritorious by the Department; ()
- 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 ()
- w.** Site acquisition costs, including sewer right of way, sewage treatment plant site, wastewater land application sites and sludge disposal areas. ()
- 05. Ineligible Project Costs.** Costs which are ineligible for funding include, but are not limited to: ()
- a.** Basin or area wide planning not directly related to the project; ()
- b.** Bonus payments not legally required for completion of construction before a contractual completion date; ()
- c.** Personal injury compensation or damages arising out of the project; ()
- d.** Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; ()
- e.** Costs outside the scope of the approved project; ()
- f.** Ordinary operating expenses of local government, such as salaries and expenses of a mayor, city council members, or city attorney; ()
- g.** Construction of privately owned wastewater treatment facilities; ()
- h.** Cost of land in excess of that needed for the proposed project. ()
- i.** Cost of refinancing existing indebtedness. ()
- j.** Reserve funds ()

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. ()

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

042. ENVIRONMENTAL REVIEW.

01. Environmental Documentation. For eligible nonpoint source projects funded solely with non-federal funds, see Subsection 042.08. The applicant shall consult with the Department during facility planning to determine the required level of environmental review. The Department will assess the possible environmental

impacts associated with the project and will notify the applicant of the type of environmental documentation which will be required. Based upon the Department's determination, the applicant shall: ~~(3-30-01)~~(_____)

a. Submit a request for categorical exclusion with supporting backup documentation as specified by the Department; (1-1-89)

b. Prepare an environmental information document in a format specified by the Department; or (1-1-89)

c. Prepare an environmental impact statement in a format specified by the Department. (1-1-89)

02. Review Of Request. If an applicant requests a categorical exclusion, the Department shall review the request and, based upon project documentation submitted by the applicant, shall: (1-1-89)

a. Issue notice of categorical exclusion; (1-1-89)

b. Notify the applicant of need for preparation of an environmental information document; or (1-1-89)

c. Notify the applicant of need for preparation of an environmental impact statement. (1-1-89)

03. Environmental Information Document Requirements. If an environmental information document is required, the Department shall: (1-1-89)

a. Conduct an environmental assessment based upon the applicant's environmental information document and issue: (1-1-89)

i. A draft finding of no significant impact; or (1-1-89)

ii. A notice of need for preparation of an environmental impact statement. (1-1-89)

b. Allow a thirty (30) day public comment period, following public notice, for all projects receiving a draft finding of no significant impact. If negative impacts are found during the public process, the Department will reassess the project to determine whether an environmental impact statement will be required. (1-1-89)

c. Issue a final finding of no significant impact if no new information is received requiring a reassessment. (1-1-89)

04. Environmental Impact Statement Requirements. If an environmental impact statement is required, the applicant shall: (1-1-89)

a. Contact all affected state agencies to determine the required scope of the document; and (1-1-89)

b. Prepare and submit a draft environmental impact statement to all affected agencies for review and comment; and (1-1-89)

c. Conduct a public hearing which may be in conjunction with a facility plan hearing; and (1-1-89)

d. Prepare and submit a final environmental impact statement incorporating all agency and public input for Departmental review and approval. (1-1-89)

05. Approval Of Requirements. Upon completion by the applicant and approval by the Department of all requirements listed in Subsection 04~~2~~.04.d., the Department will issue a record of decision documenting the mitigative measures which will be required of the applicant. The loan agreement will be conditioned upon such mitigative measures. ~~(12-31-91)~~(_____)

06. Federal Environmental Review Use. If a federal environmental review for the project has been conducted, the Department may, in its discretion, adopt the document of the federal agency and issue its own

determination. (1-1-89)

07. Validity Of Review. Environmental reviews are valid for five (5) years. If a loan application is received for a project with an environmental review which is more than five (5) years old, the Department will reevaluate the project, environmental conditions and public views and will: (1-1-89)

a. Reaffirm the earlier decision; or (1-1-89)

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 will issue and distribute a revised notice of categorical exclusion, finding of no significant impact, or record of decision. (1-1-89)

08. Exemption From Review. Loan projects funded solely with state moneys are exempt from the environmental review process described in this ~~manual~~ rule. Notice of such exemption will be provided to the loan applicant/recipient by the Department. (~~1-1-89~~)(____)

0423. -- 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 ~~or the Director's designee~~, 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. (~~3-30-01~~)(____)

04. Estimate Of Reasonable Cost. All loan contracts will include ~~an estimate of~~ the reasonable eligible costs of the project. Some eligible costs may be estimated and disbursements may be increased or decreased as provided in Section 060. (~~1-1-89~~)(____)

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 ~~and regulations set out in this manual~~, the project step to be funded under the loan offer, and Title 39, Chapter 36, Idaho Code; and (~~1-1-89~~)(____)

b. Special clauses as determined necessary by the Department for the successful investigation, design, construction and management of the project; and (1-1-89)

c. Terms consistent with applicable state and federal laws pertaining to engineering reports, 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; and (1-1-89)

d. Requirement for the prime ~~architectural~~/engineering firm(s) and their principals retained for

~~architectural~~/engineering services to carry professional liability ~~indemnification~~ insurance to protect the public from the ~~architect's~~ engineer's negligent acts and errors of omission of a professional nature. The total aggregate of the ~~architect's~~ engineer's professional liability ~~indemnification~~ insurance shall be one hundred thousand dollars (\$100,000) or twice the amount of the ~~architect's~~ engineer's fee, whichever is greater. Professional liability ~~indemnification~~ 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; and

(1-1-89)()

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

(1-1-89)()

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; and

(3-30-01)

g. All loans must be fully amortized within a period not to exceed twenty (20) years after project completion. The loan contract will contain a schedule of loan repayments stating the due dates and the amount due. The borrower may elect for either a schedule of semi-annual or annual repayments at the time the loan is finalized; and

(3-30-01)

h. Repayment default will occur when a scheduled loan repayment is ~~ten~~ thirty (~~10~~) days past due. If default occurs, the Department may invoke appropriate loan contract provisions and/or bond covenants.

(1-1-89)()

(BREAK IN CONTINUITY OF SECTIONS)

080. SUSPENSION OR TERMINATION OF LOAN CONTRACTS.

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

(1-1-89)()

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

(1-1-89)

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

(1-1-89)

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

(1-1-89)

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

(1-1-89)()

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

(1-1-89)

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

(1-1-89)

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

(1-1-89)

b. That the loan recipient may be entitled to appeal the suspension or termination pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (3-15-02)

03. Determination. A determination will be made by the Board pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (3-15-02)

04. Reinstatement Of Suspended Loan. Upon written request by the loan recipient with evidence that the causes(s) for suspension no longer exists, the Director may, if funds are available reinstate the loan contract. If a suspended loan contract is not reinstated, the loan will be amortized and a repayment schedule prepared in accordance with provisions of the loan contract. (1-1-89)

05. Reinstatement Of Terminated Loan. No terminated loan shall be reinstated. Terminated loans will be amortized and a repayment schedule prepared in accordance with provisions of the loan contract. (1-1-89)

(BREAK IN CONTINUITY OF SECTIONS)

996. ADMINISTRATIVE ~~PROVISIONS~~ APPEALS.

Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (~~3-15-02~~)(____)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
58.01.14 - RULES GOVERNING FEES FOR ENVIRONMENTAL OPERATING
PERMITS, LICENSES, AND INSPECTION SERVICES

DOCKET NO. 58-0114-0201 (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The temporary rule was effective July 1, 2002.

AUTHORITY: In compliance with Sections 67-5226(1) and 67-5221(1), Idaho Code, notice is hereby given that the Board of Environmental Quality (Board) has adopted a temporary rule and the Department of Environmental Quality (DEQ) is commencing proposed rulemaking to promulgate a final rule. This rule regulates activities not regulated by the federal government. The action is authorized by Sections 39-105 and 39-107, and 39-119, 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 August 21, 2002. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: Department of Health and Welfare rule chapter IDAPA 16.05.05, "Rules Governing Fees for Health and Environmental Operating Permits, Licenses and Inspection Services," contains sections imposing environmental fees which are no longer flexible enough to meet the needs of the different health districts. Under Docket No. 16-0505-0201, sections relating to the imposition of environmental fees, parcel surveys and sanitary restriction administration have been deleted from the Health and Welfare rule chapter. This rulemaking transfers those sections to a new DEQ rule chapter to be cited an IDAPA 58.01.14, "Rules Governing Fees for Environmental Operating Permits, Licenses and Inspection Services". Language has been added to Section 100, Environmental Fees, giving health districts the necessary flexibility. This rulemaking allows local government and the health districts to adopt equivalent or more stringent fees to cover the services provided. Some units of local government have adopted environmental fee ordinances and some health districts have revised fee rules that were adopted under their boards' rulemaking authority. The environmental fee structure needs to be flexible, across the state, to reflect the costs of providing environmental services rather than using a flat fee. Some health district environmental service costs are greater than other districts and the fees need to be reflective of the costs so that services can continue to be provided to the public. The districts with higher costs need the flexibility to revise fee structures to cover costs of providing services.

This proposed rule regulates activities that are not regulated by the federal government. This rulemaking proposes to amend long-standing administrative rules. 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.

FEE SUMMARY: This rulemaking is a transfer of long-standing rule text relating to the imposition of environmental fees, parcel surveys and sanitary restriction administration from Department of Health and Welfare Rule chapter IDAPA 16.05.05, "Rules Governing Fees for Health and Environmental Operating Permits, Licenses and Inspection Services" to new DEQ rule chapter IDAPA 58.01.14, "Rules Governing Fees for Environmental Operating Permits, Licenses and Inspection Services". Collection of the fees is authorized by Section 39-119, Idaho Code.

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

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 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 would benefit local government, the health districts and the regulated community. By repealing the sections of the rule in IDAPA 16.05.05 that are related to programs administered by DEQ, and DEQ adopting the equivalent language for these sections, there is no increase in fees imposed by these actions. Language has been added to the general Environmental Fees section that allows for local government or the health districts to adopt their own fees for services. Without the timely adoption of this rulemaking, there is a risk that health district fees could not be collected and necessary programs would not be adequately supported.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Barry Burnell at (208)373-0502 or bburnell@deq.state.id.us.

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 August 28, 2002.

DATED this 19th day of June, 2002.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pgradwoh@deq.state.id.us

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0114-0201

IDAPA 58
TITLE 01
Chapter 14

58.01.14 - RULES GOVERNING FEES FOR ENVIRONMENTAL OPERATING PERMITS, LICENSES, AND INSPECTION SERVICES

000. LEGAL AUTHORITY.

Pursuant to Sections 39-105, 39-107 and 39-119, Idaho Code, the Board of Environmental Quality is authorized to promulgate rules establishing reasonable fees to be charged and collected for any service rendered by the Department of Environmental Quality. (7-1-02)T

001. TITLE AND SCOPE.

01. Title. The rules shall be cited IDAPA 58.01.14, "Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services". (7-1-02)T

02. Scope. These rules establish reasonable fees for environmental operating permits, licenses, inspection services and waiver application processing rendered by the Department of Environmental Quality or its designees. (7-1-02)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), any written statements pertaining to the interpretation of these rules

shall be available for review at the Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255. (7-1-02)T

003. ADMINISTRATIVE APPEALS.

Persons may be entitled to appeal agency actions authorized under this chapter pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure before the Board of Environmental Quality". (7-1-02)T

004. INCORPORATION BY REFERENCE.

These rules do not contain documents incorporated by reference. (7-1-02)T

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

The state office of the Department of Environmental Quality and the office of the Board of Environmental Quality are located at 1410 N. Hilton, Boise, Idaho 83706-1255, telephone number (208) 373-0502. The office hours are 8 a.m. to 5 p.m. Monday through Friday. (7-1-02)T

006. CONFIDENTIALITY OF RECORDS.

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 3, Title 9, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality". (7-1-02)T

007. DEFINITIONS.

01. Board. The Idaho Board of Environmental Quality. (7-1-02)T

02. Department. The Idaho Department of Environmental Quality or its designee. (7-1-02)T

03. Director. The Director of the Idaho Department of Environmental Quality or his designee. (7-1-02)T

008. -- 099. (RESERVED).

100. ENVIRONMENTAL FEES.

The fees specified in Sections 101 through 199 shall be charged for the following environmental services rendered by the Department or its designees. Fees for services rendered by designees that are equivalent or greater than the fees listed in Sections 101 through 199 may be adopted by the district health departments or local government. The fees are to be paid by the party receiving the services to the Department or designee performing the service, in the time, place and manner specified by the performing entity. (7-1-02)T

101. -- 109. (RESERVED).

110. INDIVIDUAL AND SUBSURFACE SEWAGE DISPOSAL SYSTEM PERMIT.

For those services rendered in the process of issuing installation permits for individual and subsurface sewage disposal systems (see IDAPA 58.01.03, "Rules Governing Individual and Subsurface Sewage Disposal Systems"), the following fees apply: (7-1-02)T

01. Individual Households Or Buildings. For individual households or buildings, if the individual and subsurface sewage disposal system is a new installation or a replacement or expansion of an existing system, the fee shall be ninety dollars (\$90). (7-1-02)T

02. Multiple Households Or Buildings. For individual and subsurface sewage disposal systems serving more than one (1) household or building in any combination, the fee shall be ninety dollars (\$90) plus ten dollars (\$10) per each household or each two hundred fifty (250) gallons of flow. (7-1-02)T

111. -- 114. (RESERVED).

115. INDIVIDUAL AND SUBSURFACE SEWAGE DISPOSAL SYSTEM PUMPER PERMIT.

For those services rendered in the process of issuing permits to persons operating individual and subsurface sewage

disposal system pumping equipment (see IDAPA 58.01.15, "Rules Governing the Cleaning of Septic Tanks"), the fee shall be forty dollars (\$40) plus ten dollars (\$10) for each tank truck or tank per annum. (7-1-02)T

116. -- 119. (RESERVED).

120. SUBSURFACE SEWAGE DISPOSAL SYSTEM INSTALLER'S REGISTRATION PERMIT.

For those services rendered in the process of issuing Installer's Registration Permits (see IDAPA 58.01.03, "Rules For Individual and Subsurface Sewage Disposal Systems"), the fee shall be fifty dollars (\$50) per annum for a standard and basic alternative system installer's registration permit and one hundred dollars (\$100) per annum for a standard, basic and complex alternative system installer's registration permit. (7-1-02)T

121. -- 149. (RESERVED).

150. PARCEL SURVEY.

For those services rendered in evaluating existing water supply or sewage disposal systems when such evaluation is a condition for the sale of real property, the fee shall be sixty dollars (\$60) excluding laboratory services. (7-1-02)T

151. -- 159. (RESERVED).

160. SANITARY RESTRICTION ADMINISTRATION.

For those services rendered in the administration of sanitary restrictions, pursuant to Section 50-1326, Idaho Code, the following fees apply: (7-1-02)T

01. Subdivisions Or Plats Proposing Individual And Subsurface Sewage Disposal System Discharge To Subsurface. For subdivisions or plats for which sewage treatment and disposal systems are designed to discharge to the subsurface, the fee shall be one hundred dollars (\$100) plus twenty dollars (\$20) per lot. (7-1-02)T

02. Subdivisions Or Plats Proposing Other Than Individual And Subsurface Sewage Disposal System Discharge To Subsurface. For subdivisions or plats for which sewage treatment and disposal systems are not designed to discharge to the subsurface, the fee shall be twenty-five dollars (\$25). (7-1-02)T

161. -- 899. (RESERVED).

900. WAIVER OF FEES.

Upon written application to the Director of the Department of Environmental Quality, a waiver of a specific fee may be granted to an applicant who is required by these rules to pay such a fee. (7-1-02)T

01. Determination Of Good Cause. Good cause for such a waiver must be shown before it shall be granted by the Director. Good cause may include hardship or extenuating circumstances, as determined by the Director. (7-1-02)T

02. Duration Of Waiver. If the fee sought to be waived becomes due periodically, the fee may be waived for a designated period of time. (7-1-02)T

03. Limitations. Granting of a waiver shall not be considered as precedent or be given any force or effect in any other proceeding. (7-1-02)T

901. -- 999. (RESERVED).

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.20 - RULES FOR ADMINISTRATION OF DRINKING WATER LOAN ACCOUNT

DOCKET NO. 58-0120-0201

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Department of Environmental Quality (DEQ) has proposed rulemaking. This 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 August 23, 2002. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The proposed rules address review and approval of contracts for consulting engineers and determining eligible costs for loans. The rules clearly state the types of contracts that will be allowed, what costs contained in the contracts and other costs will be eligible, and how the contracts and costs are reviewed. Other changes were made to the rules to make them consistent with other DEQ loan and grant rules. Cities, counties, districts and associations that own and operate wastewater facilities and public drinking water systems may be interested in this rulemaking.

This rulemaking is an amendment to longstanding administrative rules that regulate activities not regulated by the federal government. 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, the Idaho Department of Environmental Quality (DEQ) intends to present the final proposal to the Board of Environmental Quality in the fall of 2002 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2003 session of the Idaho Legislature.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during a negotiation conducted pursuant to Idaho Code Section 67-5220 and IDAPA 58.01.23.812 - 815. The negotiation was open to the public. Participants in the negotiation included engineering and consulting firms, Association of Idaho Cities, Idaho Rural Water Association, engineering and consulting firms, sewer districts, members of the public, and DEQ staff. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Volume 02-4, April 3, 2002.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Bill Jerrel at (208)373-0502 or wjerrel@deq.state.id.us.

Anyone can 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 September 6, 2002.

Dated this 19th day of June, 2002.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418
Fax No. (208)373-0481
pgradwoh@deq.state.id.us

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0120-0201

IDAPA 58
TITLE 01
Chapter 20

58.01.20 - RULES FOR ADMINISTRATION OF DRINKING WATER LOAN ~~ACCOUNT~~ PROGRAM

000. LEGAL AUTHORITY.

The Idaho State Board of Environmental Quality, pursuant to authority granted in Chapters 01 and 76, Title 39, Idaho Code, adopted the following rules for the administration of a Drinking Water Loan ~~Account~~ Program in Idaho. (3-23-98)()

001. TITLE AND SCOPE.

01. Title. These rules shall be known and cited as ~~IDAPA 58.01.20~~, Rules of the Idaho Department of Environmental Quality, IDAPA 58.01.20, "Rules for Administration of Drinking Water Loan ~~Account~~ Program". (3-23-98)()

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 a capitalization grant 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)

003. ADMINISTRATIVE APPEALS.

Persons may be entitled to appeal ~~Department of Environmental Quality~~ agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (3-15-02)()

004. POLICY.

It is the policy of the Idaho Board of Environmental Quality, through the Idaho Department of Environmental Quality, to administer the Drinking Water Loan ~~Account~~ Program. The Drinking Water Loan ~~Account~~ Program provides assistance to eligible public drinking water systems for the planning, design, and construction of facilities to ensure safe and adequate drinking water. It is also the intent of the Board of Environmental Quality to assign a priority rating to those projects which shall facilitate the compliance of any eligible public water system with national primary drinking water regulations applicable to the system or to otherwise significantly further the health protection objectives of these rules and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.). (3-23-98)()

005. INCORPORATION BY REFERENCE.

These rules do not contain documents incorporated by reference. ()

0056. SYSTEM ELIGIBILITY.

01. Eligible Systems. Public and private community water systems and nonprofit noncommunity water systems. (3-23-98)

02. Systems Not Eligible. The following public drinking water systems will not be considered eligible for project loans: (3-23-98)

a. Systems that do not have the technical, managerial, and financial capability to ensure compliance with the requirements of the Idaho Rules for Public Drinking Water Systems (IDAPA 58.01.08) and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.); (3-23-98)

b. Systems in significant noncompliance with any requirement of the Idaho Rules for Public Drinking Water Systems (IDAPA 58.01.08) and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.); (3-23-98)

c. Systems under disapproval designation as outlined in the Idaho Rules for Public Drinking Water Systems (IDAPA 58.01.08); (3-23-98)

d. Systems under current drinking water enforcement action by the Department; or (3-23-98)

e. Systems delinquent in payment of the annual state drinking water fee assessment. (3-23-98)

03. Assistance To Ensure Compliance. Public water systems not eligible for project loans as described in Subsections 0056.02.a. ~~and through~~ 0056.02.b.d. may receive assistance if: (~~3-23-98~~)(____)

a. The use of the assistance will ensure compliance; (3-23-98)

b. The owner or operator of the system agrees to undertake feasible and appropriate changes in operations (including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures); (3-23-98)

c. The Department determines that the measures are necessary to ensure that the system has the technical, managerial, and financial capability to comply with state and federal drinking water requirements over the long term; and (3-23-98)

d. Prior to providing assistance under this section to a public water system that is in significant noncompliance with any requirement of the Idaho Rules for Public Drinking Water Systems (IDAPA 58.01.08) and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.) or variance, the Department conducts a review to determine whether this section applies to the system. (3-23-98)

0067. -- 009. (RESERVED).

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. (~~3-23-98~~)(____)

02. Board. The Idaho State Board of Environmental Quality. (3-23-98)

03. Categorical Exclusion (CE). "~~Categorical exclusion~~" means a ~~e~~Category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. (~~3-23-98~~)(____)

04. Community Water System. A public drinking water system that: (~~3-23-98~~)(____)

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)

05. 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, ~~and~~ other action necessary in the construction of public water system facilities, ~~and~~ the inspection and supervision of the construction, ~~and~~ start-up of the associated facilities. (3-23-98)()

- 06. Contaminant.** Any physical, chemical, biological, or radiological substance or matter in water. ()
- 067. Department.** The Idaho Department of Environmental Quality. (3-23-98)
- 078. Director.** The Director of the Idaho Department of Environmental Quality or his/her designee. (3-23-98)
- 089. 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)
- 0910. Disadvantaged Loans.** Loans made to a disadvantaged community. (3-23-98)
- 11. Distribution System.** Any combination of pipes, tanks, pumps, and other equipment which delivers water from the source(s) and/or treatment facility(ies) to the consumer. ()
- 102. ~~EID.~~ Environmental Information Document (EID).** Any written environmental assessment prepared by an applicant or consultant describing the environmental impacts of a proposed drinking water construction project. This document will of sufficient scope to enable the responsible official to assess the environmental impacts of the proposed project and ultimately determine if an environmental impact statement (EIS) is warranted. (3-23-98)()
- 143. ~~EIS.~~ Environmental Impact Statement (EIS).** A document prepared by the grantee in accordance with Environmental Review Procedures contained in Chapter 5 of the Handbook when the Department determines that the proposed drinking water construction project will significantly affect the environment as described in Appendix C of the Handbook. 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. (3-23-98)()
- 124. Eligible Costs.** Costs which are necessary for planning, designing, and/or constructing public water system facilities. To be eligible, costs must also be reasonable, ~~allowable~~, and ~~allocable~~ not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 041. (3-23-98)()
- 135. Eligible Systems.** Public and private community water systems and nonprofit noncommunity water systems. (3-23-98)
- 146. Engineering Report.** A report which compares public water system facility alternatives and identifies the most cost effective, environmentally sound alternative. (3-23-98)
- 157. Financial Management System.** Uniform method of recording, summarizing, and analyzing financial information about the public water system facility. (3-23-98)
- 168. ~~FNSI.~~ Finding Of No Significant Impact (FNSI).** 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. (3-23-98)()
- 19. Handbook.** "Drinking Water Loan Handbook of Procedures." ()
- 1720. Ineligible Costs.** Costs which are ~~not necessary for the planning, designing, and/or construction of public water system facilities or which are not reasonable, allowable, or allocable~~ described in Subsection 041.05.

(3-23-98)()

21. Managerial Capability. The capabilities of the qualified entity to support the proper financial management and technical operation of the system. ()

~~1822.~~ **MCL. Maximum Contaminant Level (MCL).** The maximum permissible level of a contaminant in water which is delivered to any user of a public water system. (3-23-98)()

~~1923.~~ **Municipality.** Any county, city, town, or other public entity created pursuant to state law special service district, nonprofit corporation or other governmental entity having authority to dispose of sewage, industrial wastes, or other wastes, or to provide for safe drinking water, any Indian tribe or authorized Indian tribal organization, or any combination of two (2) or more of the foregoing acting jointly, in connection with an eligible project. (3-23-98)()

204. Noncommunity Water System. A public water system that is not a community water system. (3-23-98)

~~215.~~ **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)

226. 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)

237. O & M 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)

248. 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)

259. Plan Of Operation. A schedule of ~~specifications~~ specific actions and completion dates for construction, start-up, and operation of the public water system facility. (3-23-98)()

2630. 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. 300f Section et seq.), population affected, and need on a household basis for protection of Idaho's public drinking water. (3-23-98)()

~~2731.~~ **Public Drinking Water Systems.** ()

a. In General. A system for the provision to the public of water for human consumption through pipes or other constructed conveyances if such system has at least fifteen (15) service connections 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: (3-23-98)()

ai. Any ~~drinking water source~~ collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such systems; and (3-23-98)()

bii. Any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public drinking water system is either a "community water system" or a "noncommunity water system". ()

b. Connections. For purposes of paragraph a. of this subsection, A connection to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection if: (3-23-98)()

i. The water is used exclusively for purposes other than residential uses (consisting of drinking, cooking, and bathing, or other similar uses); (3-23-98)

ii. The Director determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking, and cooking, ~~or bathing, or other similar uses~~; or (3-23-98)()

iii. The Director determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations. (3-23-98)()

c. Irrigation Districts. An irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use shall not be considered to be a public drinking water system if the system or the residential or similar users of the system comply with subparagraphs b.ii. and b.iii. of this subsection. ()

2832. **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 and which establishes and maintains a dedicated loan repayment source. (3-23-98)

33. **Rehabilitation.** The repair or replacement of segments of drinking water facilities. ()

34. **Reserve Capacity.** That portion of the system in the planned facilities to handle future drinking water demand. ()

~~**29.** **Scope Of Project.** *Those portions of the proposed facility including administration, engineering, and physical components that constitute a complete project as determined from the most cost effective, environmentally sound public water system facility alternative identified in a engineering report and approved by the Department.* (3-23-98)~~

305. **State.** The State of Idaho. (3-23-98)

346. **Supplier Or Provider Of Water.** Any person who owns and/or operates a public water system. (3-23-98)

327. **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)

38. **Technical Capability.** The ability of the public drinking water system to comply with existing and expected drinking water rules. ()

339. **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)

340. **URTH. 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. (3-23-98)()

3541. **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 facility. (3-23-98)

3642. **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)

43. Water Treatment Plant. That portion of the public drinking water system whose primary purpose is to remove contaminants. ()

(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. 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 criteria. ()

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 ~~Account~~ Program in accordance with these rules. Projects considered for priority rating shall first be evaluated by Department regional staff. (3-23-98)()

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. Certified by the Department. Such emergencies shall be related to a waterborne outbreak, ~~chemical or radiological~~ contamination levels at or above URTH, or a failed water source. (100 points) (3-23-98)()

b. Public Health Hazard. Identified and verified by the Department. Points shall be given based on the presence and severity of waterborne illnesses. (19 points) (3-23-98)

c. 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)

d. General Conditions of Existing Facilities. Points shall be given based on deficiencies with facilities for pumping, treating, and delivering drinking water. (61 points) (3-23-98)

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. (16 points) (3-23-98)

h. Affordability. Points shall be given when proposed system user charges exceed state affordability guidelines. (10 points) (3-23-98)

03. 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)

04. 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)

05. 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)

06. 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. A project that is bypassed shall be notified in writing of the reasons for being bypassed. (3-23-98)

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 a median household income that does not exceed eighty percent (80%) of the statewide non-metropolitan median household income from the most recent census data, and an annual cost of drinking water service for residential customers which exceeds two percent (2%) of the median household income. (3-23-98)

a. The annual cost includes 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, the applicant may use the census data for the county in which it is located. (3-23-98)

b. For disadvantaged applicants for which the annual cost exceeds two percent (2%) of the median household income, those applicants must ~~have been either declined assistance or received only partial~~ agree to seek assistance from all other available state and federal agencies offering grants before loan terms can be adjusted. (3-23-98)(____)

02. ~~Denied Or Partial Assistance~~ Adjustment Of Loan Terms. ~~If assistance has been denied or only partial assistance given by other agencies,~~ loan terms may be adjusted in the following sequence: (3-23-98)(____)

a. First, 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 equals two percent (2%) of median household income. (3-23-98)

b. If at a thirty (30) year repayment, the annual cost still exceeds two percent (2%) 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 equal to two percent (2%) of median household income. (3-23-98)

c. The interest rate ~~reduction~~ may be reduced to as low as zero percent (0%). If even at zero percent (0%) interest and a thirty (30) year repayment, the annual charge per residential user still exceeds two percent (2%) of median household income, the principal which causes the user charge to exceed two percent (2%) may be reduced except the principal reduction cannot exceed an amount greater than fifty percent (50%) of the total project cost. (3-23-98)(____)

(BREAK IN CONTINUITY OF SECTIONS)

030. PROJECT FUNDING.

Loan funds awarded under this program may be used to prepare an engineering report which identifies the most cost effective, environmentally sound drinking water system alternative to achieve or maintain compliance with the Idaho Rules for Public Drinking Water Systems, 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. (____)

- 01. Project Step Funding.** Projects may be funded in steps: (3-23-98)
- a.** Step 1. Engineering report prepared by a professional engineer licensed in the state of Idaho who carries professional liability ~~indemnification~~ insurance in accordance with Subsection 050.05.d., and in a format prescribed by the Department; (3-23-98)(____)
 - b.** Step 2. Design, which includes the preparation by a professional engineer licensed in the state of Idaho of the detailed engineering plans and specifications necessary for the bidding and construction of the project; (3-23-98)
 - 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. Cost Effective Requirement.** Step 2, Step 3, or Step 4 loans shall not be awarded until a final cost effective and environmentally sound alternative has been selected by the Step 1 engineering report as approved by the Department. The cost effective alternative may be selected based on the comments received from at least one (1) public hearing attended by affected users within the jurisdiction of the qualifying entity and conducted in accordance with state law. (3-23-98)
- 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. (3-23-98)(____)
- ~~**05. Eligible Project Costs.** Costs eligible for funding shall be determined from the scope of the project and may include, but not be limited to:~~ (3-23-98)
- ~~**a.** Costs of salaries, benefits, and expendable material the qualified entity incurs in the project except ordinary operating expenses of local government such as salaries and expenses of a mayor; city council members; board; or a city, district, or board attorney;~~ (3-23-98)
 - ~~**b.** Costs for construction contract bids and executed in compliance with state public works construction laws;~~ (3-23-98)
 - ~~**c.** Professional and consulting services;~~ (3-23-98)
 - ~~**d.** Engineering directly related to the public water system facilities;~~ (3-23-98)
 - ~~**e.** Financial, technical, and management capability analysis if it shall ensure compliance;~~ (3-23-98)
 - ~~**f.** Preparation of construction drawings, specifications, estimates, and construction contract documents;~~ (3-23-98)
 - ~~**g.** Landscaping;~~ (3-23-98)
 - ~~**h.** Removal and relocation or replacement of utilities for which the qualifying entity is legally obligated to pay;~~ (3-23-98)
 - ~~**i.** Material acquired, consumed, or expended specifically for the project;~~ (3-23-98)
 - ~~**j.** A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations;~~

		(3-23-98)
<i>k.</i>	<i>Preparation of an operation and maintenance manual;</i>	(3-23-98)
<i>l.</i>	<i>Preparation of a plan of operation;</i>	(3-23-98)
<i>m.</i>	<i>Start-up services;</i>	(3-23-98)
<i>n.</i>	<i>Public participation for alternative selection;</i>	(3-23-98)
<i>o.</i>	<i>Development of user charge and financial management systems;</i>	(3-23-98)
<i>p.</i>	<i>Development of water system protection and backflow prevention ordinance or rule;</i>	(3-23-98)
<i>q.</i>	<i>Initial staffing plans and budget development;</i>	(3-23-98)
<i>r.</i>	<i>Costs of assessing and defending contractor claims determined unmeritable by the Department;</i>	(3-23-98)
<i>s.</i>	<i>Site acquisition costs, including right of way, well lot site, system site, and finished water storage;</i>	(3-23-98)
<i>t.</i>	<i>Certain direct and other costs as determined eligible by the Department.</i>	(3-23-98)
06.	<i>Ineligible Project Costs.</i> <i>Costs which are ineligible for funding include, but are not limited to:</i>	(3-23-98)
<i>a.</i>	<i>Basin or area wide planning not directly related to the project;</i>	(3-23-98)
<i>b.</i>	<i>Bonus payments not legally required for completion of construction before a contractual completion date;</i>	(3-23-98)
<i>c.</i>	<i>Personal injury compensation or damages arising out of the project;</i>	(3-23-98)
<i>d.</i>	<i>Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws;</i>	(3-23-98)
<i>e.</i>	<i>Costs outside the scope of the approved project;</i>	(3-23-98)
<i>f.</i>	<i>Ordinary operating expenses of local government, such as salaries and expenses of a mayor, city council members, board, or city or board attorney;</i>	(3-23-98)
<i>g.</i>	<i>Cost of land in excess of that needed for treatment or storage of finished water;</i>	(3-23-98)
<i>h.</i>	<i>Costs of condemnations; or</i>	(3-23-98)
<i>i.</i>	<i>Engineering costs prepared without professional liability indemnification.</i>	(3-23-98)

(BREAK IN CONTINUITY OF SECTIONS)

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 ~~a completed state loan application form~~ and the following documentation, as applicable, ~~approved, or approvable by the Department in both form and content:~~ (3-23-98)(____)

~~a. All loan applications:~~ (3-23-98)

~~i. A lawful resolution passed by the governing body authorizing an elected official or chief financial officer authorized individual of the qualifying entity to execute a loan contract and sign subsequent loan disbursement requests; and~~ (3-23-98)(____)

~~ii. Contracts for architectural/engineering services, including justification for the firm selected and a certification of liability indemnification, as described in Subsection 050.05.d., which covers all such services rendered for all project phases which are state funded; 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~~ (3-23-98)(____)

~~iii. Preliminary plan of system revenue and loan repayment schedule;~~ (3-23-98)

~~iv. A legal opinion from the loan applicant's lawyer stating that the loan applicant has complied with all applicable federal, state, and local laws including, if applicable, laws relating to the issuance of bonds and the incurrence of debt. The costs of such an opinion can be included as eligible project costs; and~~ (3-23-98)

c. Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum: (____)

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

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

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

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 (____)

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 (____)

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 67-2320, 50-341 and 42-3212, Idaho Code. (____)

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. Plan of study describing the work tasks to be performed in the engineering report, a schedule for completion of the work tasks, and an estimate of man hours and costs to complete the work tasks. (3-23-98)

h. Step 2, Design. (3-23-98)

- i. Engineering report including a final environmental document and decision in accordance with Section 0412; (3-23-98)()
- ii. Financial, technical, and management capability analysis as provided in Subsection 011.01; (3-23-98)
- iii. Inter-municipal service agreements between all qualifying entities within the scope of the project, if applicable; and (3-23-98)
- ~~iv. Documented evidence of all necessary easements and land acquisition. (3-23-98)~~
- ~~di. Step 3, Construction. (3-23-98)~~
- i. Documented evidence of all necessary easements and land acquisition. ()
- 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)
- and ~~iiiv. A user charge system, water use system protection ordinance, and financial management system; (3-23-98)~~
- iv. A staffing plan and budget. (3-23-98)
- ~~ej. 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. (3-23-98)~~

03. ~~Acceptance Of Application.~~ Applications shall be accepted in accordance with the state priority list target dates. No applications shall be accepted for projects not rated on the original priority list unless the priority list is amended and approved by the Director. Incomplete applications lacking information may be returned to the applicant. Once complete information is provided, the application may be resubmitted. 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. (3-23-98)()

04. ~~Notification Of Disapproval Incompleteness Of Application.~~ Written notification of application rejection with the reasons for denial if an application is incomplete, including an explanation of missing documentation shall be sent to the applicant. The applicant may provide the missing documentation. (3-23-98)()

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. ()

- 01. Eligible Costs. Eligible costs are those determined by the Department to be: ()**
 - a. Necessary for planning, designing and/or constructing drinking water systems; ()**
 - b. Reasonable; and ()**
 - c. Costs that are not ineligible as described in Subsection 041.05. ()**

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 preliminary engineering report for design and construction of drinking water systems, and any other relevant information in the application that describes the scope of the project to be funded. ()

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 67-2320, 50-341 and 42-3212, Idaho Code. ()

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

a. Costs of salaries, benefits, and expendable material the qualified entity incurs in the project except ordinary operating expenses of local government such as salaries and expenses of a mayor, city council members, board; or a city, district, or board attorney; ()

b. Costs under construction contracts bid and executed in compliance with state public works construction laws; ()

c. Professional and consulting services utilizing a lumpsum contract, an hourly rate contract, a time and materials contract or cost plus a fixed fee contract; ()

d. Engineering directly related to the public water system facilities; ()

e. Financial and management capability analysis if it ensures compliance; ()

f. Preparation of construction drawings, specifications, estimates, and construction contract documents; ()

g. Landscaping; ()

h. Removal and relocation or replacement of utilities for which the qualifying entity is legally obligated to pay; ()

i. Material acquired, consumed, or expended specifically for the project; ()

j. A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations; ()

k. Preparation of an operation and maintenance manual; ()

l. Preparation of a plan of operation; ()

m. Start-up services; ()

n. Project identification signs; ()

o. Public participation for alternative selection; ()

p. Development of user charge and financial management systems; ()

q. Development of water system protection and backflow prevention ordinance or rule; ()

r. Initial staffing plans and budget development; ()

s. Costs of assessing and defending contractor claims determined unmeritorious by the Department; ()

- t.** Site acquisition costs, including right of way and the site for public water system; and ()
- u.** Certain direct and other costs as determined eligible by the Department. ()
- 05. Ineligible Project Costs.** Costs which are ineligible for funding include, but are not limited to: ()
 - a.** Basin or area wide planning not directly related to the project; ()
 - b.** Bonus payments not legally required for completion of construction before a contractual completion date; ()
 - c.** Personal injury compensation or damages arising out of the project; ()
 - d.** Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; ()
 - e.** Costs outside the scope of the approved project; ()
 - f.** Ordinary operating expenses of local government, such as salaries and expenses of a mayor, city council members, board, or city, district or board attorney; ()
 - g.** Cost of land in excess of that needed for the proposed project; ()
 - h.** Cost of condemnations; or ()
 - i.** Engineering costs incurred without professional liability insurance. ()
- 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. ()
- 07. Eligible Costs And The Loan Offer.** The loan offer shall reflect those costs determined by the Department to be eligible costs. The loan offer, however, may include estimates of some eligible costs that have not yet been set, such as construction costs. Actual eligible costs may differ from such estimated costs set forth in the loan offer. In addition, loan disbursements may be increased or decreased if eligible costs are modified as provided in Section 060. ()

042. ENVIRONMENTAL REVIEW.

- 01. Overview Of Process.** The applicant shall consult with the Department at an early stage in the preparation of the engineering report to determine the required level of environmental review. Based on review of existing information, the Department shall assess potential environmental impacts and shall instruct the applicant to either: (3-23-98)
 - 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.** At the request of an applicant, the Department shall determine from existing information whether an action is consistent with categories eligible for exclusion where upon the Department

shall issue a notice of Categorical Exclusion from substantive environmental review. Once the Categorical Exclusion is granted for the proposed project and a notice of Categorical Exclusion has been published in a local newspaper to inform the public of this action, the engineering report can be approved and the loan award can proceed. (3-23-98)

03. Environmental Review Process. When issuance of a Categorical Exclusion is not appropriate, the applicant shall prepare an Environmental Information Document (EID). In accordance with Department procedures: (3-23-98)

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" (FNSI). (3-23-98)

04. Final Finding Of No Significant Impact. The final FNSI shall be published in a newspaper of general circulation in the geographical area of the proposed project in accordance with state policies on public participation. Following the required period of public review and comment and after any public concerns about project impacts are resolved, the FNSI shall become final and the engineering report can be approved and the loan can be awarded. (3-23-98)

05. Environmental Impact Statement (EIS) Requirements. If an EIS is required, the applicant 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 which may be in conjunction with a engineering report hearing; and (3-23-98)

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 and approval by the Department of all requirements listed in Subsection 04-2.05, the Department shall issue a record of decision, documenting the mitigative measures which shall be required of the applicant. The loan agreement can be completed once the final EIS has Department approval. (~~3-23-98~~)(____)

07. Mitigation Measures. Prior to approval of a facilities plan, the Department must ensure that effective mitigation measures identified in the FNSI and EID shall be implemented by the applicant. (3-23-98)

08. 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)

09. Federal Environmental Review Use. If environmental review for the project has been conducted by another state, federal, or local agency, the Department may, in its discretion, issue its own determination by adopting the document of the federal agency. (3-23-98)

10. Validity Of Review. Environmental reviews are valid for five (5) years. 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)

0423. -- 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 his/her 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. (3-23-98)

04. Estimate Of Reasonable Cost. All loan contracts shall include ~~an estimate of~~ the reasonable eligible costs of the project. Some eligible costs may be estimated and disbursements may be increased or decreased as provided in Section 060. (3-23-98)(____)

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 ~~and regulations set out in this document~~, the project step to be funded under the loan offer, and Chapter 76, Title 39, Idaho Code; (3-23-98)(____)

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, 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; (3-23-98)

d. Requirement for the prime ~~architectural~~ engineering firm(s), and their principals retained for ~~architectural~~ engineering services, to carry professional liability ~~indemnification~~ insurance to protect the public from negligent acts of the ~~architect~~ engineer and errors of omission of a professional nature. The total aggregate of the professional liability of the ~~architect~~ engineer ~~indemnification~~ insurance shall be one hundred thousand dollars (\$100,000) or twice the amount of the fee of the ~~architect~~ engineer, whichever is greater. Professional liability ~~indemnification~~ insurance must cover all such services rendered for all project phases which are state funded; (3-23-98)(____)

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 has approved and adopted acceptable public works construction standards approved by the Department; (3-23-98)(____)

f. The loan interest rate for loans made during the state fiscal year beginning July 1 shall be established by the Director ~~by January 1 prior to the beginning of the state fiscal year.~~ 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; (3-23-98)(____)

g. 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 may elect for either a schedule of semi-annual repayments or annual repayments at the time the loan is finalized; and (3-23-98)

h. Repayment default shall occur when a scheduled loan repayment is ~~ten~~ thirty (~~7~~30) days past due. If default occurs, the Department may invoke appropriate loan contract provisions and/or bond covenants. (3-23-98)(____)

051. ACCOUNTING AND AUDITING PROCEDURES.

Loan recipients must maintain project accounts in accordance with generally accepted government accounting standards. ~~These standards are usually defined as, but not limited to, those contained in the U.S. General Accounting Office (GAO) publication "Standards for Audit of Governmental Organization, Programs, Activities, and Functions", published February 27, 1981~~ principles issued by the Government Accounting Standards Board (GASB). (3-23-98)(____)

(BREAK IN CONTINUITY OF SECTIONS)

080. SUSPENSION OR TERMINATION OF LOAN CONTRACTS.

01. Causes. The Director may suspend or terminate any loan contract prior to final disbursement for failure by the loan recipient or its agents including ~~architectural~~ engineering firm(s), contractor(s), or subcontractor(s) to perform. A loan contract may be suspended or terminated for good cause including, but not limited to, the following: (3-23-98)(____)

a. Commission of fraud, embezzlement, theft, forgery, bribery, misrepresentation, conversion, malpractice, misconduct, malfeasance, misfeasance, falsification, or unlawful destruction of records, or receipt of stolen property, or any form of tortious conduct; (3-23-98)

b. Commission of any crime for which the maximum sentence includes the possibility of one (1) or more years of imprisonment or any crime involving or affecting the project; (3-23-98)

c. Violation(s) of any term of the loan contract; (3-23-98)

d. Any willful or serious failure to perform within the scope of the project, plan of operation, project schedule, terms of ~~architectural~~ engineering sub-agreements, or contracts for construction; or (3-23-98)(____)

e. Debarment of a contractor or subcontractor for good cause by any federal or state agency from working on public work projects funded by that agency. (3-23-98)

02. Notice. The Director shall notify the loan recipient in writing, and forwarded by certified mail, of the intent to suspend or terminate the loan contract. The notice of intent shall state: (3-23-98)

- a.** Specific acts or omissions which form the basis for suspension or termination; and (3-23-98)
- b.** That the loan recipient may be entitled to appeal the suspension or termination pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (3-15-02)
- 03. Determination.** A determination will be made by the Board pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (3-15-02)
- 04. Reinstatement Of Suspended Loan.** Upon written request by the loan recipient with evidence that the causes(s) for suspension no longer exist(s), the Director may, if funds are available, reinstate the loan contract. If a suspended loan contract is not reinstated, the loan shall be amortized and a repayment schedule prepared in accordance with provisions of the loan contract. (3-23-98)
- 05. Reinstatement Of Terminated Loan.** No terminated loan shall be reinstated. Terminated loans shall be amortized and a repayment schedule prepared in accordance with provisions of the loan contract. (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. 58-0122-0201

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Department of Environmental Quality (DEQ) has proposed rulemaking. This 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 August 23, 2002. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The proposed rules address review and approval of contracts for consulting engineers and determining eligible costs for grants. The rules clearly state the types of contracts that will be allowed, what costs contained in the contracts and other costs will be eligible, and how the contracts and costs are reviewed. Other changes were made to the rules to make them consistent with other DEQ loan and grant rules. Cities, counties, districts and associations that own and operate wastewater facilities and public drinking water systems may be interested in this rulemaking.

This rulemaking is an amendment to longstanding administrative rules that regulate activities not regulated by the federal government. 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, the Idaho Department of Environmental Quality (DEQ) intends to present the final proposal to the Board of Environmental Quality in the fall of 2002 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2003 session of the Idaho Legislature.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during a negotiation conducted pursuant to Idaho Code Section 67-5220 and IDAPA 58.01.23.812 - 815. The negotiation was open to the public. Participants in the negotiation included engineering and consulting firms, Association of Idaho Cities, Idaho Rural Water Association, engineering and consulting firms, sewer districts, members of the public, and DEQ staff. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Volume 02-4, April 3, 2002, page 24.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Bill Jerrel at (208)373-0502 or wjerrel@deq.state.id.us.

Anyone can 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 September 6, 2002.

Dated this 19th day of June, 2002.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418
Fax No. (208)373-0481
pgradwoh@deq.state.id.us

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0122-0201

000. LEGAL AUTHORITY.

The Idaho State Board of Environmental Quality, pursuant to authority granted in Chapters 1 and 36, Title 39, Idaho Code, adopted the following rules for the administration of a Drinking Water Planning Grant Program in Idaho. (3-30-01)(____)

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 in conformance with Chapter 5 of the "Drinking Water Facilities Loan ~~Account~~ Handbook of Procedures" to evaluate feasible treatment, storage and distribution alternatives for public drinking water systems. (3-30-01)(____)

(BREAK IN CONTINUITY OF SECTIONS)

003. ADMINISTRATIVE ~~PROCEDURES~~ APPEALS.

Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (3-15-02)(____)

(BREAK IN CONTINUITY OF SECTIONS)

005. CONFIDENTIALITY ~~OF RECORDS~~.

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 3, Title 9, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality". (3-30-01)(____)

(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 State Board of Environmental Quality. (3-30-01)(____)

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 assessment nor an environmental impact statement is required. (3-30-01)

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. Construction.** The erection, building, acquisition, alteration, reconstruction, improvement or extension of a public drinking water system, including preliminary planning to determine the economic and engineering feasibility of a public drinking water system, 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 a public drinking water system, ~~and~~ the inspection and supervision of the construction and start-up of the associated facilities. (~~3-30-01~~)()
- 06. Contaminant.** Any physical, chemical, biological, or radiological substance or matter in water. (3-30-01)
- 07. Department.** The Idaho Department of Environmental Quality. (3-30-01)
- 08. Director.** The Director of the Idaho Department of Environmental Quality or his designee. (3-30-01)
- 09. Distribution System.** Any combination of pipes, tanks, pumps, and other equipment which delivers water from the source(s) and/or treatment facility(ies) to the consumer. (3-30-01)
- ~~**10. Environmental Impact Statement (EIS).** A document prepared by the grantee in accordance with Environmental Review Procedures contained in Chapter 5 of the Handbook when the Department determines that the proposed drinking water construction project will significantly affect the environment as described in Appendix C of the Handbook. 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. (3-30-01)~~
- 121. Eligible Costs.** Costs which are necessary for planning public drinking water systems. To be eligible, costs must also be reasonable, ~~allowable~~ and ~~allocable~~ not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 032. (~~3-30-01~~)()
- ~~**132. Engineering Report.** Report prepared in conformance with Chapter 5 of the Handbook to evaluate feasible treatment, storage, and distribution alternatives for public drinking water systems. (3-30-01)~~
- ~~**103. Environmental Information Document (EID).** Any written environmental assessment prepared by an 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 to assess the environmental impacts of the proposed project and ultimately determine if an environmental impact statement (EIS) is warranted. (3-30-01)~~
- 14. Financial Capability.** The ability to raise and manage funds to provide the necessary resources for proper operation. (3-30-01)
- 15. Finding Of No Significant Impact (FNSI).** 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. (3-30-01)
- 16. Handbook.** "Drinking Water Loan Account Handbook of Procedures." (3-30-01)
- 17. Ineligible Costs.** Costs which are ~~not necessary for planning at a public drinking water system or which are not reasonable, allowable or allocable~~ described in Subsection 032.06. (~~3-30-01~~)()
- 18. 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)

19. Managerial Capability. The capabilities of the qualified entity to support the proper financial management and technical operation of the system. (3-30-01)

20. Municipality. Any county, city, special service district, nonprofit corporation or other governmental entity having authority to dispose of sewage, industrial wastes, or other wastes, or to provide for safe drinking water, any Indian tribe or authorized Indian tribal organization, or any combination of two (2) or more of the foregoing acting jointly, in connection with an eligible project. (3-30-01)

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

~~**22.**~~ **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. ~~(3-30-01)~~()

~~**23.**~~ **Nontransient Noncommunity Water System (NTNCWS).** 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. (3-30-01)

~~**24.**~~ **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). ()

~~**25.**~~ **Priority List.** A list of proposed projects rated according to the priority rating system 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., and the need on a household basis and for protection of Idaho's public drinking water supplies. (3-30-01)

~~**26.**~~ **Public Drinking Water System.** (3-30-01)

a. In General. A system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections 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: (3-30-01)

i. Any collection, treatment, storage, and distribution facilities under control of the operator of such system, and used primarily in connection with such system; and (3-30-01)

ii. Any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public drinking water system is either a "community water system" or a "noncommunity water system". (3-30-01)

b. Connections. For purposes of ~~Subsection 010.24.~~ paragraph a. of this subsection, a connection to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection, if: ~~(3-30-01)~~()

i. The water is used exclusively for purposes other than residential uses (consisting of drinking, bathing, and cooking, or other similar uses); (3-30-01)

ii. The Director determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking; or (3-30-01)

iii. The Director determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the

user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations. (3-30-01)

c. Irrigation Districts. An irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use shall not be considered to be a public drinking water system if the system or the residential or similar users of the system comply with ~~Subsections 010.24. subparagraphs b.ii. and 010.24.b.iii. of this subsection.~~ (3-30-01)(____)

~~**d.** *Transition Period.* A supplier of water that would be a public drinking water system only as a result of modifications made to Subsection 010.24 by the Safe Drinking Water Act Amendments of 1996 shall not be considered a public drinking water system for purposes of the Safe Drinking Water Act until the date that is two (2) years after the date of enactment of the Safe Drinking Water Act Amendments of 1996. If a supplier of water does not serve fifteen (15) service connections (as defined in Subsections 010.24.a., 010.24.b., and 010.24.c.) or twenty-five (25) people at any time after the conclusion of the two (2) year period, the supplier of water shall not be considered a public drinking water system.~~ (3-30-01)

257. Qualifying Entity. Community water systems and nonprofit noncommunity water systems. (3-30-01)

268. Rehabilitation. The repair or replacement of segments of drinking water facilities. (3-30-01)

279. Reserve Capacity. That portion of the system in the planned facilities to handle future drinking water demand. (3-30-01)

~~**28. Scope Of Project.** The preparation of an engineering report which identifies the most cost effective, 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.~~ (3-30-01)

2930. State. The state of Idaho. (3-30-01)

301. 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)

372. Technical Capability. The ability of the public drinking water system to comply with existing and expected drinking water rules. (3-30-01)

323. 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)

34. Unreasonable Risk To Health (URTH). Refers to a level of contamination that presents an "unreasonable risk to health" and is determined on a ~~contamination~~ contaminant by contaminant basis by the U.S. Environmental Protection Agency. (3-30-01)(____)

335. Water Treatment Plant. That portion of the public drinking water system whose primary purpose is to remove contaminants. (3-30-01)

(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 ~~staff~~ and consulting engineers. Limited grant funds are awarded to projects based on priority ratings. Projects are rated by the Department ~~staff~~ on a standard priority rating form using public health and water quality criteria. (3-30-01)(____)

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 Grant Program in accordance with these rules. ()

02. **Priority Rating.** Priority criteria shall contain the following points: (3-30-01)

a. Public Health Emergency. Certified by the Department. Such emergencies shall be related to a waterborne outbreak, chemical or radiological contamination levels above URTH, or a failed water source - one hundred (100) points. (3-30-01)

b. Public Health Hazard. Identified and verified by the Department. Points shall be given based on the presence and severity of waterborne illnesses - nineteen (19) points. (3-30-01)

c. 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)

d. General Conditions of Existing Facilities. Points shall be given based on deficiencies with facilities for pumping, treating, storing, and delivering drinking water - sixty-one (61) points. (3-30-01)

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)

g. Incentives. Bonus points shall be awarded to systems that promote source water protection, conservation, economy, proper operation maintenance, and monitoring - sixteen (16) points. (3-30-01)

h. Affordability. Points shall be given when current system user charges exceed state affordability guidelines - ten (10) points. (3-30-01)

023. **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)

034. **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)

045. **Priority Target Date.** A qualifying entity whose project is on the adopted list will be contacted by the Department and a target date for submission of a completed grant application will be established. (3-30-01)

056. **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. A qualifying entity that is bypassed will be notified in writing of the reasons for being bypassed. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

030. PROJECT FUNDING.

Grant funds awarded under this program will be used entirely to prepare an engineering report which identifies the most cost effective, environmentally sound drinking water system alternative to achieve or maintain compliance with

the Idaho Rules for Public Drinking Water Systems, 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. (3-30-01)

01. Engineering Report. (3-30-01)

a. Step 1. The engineering report will be prepared in accordance with Chapter 5 of the Handbook and certified by a registered professional engineer licensed in the state of Idaho. The engineering report will include, as a minimum, the following: ~~(3-30-01)~~(_____)

- i. Description of existing conditions for the proposed project area; (3-30-01)
- ii. Description of future conditions for the proposed project area; (3-30-01)
- iii. Development and initial screening of alternatives; (3-30-01)
- iv. Final screening of principal alternatives and plan adoption; (3-30-01)
- v. Selected plan description and implementation arrangements; (3-30-01)
- vi. Relevant engineering data supporting the final alternative; and (3-30-01)
- vii. Environmental information document (EID) as described in Section 040. (3-30-01)

b. The engineering report must be reviewed and approved by the Department. (3-30-01)

c. The planning period shall be twenty (20) years for all facilities except distribution and transmission systems may be forty (40) years. (3-30-01)

d. The most cost effective environmentally sound alternative may be selected based in part on public comments received from at least one (1) public hearing attended by intended users within the jurisdiction of the grantee conducted in accordance with state law. (3-30-01)

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)

~~**03. Eligible Project Costs.** Costs eligible for funding shall be determined from the scope of the project and may include, but are not limited to: (3-30-01)~~

~~**a.** Costs of salaries, benefits, and expendable material the qualified entity incurs in the project except ordinary expenses of local government such as salaries and expenses of a mayor; city council members; board; or a city, district or board attorney; (3-30-01)~~

~~**b.** Professional and consulting services utilizing any type of contract except cost plus percentage of construction; (3-30-01)~~

~~**c.** Engineering 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 and environmental review report; (3-30-01)~~

~~**d.** Financial, technical and management capability analysis; (3-30-01)~~

~~**e.** Public participation for alternative selection; (3-30-01)~~

~~**f.** Certain direct and other costs as determined eligible by the Department; and (3-30-01)~~

~~**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.~~ (3-30-01)

~~**04. Ineligible Costs.** Costs which are ineligible for funding for the planning of the drinking water facilities include but are not limited to:~~ (3-30-01)

- ~~**a.** Basin or area wide planning not directly related to the project;~~ (3-30-01)
- ~~**b.** Personal injury compensation or damages arising out of the project;~~ (3-30-01)
- ~~**c.** Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws;~~ (3-30-01)
- ~~**d.** Costs outside the scope of the approved project;~~ (3-30-01)
- ~~**e.** Ordinary operating expenses of local government, such as salaries and expenses of a mayor, city council members, or city attorney;~~ (3-30-01)
- ~~**f.** Preparation of a grant application;~~ (3-30-01)
- ~~**g.** All costs related to assessment, defense and settlement of disputes;~~ (3-30-01)
- ~~**h.** Costs of supplying required permits or waivers;~~ (3-30-01)
- ~~**i.** Costs incurred prior to award of the grant unless specifically approved in writing as eligible pre-award costs by the Department;~~ (3-30-01)
- ~~**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~~ (3-30-01)
- ~~**k.** Land acquisition costs and associated costs other than those listed as eligible in Subsection 030.02.g.~~ (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. ()

031.2. 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 ~~approved or approvable by the Department,~~ as applicable: (3-30-01)()

a. An authorizing resolution passed by a majority of the governing body authorizing an elected official or ~~chief financial~~ officer of the qualifying entity to commit funding; and (3-30-01)()

b. Contracts for engineering services, including justification for the firm selected 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 032; and (3-30-01)()

c. ~~A certification of professional liability indemnification for a total aggregate of one hundred thousand dollars (\$100,000) or twice the amount of the engineering firm's fee, whichever is greater, which covers all~~

~~such services rendered for all project steps whether or not such services or steps are state funded~~ plan of study describing the work tasks to be performed in the engineering report; and (3-30-01)(____)

d. Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum: (____)

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

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

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

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 (____)

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 032; and (____)

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 67-2320, 50-341 and 42-3212, Idaho Code; and (____)

dg. A statement regarding how the non-grant portion of the project will be funded; and (3-30-01)(____)

eh. 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 ~~completeness in accordance with~~ whether they contain all of the information required by Subsections ~~031.02 and 031.04.~~ (3-30-01)(____)

04. Basis For Determining Completeness Of Applications. ~~The evaluation by the Department for the approval of grant applications will include, but not be limited to, consideration of the following items:~~ (3-30-01)

a. ~~An authorizing resolution passed by a majority of the governing body authorizing an elected official or chief financial officer of the qualifying entity to commit funding.~~ (3-30-01)

b. ~~Adequate justification for selected engineering services. An engineer selected by the applicant must as a minimum:~~ (3-30-01)

i. ~~Be procured through the selection guidelines and procedures prescribed under Idaho law; and~~ (3-30-01)

ii. ~~Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; and~~ (3-30-01)

iii. ~~Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and~~ (3-30-01)

iv. ~~Be covered by professional liability indemnification 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. (3-30-01)~~

~~e. An incorporated nonprofit applicant must show by its Articles of Incorporation and/or Bylaws that it is nonprofit and incorporated according to Chapter 3, Title 30, Idaho Code. (3-30-01)~~

~~d. Demonstration of the financial capability to fund the non-grant portion of the project. (3-30-01)~~

~~054. Notification Regarding Incompleteness Of Application. Written notification ~~regarding whether the application is complete, and if it an application is incomplete, including an explanation of missing documentation, will be sent to the applicant. The applicant may provide the missing documentation. (3-30-01)(~~_____)~~

~~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. (~~_____)

033. 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. (_____)

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

a. Necessary for planning drinking water treatment facilities; (_____)

b. Reasonable; and (_____)

c. Costs that are not ineligible as described in Subsection 032.06. (_____)

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. (_____)

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 Section 67-2320, Idaho Code. (_____)

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

a. Costs of salaries, benefits, and expendable material the qualified entity incurs in the project except ordinary expenses of local government such as salaries and expenses of a mayor; city council members; board; or a city, district or board attorney; (_____)

b. Professional and consulting services utilizing a lump-sum contract, specifying costs of individual tasks. (_____)

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 and environmental review report; (_____)

d. Financial, technical and management capability analysis; (_____)

e. Public participation for alternative selection; (_____)

f. Certain direct and other costs as determined eligible by the Department; and (_____)

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. ()

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

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

b. Personal injury compensation or damages arising out of the project; ()

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

d. Costs outside the scope of the approved project; ()

e. Ordinary operating expenses of local government, such as salaries and expenses of a mayor, city council members, or city attorney; ()

f. Preparation of a grant application; ()

g. All costs related to assessment, defense and settlement of disputes; ()

h. Costs of supplying required permits or waivers; ()

i. Costs incurred prior to award of the grant unless specifically approved in writing as eligible pre-award costs by the Department; ()

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 ()

k. Land acquisition costs and associated costs other than those listed as eligible in Subsection 032.05.g. ()

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. ()

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, such as construction costs. 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. ()

0324. -- 039. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

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, 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 has complied with all agreement conditions and has prudently managed the project. The Director may, as a condition of payment, require that a grantee 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)

04. Estimate Of Reasonable Cost. Each grant project contract will include ~~an estimate of the reasonable~~ 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. (~~3-30-01~~)()

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: and ()

b. Special clauses as determined necessary by the Department for the successful investigation and management of the project: and ()

c. Terms consistent with applicable state and federal laws pertaining to engineering reports: and ()

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 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. ()

(BREAK IN CONTINUITY OF SECTIONS)

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 033. ~~Eligible costs include, but are not limited to, those costs described in Subsection 030.02. The Department shall review the engineering contract submitted with the application to determine eligibility of costs for payment. The Department shall also review other costs, if any, to determine eligibility for payment.~~ (3-30-01)()

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 may be reviewed by the Department. The review may be deferred until the review of the design/construction loan is performed. (3-30-01)

06. Final Payment. The final payment consisting of five percent (5%) of the total state grant will not be made until after final approval of the engineering, completion of the environmental review process, and the project review has been completed or deferred. (3-30-01)

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Bulletin 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 new issue of the state Administrative Bulletin.

IDAPA 07 – DIVISION OF BUILDING SAFETY 1090 E. Watertower St., Meridian, ID 83642

Docket No. **07-0204-0201**, Rules Governing Safety Plumbing Inspections. Replaces outdated Cross Connection Control Manual with most current edition. Comment by: 8/28/02.

Docket No. **07-0206-0201**, Rules Concerning Uniform Plumbing Code. Changes “adoption” to “incorporation by reference”; provides consistency between rules of the Plumbing Bureau and those of the state’s Health Districts and between state statute and the 2000 Uniform Plumbing Code. Comment by: 8/28/02.

IDAPA 09 – DEPARTMENT OF LABOR 317 W. Main St., Boise, ID 83735

Docket No. **09-0106-0201**, Rules of the Appeals Bureau. Conforms to Supreme Court decision recognizing an exception to Department’s postmark rule for timely appeals, which will benefit appellants. Comment by: 8/28/02.

IDAPA 11 – IDAHO STATE POLICE P.O. Box 700, Meridian, ID 83680-0700

Docket No. **11-1102-0201**, Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers. Adds required informational sections to rule. Comment by: 8/28/02.

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE P.O. Box 83720, Boise, ID 83720-0036

Docket No. **16-0305-0202**, Rules Governing Eligibility for Aid to the Aged, Blind and Disabled. Defines an asset transfer for sole benefit; allows a higher income deduction for a Medicaid-eligible veteran in a State or private nursing home; provides that “end of treatment” for a woman eligible for Medicaid through the Breast and Cervical Cancer program is determined by the Division of Medicaid; defines “reasonable and ordinary monthly needs” for evaluating the purchase of an annuity as an asset transfer; establishes when an irrevocable annuity is an asset transfer and when an asset transfer penalty will be imposed; provides that an annuity must be a single premium annuity unless found exempt; repeals an obsolete rule. Comment by: 8/28/02.

16.03.09 - Rules Governing the Medical Assistance Program.

Docket No. **16-0309-0208**. Establishes separate prospective payment rates for medical, mental and dental health care for Federally Qualified Health Centers and for medical and mental health care for Rural Health Clinics; specifies that payment for services conforms to the 2000 Benefit Improvement and Protection Act; changes the reimbursement method from a retrospective to a prospective payment system. Comment by: 8/28/02.

Docket No. **16-0309-0209**. Defines “cancer treatment” and “end of treatment” for women diagnosed with breast or cervical cancer and authorizes the Department to determine when cancer treatment has ended. Comment by: 8/28/02.

16.03.10 - Rules Governing Medicaid Provider Reimbursement.

Docket No. **16-0310-0201**. Revises reimbursement method from a “retrospective” to a “prospective” payment system. Comment by: 8/28/02.

Docket No. **16-0310-0202**. Removes capped rates as of July 1, 2002 and applies existing rate methodology using the prospective payment system; corrects typographical errors. Comment by: 8/28/02.

Docket No. **16-0505-0201**, Rules Governing Fees for Health Operating Permits, Licenses and Inspection Services. Deletes sections relating to the imposition of environmental fees, parcel surveys and sanitary restriction administration, and transfers them to a new DEQ rule (see Docket No. 58-0114-0201). Comment by: 8/28/02.

IDAPA 23 – IDAHO BOARD OF NURSING
P.O. Box 83720, Boise, ID 83720-0061

Docket No. **23-0101-0201**, Rules of the Idaho Board of Nursing. Creates the regulatory framework for issuance, renewal, and reinstatement of emeritus licenses and establishes the fees for issuance, renewal, and reinstatement. Comment by: 8/28/02.

IDAPA 35 – STATE TAX COMMISSION
P.O. Box 36, Boise, ID 83722

35.01.03 - Property Tax Administrative Rules

Docket No. **35-0103-0203. Sets up procedures to be followed when a county falls behind on their 5-year reappraisal plan. Comment by: 8/28/02.

Docket No. **35-0103-0204**. School districts will only be required to subtract a portion of equipment monies to comply with HB 680. Comment by: 8/28/02.

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY
1410 N. Hilton, Boise, ID 83706-1255

Docket No. **58-0101-0201, Rules for the Control of Air Pollution in Idaho. Revises open burning rule to remedy inconsistencies between other local, state, and federal rules, regulations, and laws; clarifies the requirements for the burning of residential solid waste; and adds reference to the adoption of the Smoke Management and Crop Residue Disposal Act. Comment by: 9/11/02.

58.01.02 – Water Quality Standards and Wastewater Treatment Requirements.

Docket No. **58-0102-0201. Clarifies and standardizes the following: defines public wastewater facility to identify facilities and operators affected by this rule; a classification system for operators and wastewater collection systems and wastewater treatment facilities; operator qualifications; certification renewal requirements; ongoing professional growth requirements; re-certification; enforcement provisions for noncompliance; resources needed to implement the new rules; and ongoing stakeholder involvement. Also includes reciprocity criteria, confidentiality language, contracting options, grandparenting rights, a wastewater land application endorsement for operators of wastewater land application systems, and periodic program and rule reviews. Comment by: 9/6/02.

Docket No. **58-0102-0203. Adopts site-specific water quality criteria for portions of the Boise River for copper and lead; provides for developing new water quality criteria or modifying existing water quality criteria through site-specific analyses. Comment by: 9/6/02.

Docket No. **58-0102-0204. Adds new use designations for state waters; distinguishes between water suitable for “primary contact” or “secondary contact” recreation; lists chemical water quality criteria that are currently not listed in the Idaho water quality standards including expressing specified metals criteria as dissolved metals; and adopts low flow provisions. Comment by: 9/6/02.

Docket No. **58-0102-0205. Specifies various methods for evaluating water quality based effluent limits and for identifying procedures for calculating values for effluent concentration, background concentrations of pollutants, and hardness values of the receiving water to determine if and what type of permit limits may be necessary. Comment by: 9/6/02.

Docket No. **58-0105-0201**, Rules and Standards for Hazardous Waste. Updates rules to make them consistent with revisions to the federal RCRA regulations as of 7/1/02; clarifies the definition of “Director”; makes other technical and grammatical corrections. Comment by: 8/28/02.

Docket No. **58-0114-0201**, Rules Governing Fees for Environmental Operating Permits, Licenses and Inspection Services. Removes and transfers sections from IDAPA 16.05.05 relating to the imposition of environmental fees, parcel surveys and sanitary restriction administration to this new chapter; allows local government and the health

districts to adopt equivalent or more stringent fees to cover the services provided. Comment by: 8/28/02.

Docket No. **58-0104-0201**, Rules for the Administration of Wastewater Treatment Facility Grants;

Docket No. **58-0112-0201**, Rules for Administration of Water Pollution Control Loans;

Docket No. **58-0120-0201**, Rule for Administration of Drinking Water Loan Account; and

Docket No. **58-0122-0201**, Rules for Administration of Planning Grants for Public Drinking Water Facilities.

These four dockets address review and approval of contracts for consulting engineers and for determining eligible costs for grants and loans; state the types of contracts allowed, what contract costs and other costs will be eligible, and how the contracts and costs are reviewed; other changes make rules consistent with other DEQ loan and grant rules. Comment by: 9/6/02.

****PUBLIC HEARINGS HAVE BEEN SCHEDULED FOR THESE DOCKETS.**

Please refer to the Idaho Administrative Bulletin, **August 7, 2002, Volume 02-8** for notices and text of all rulemakings, public hearing schedules, Governor's executive orders, and agency contact names.

Citizens of your county can view all issues of the Idaho Administrative Bulletin at the county law libraries.

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The Idaho Administrative Bulletin and Administrative Code are available on-line at: <http://www2.state.id.us/adm/adminrules/>

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

**This index tracks the history of all agency rulemakings from 1993 to the present.
It includes all rulemaking activities on each chapter of rules
and includes negotiated, temporary, proposed, pending
and final rules, public hearing notices
and vacated rulemaking notices.**

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