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**IDAPA 26
TITLE 01
Chapter 32**

**26.01.32 - RULES GOVERNING THE ADMINISTRATION
OF THE WATERWAYS IMPROVEMENT FUND**

000. LEGAL AUTHORITY.

These Idaho Parks and Recreation Board is authorized under Section 67-4223(a), Idaho Code, to adopt, amend, or rescind rules as may be necessary for proper administration of the department and its programs. (1-1-94)

001. TITLE AND SCOPE.

01. Title. The title of this chapter shall be cited in full as Idaho Department of Parks and Recreation Rules, IDAPA 26, Title 01, Chapter 31, "Rules Governing the Administration of the Waterways Improvement Fund." (1-1-94)

02. Scope. This chapter establishes procedures for the administration of the Waterways Improvement Fund, including requirements for project application, eligibility, review, award and management. (1-1-94)

002. WRITTEN INTERPRETATIONS.

This agency has written interpretations of these rules, in the form of explanatory comments accompanying the notice of proposed rule-making that originally proposed the rules, or documentation of compliance with IDAPA 26.01.01.150, "Rules of Administrative Procedure of the Idaho Park And Recreation Board." In addition, participation manuals prepared and maintained by the department provide additional interpretation of these rules. These documents are available for public inspection and copying in the central office of the agency. (1-1-94)

003. APPEALS.

Any applicant who may be adversely affected by a final decision, ruling, or direction of the director or board may appeal such final decision, ruling, or direction as outlined under IDAPA 26.01.01.250, "Rules of Administrative Procedure of the Idaho Park and Recreation Board." (1-1-94)

004. PUBLIC RECORDS.

The records relative to any grant project are public records, and are to be controlled as outlined under IDAPA 26.01.01.300, "Rules of Administrative Procedure of the Idaho Park and Recreation Board." (7-1-93)

005. (RESERVED).

006. CITATION.

The official citation of this chapter is IDAPA 26.01.32000. et seq. For example, the citation for this section is IDAPA 26.01.32.006. (1-1-94)

007. -- 009. (RESERVED).

010. DEFINITIONS.

As used herein are defined as follows:

01. Applicant. A public agency that identifies a need for a project, supplies initial support data, and applies for a grant through the Waterways Improvement fund grant program. (1-1-94)

02. Board. The Idaho Park and Recreation Board, a bipartisan, six (6) member board, appointed by the governor. (7-1-93)

03. Boating Program Supervisor. The staff administrator of the Waterways Improvement Fund. (1-1-94)

04. Department. The Idaho Department of Parks and Recreation. (1-1-94)

05. Director. The director and chief administrator of the department, or the designee of the director. (1-1-94)

06. Grant. A grant from the Waterways Improvement Fund. (1-1-94)
07. Participation Manual. A compilation of state procedures, rules, and instructions that have been assembled in manual form and which have been approved by the director or the board for dissemination to the public and public agencies that may wish to participate in the grant program. (7-1-93)
08. Project. Any effort in compliance with Title 57, Chapter 15, Idaho Code, as amended, and applicable rules and policies governing the use of the Waterways Improvement Fund. (1-1-94)
09. Public Agency. A state, federal or local government or a subdivision thereof, or an Indian Tribe. (1-1-94)
10. Staff. Any individual employed by the department. (7-1-93)
11. Waterways Committee. That committee created by Section 67-7012, Idaho Code. (1-1-94)
12. Waterways Improvement Fund. That fund created by Idaho Code Section 57-1501, Idaho Code. These moneys may be used for the protection and promotion of safety, waterways improvements, creation and improvement of parking areas for boating purposes, making and improving boat ramps and moorings, marking of waterways, search and rescue, and all things incident to such purposes including the purchase of real and personal property. (1-1-94)

011. -- 049. (RESERVED).

050. ELIGIBLE APPLICANTS FOR WATERWAYS IMPROVEMENT FUND GRANT MONEYS.

Public agencies, as described in Subsection 010.09 of this chapter are eligible to apply for and receive Waterways Improvement Fund grants, provided that all applications for projects involving the construction of improvements shall be approved by the county waterways committee. (1-1-94)

051. -- 099. (RESERVED).

100. APPLICATION PROCEDURES.

All forms and documentation required by these rules and the department shall be completed to the satisfaction of the department and shall be submitted according to these rules in order for a grant application to be considered for approval. General procedures to follow are: (1-1-94)

01. Forms. To be considered for a grant, an applicant must file with the department a completed grant application form and other documentation specified in the participation manual, all of which shall have original signatures. An applicant must further file with the department a completed grant agreement form, with original signatures, within thirty (30) calendar days of written notification of grant approval. The application and grant agreement forms shall be provided to the applicant by the department. (1-1-94)

02. Review. All applications, grant agreement forms and other documentation submitted to the department shall be referred to the boating program supervisor for review and recommendations. The boating program supervisor or staff shall review the application materials to ensure that there is adequate data available to present the project to the director or the board. When possible, the boating program supervisor or staff may perform an on-site inspection for preliminary fact finding and to evaluate support information. At the discretion of the director, a technical report prepared by a licensed, certified engineer may be required prior to funding consideration by the department or the board. This report shall be paid for by the applicant. (1-1-94)

03. Priority Rating of Project. The department will evaluate the project according to the priority rating system described herein; and the boating program supervisor shall submit the project to the director or the board for further recommendations, or approval (according to Section 350 of this chapter), or return the project to the applicant for more data, or notify the applicant in writing if the project is rejected. (1-1-94)

101. -- 149. (RESERVED).

150. APPLICANT OBLIGATIONS.

01. Project Completion. Except as provided herein, upon department approval of a grant application, and acceptance of the grant by the applicant, the applicant shall be obligated to complete all elements of a project as described on the approved grant application and grant agreement forms. (7-1-93)

02. Project Management. Except as provided herein, the applicant shall be obligated to manage the project and any adjacent waterway as specified in the grant application and grant agreement forms. (7-1-93)

03. Grant Modification. Only for good cause and detailed justification shown in writing, and upon approval by the department, may the terms and obligations of the grant application and agreement forms be modified. (7-1-93)

04. Failure to Comply. Failure by the applicant to comply with grant terms and obligations shall result in the immediate revocation of an approved grant or shall constitute a conversion pursuant to Section 550 of this chapter, as applicable. (1-1-94)

151. -- 199. (RESERVED).

200. PROJECT TIME PERIOD.

01. Grant Cycle. Applications for projects shall be considered at least once per state fiscal year. (1-1-94)

02. Application Deadlines. The department shall determine the deadline for submittal of applications and grant agreement forms for the upcoming state fiscal year. The department shall notify all known applicants of the deadline date at least forty-five (45) calendar days prior to the deadline date. (1-1-94)

03. Expenditure of Grant Funds. Except as herein provided, after a project is approved and grant funds are obligated, the applicant shall have only the designated state fiscal year in which to expend the funds. If the grant funds are not expended within the designated state fiscal year, then the grant shall be revoked by the department unless specifically granted an extension of time by the director, through either the department's miscellaneous encumbrance requests procedure or an initial approval of a multi-year (maximum of two (2) years) project. (1-1-94)

04. Cost Increases. For projects approved by the director or the board, if upon completion the actual project costs are higher than the anticipated costs, the applicant may request in writing a supplemental cost increase grant. Such requests shall be considered for approval by the department, as necessary, on a case by case basis throughout the year. (1-1-94)

05. Additional Grant Cycles. During the state fiscal year, if it becomes apparent that a substantial amount of grant funds is not obligated, the department may offer a second application period to all applicants. Such second application period shall include and abide by all laws and rules applicable to this grant, except that the time frame of the second application period shall be determined by the department. (1-1-94)

201. -- 249. (RESERVED).

250. ELIGIBILITY AND PRIORITY RATING OF PROJECTS.

01. Eligibility Determinations. Eligibility of all projects shall be determined by the boating program supervisor or staff, considering Chapter 15, Title 57, Idaho Code, other applicable state laws and rules, and departmental rules. Except as herein provided, for a project to be eligible, it shall be for the primary benefit of boaters engaging in boating activities. Should boaters be less than the primary beneficiaries of a project, then the project shall be prorated to determine the amount of use that the project will benefit boaters engaging in boating activities. The prorated amount only shall then be eligible for grant funds or other dedicated boating funds used as a matching share. (1-1-94)

02. Privately Owned or Operated Projects. Except as herein provided, projects to be privately owned or

operated are ineligible for grant funding. However, due to the unique potential for environmental pollution, where boat sewage pumpout facilities are needed on privately owned or operated locations, private providers may receive grant funding by having a public agency apply for a grant in their behalf and by contracting with the public agency to be able to develop and operate such projects according to the participation manual. (1-1-94)

03. Pre-Approval Activities. A project, or any part thereof, either paid for, or completed by the applicant prior to approval by the department shall be ineligible for grant funding. However, costs for design or engineering incurred within one (1) year prior to project approval can be considered as a matching share provided they are undertaken by qualified professionals, and they are listed on the application and accepted as part of the project. Total design or engineering costs shall not exceed fifteen percent (15%) of the claimed total project cost. (1-1-94)

04. Priority Rating Criteria. Project priorities will be established by the department rating each eligible project using the criteria outlined in the priority rating system forms IDPR/SWI 50.3 and 50.6. The criteria may include the following: (1-1-94)

- a. Conformance with legal requirements; (7-1-93)
- b. Compliance with program intent; (7-1-93)
- c. Fulfillment of the needs and demands of Idaho's boaters; (7-1-93)
- d. Appropriateness of the size, design or location of the proposed project; (7-1-93)
- e. Efficiency of the cost and timing of the proposed project; (7-1-93)
- f. Amount of or potential for boating activity or accidents within the county where the project is to take place; (7-1-93)
- g. The county's level of participation in the boating law enforcement program as described in IDAPA 26.01.30.400, "Idaho Safe Boating Rules;" (7-1-93)
- h. The opportunity given to the public to comment on the project: (1-1-94)
- i. Whether the project best benefits those users which generate the revenues in the Waterways Improvement Fund; (1-1-94)
- j. The applicant's level of matching share provided for the project; (1-1-94)
- k. Immediate need for the project relative to water levels; and (1-1-94)
- l. History of prior grant project management by the applicant. (7-1-93)

05. Point Breakdown. A more specific discussion of criteria and point breakdowns is included in the project priority rating forms, IDPR/SWI 50.3 and 50.6, available from the department. (7-1-93)

251. -- 299. (RESERVED).

300. EMERGENCY RELIEF.

The department may retain available grant moneys for the exclusive purpose of providing boating facilities or services due to an emergency need, as determined by the director or the board. (1-1-94)

01. When to Apply. An applicant may apply for emergency relief moneys on an as needed basis. (1-1-94)

02. How to Apply. Application may be made by providing written justification and proof of emergency to the department. (1-1-94)

03. Approval. The department shall consider the approval of such applications on a case by case basis. Should there be competition for these moneys beyond their limit, then the department shall use the priority rating system established in Subsection 250.04 of this chapter. (1-1-94)

301. -- 349. (RESERVED).

350. AUTHORITY FOR FUNDING APPROVAL.

01. Project Amount. Projects less than ten thousand dollars (\$10,000) may be approved by the director. Projects of ten thousand dollars (\$10,000) or more shall be presented to the board for approval. (1-1-94)

02. Minor Cost Increases. Cost increases of fifteen percent (15%) or less may be approved by the director, except such increases that bring the initial project cost from less than ten thousand dollars (\$10,000) to ten thousand dollars (\$10,000) or more. Cost increases of that bring the initial project cost from under ten thousand dollars (\$10,000) to ten thousand dollars (\$10,000) or more will be presented to the board for approval. (1-1-94)

03. Major Cost Increases. Cost increases of more than fifteen percent (15%) or changes in project elements which increase the total project cost by more than fifteen percent (15%) shall require that the project be presented as a totally new proposal and compete through the general application process described herein. Should the revised project not receive approval for cost increase grant funding, the applicant shall be required to complete the scope of the project as originally proposed at its expense or return any project grant funds paid to it so that the project may be cancelled and the grant funds reallocated. (1-1-94)

04. Development Costs. For cost increase requests on development projects to be considered, the following shall be met: (1-1-94)

a. The increase, or any portion thereof, is to be used only for costs incurred on elements specified in the project agreement; and (7-1-93)

b. The applicant has initiated implementation of the project in a timely manner and has had little control over the condition causing the cost overrun. (7-1-93)

05. Acquisition Projects. Acquisition project cost increases shall meet the following conditions: (1-1-94)

a. The increased market value is supported by an acceptable appraisal; and (7-1-93)

b. The applicant has diligently pursued the acquisition. (7-1-93)

06. Basis For Cost Increase. Cost increase requests for development projects are based on the total approved costs. Cost increase requests for acquisition projects are based on a parcel by parcel determination. (7-1-93)

07. Grant Fund Limit. The total sum of grant funds approved to be used in any one county may not exceed thirty percent (30%) of the total grant funds approved to be used statewide in any state fiscal year. (7-1-93)

351. -- 399. (RESERVED).

400. DISBURSEMENT OF FUNDS.

01. Reimbursement. Except as herein provided, the director shall authorize disbursement of funds allocated to a project by reimbursement only, after the applicant has acquired the project items and has presented a copy of the billing or other required documentation to the department in order to show satisfactory evidence of compliance with the project application and grant agreement form. (1-1-94)

02. Partial Payments. Partial payments may be made during the course of a project on a reimbursement basis upon presentation of billings or other required documentation showing satisfactory evidence of partial

compliance with the application and grant agreement form. (7-1-93)

03. Advances. A disbursement of funds may be made on an advance basis only if substantiating evidence is provided in writing to the department showing that an emergency exists and if approved by the director. Upon completion of the expenditure of the grant funds as herein specified, if it is discovered that the actual costs were less than the grant amount, then the difference shall be immediately returned to the department and deposited in the Waterways Improvement Fund. (1-1-94)

04. Documentation. The applicant must submit copies of all vouchers, cancelled checks, invoices, and other required billing forms within forty-five (45) calendar days of the actual expenditure of the waterways improvement fund grant moneys. (1-1-94)

401. -- 449. (RESERVED).

450. ACCOUNTING FOR PROJECT COSTS.

All costs incurred on a project shall have prior approval and shall be accountable before and after payment is made. All claims against the Waterways Improvement Fund shall be examined, audited, and allowed in the same manner now or hereafter provided by law for claims against the state. (1-1-94)

451. -- 499. (RESERVED).

500. MAINTENANCE STANDARDS.

Real property, facilities and equipment purchased with Waterways Improvement Fund moneys shall be maintained and operated in the condition equivalent to that existing when the item was funded by the Waterways Improvement Fund, normal wear and tear excepted. Maintenance standards shall be adopted by the applicant during the application phase of the grant. (1-1-94)

501. -- 549. (RESERVED).

550. PROJECT CONVERSION.

No projects funded by the Waterways Improvement Fund shall, without the prior written approval of the department, be converted to uses other than for the authorized purpose of the original grant. The department shall approve a conversion only when the Waterways Improvement Fund moneys spent on the project can be returned to the Waterways Improvement Fund as described herein, or the applicant can provide an immediate substitution of other projects of at least equal current fair market value and of reasonably equivalent usefulness and location. The department has authority to disapprove conversion requests or to reject proposed project substitutions. (1-1-94)

01. Creating a Conversion. A conversion may involve any of the following situations: (1-1-94)

a. Project interests are conveyed for uses other than the authorized purpose of the original grant. (7-1-93)

b. Uses other than the authorized purpose of the original grant are made of the project, the project area, or a portion thereof. (7-1-93)

c. Non-eligible facilities are developed within the project area. (7-1-93)

d. Use related to the authorized purpose of the original grant is terminated. (7-1-93)

02. Resolving a Conversion. If there is a project conversion, the applicant is responsible for either: (7-1-93)

a. Immediately repaying the Waterways Improvement Fund an amount determined by the department based on the department's percentage of participation in the cost of the original project and investment amortization through use, project life expectancy, and depreciation or appreciation of the property, facilities or equipment by a department approved appraisal; or (1-1-94)

b. Making an immediate substitution of reasonably equivalent usefulness and location as that being converted. It shall, however, be administered by the same political jurisdiction as the converted project. (1-1-94)

03. Compliance With Laws. All conversions shall abide by all pertinent state and federal laws.(1-1-94)

04. Alternatives. The department shall consider a conversion request only if all practical alternatives to the conversion have been evaluated and rejected on a sound basis. (1-1-94)

551. -- 599. (RESERVED).

600. RESPONSIBILITY FOR EQUIPMENT PURCHASED WITH WATERWAYS IMPROVEMENT FUND MONEYS.

01. Totally Grant Funded. Single units of equipment, with a current fair market value of one thousand dollars (\$1,000) or more as determined by the department, which are purchased wholly with grant funds administered by the department, including Boat Safety Account grant funds, shall remain the property of the department to be leased to the applicant through a lease contract. If the equipment is being under utilized, misused, or used for purposes other than the original grant purposes it may be reclaimed by the department at the expiration or cancellation of the lease herein described. Determination shall be made on reclaiming the equipment by the director or board with advice of the boating program supervisor. (1-1-94)

a. Equipment which is the property of the department shall be leased to the project applicant for the length of time determined by the director or board as necessary to accomplish the project under the parameters of project viability, equipment usability and user needs. Either party may cancel the lease. The canceling party shall provide the other party with at least thirty (30) days written notice. (1-1-94)

b. Equipment lease price or consideration shall be negotiated and determined prior to project approval. (1-1-94)

c. Project applicants shall bear the full responsibility for damage to or destruction of project facilities and equipment through its own means or applicable insurance. (1-1-94)

02. Partially Grant Funded. Single units of equipment, with a current fair market value of one thousand dollars (\$1,000) or more as determined by the department, which are purchased only partially (less than one hundred percent (100%)) with grant funds administered by the department, including Boat Safety Account grant funds, shall become the property of the applicant. Such units of equipment shall be subject to Section 550 of this chapter. (7-1-93)

03. Minor Purchases. Single units of equipment, with a current fair market value of less than one thousand dollars (\$1,000) as determined by the department, which are purchased either partially or wholly with grant funds administered by the department, including Boat Safety Account grant funds, shall become the property of the applicant. Such units of equipment shall be exempt from Section 550 of this chapter. (7-1-93)

601. -- 649. (RESERVED).

650. REAL PROPERTY.

01. Appraisals. A real estate appraisal is required for all real property to be acquired with grant funds. All appraisal shall be prepared according to the participation manual. The appraisal shall be prepared and paid for by the applicant. (1-1-94)

02. Appraisal Review. The department shall review appraisals as necessary. Any appraisal report that does not meet the basic content requirements, or use correct analysis procedures shall be corrected to the satisfaction of the department. All costs shall be paid by the applicant. (1-1-94)

03. Negotiated Price. An approved appraisal is an acceptable estimate of property value. The negotiation between a willing seller and a willing buyer may set a price that is higher than the appraisal, and this

market place value can be considered along with the appraised value in establishing the reasonable limits of assistance. If the applicant believes that the negotiated price is a better indication of market value, yet it is higher than the appraised value, a detailed and well documented statement of this difference shall be submitted, together with a formal request for a cost increase. (Section 350 of this chapter.) (1-1-94)

04. Adequate Title. The applicant shall have title to or adequate control and tenure of the real property (land, land improvements, structures and appurtenances thereto) to be developed, as described in the participation manual. The applicant shall list all outstanding rights or interests held by others in the property to be developed. In the event that the real property becomes unusable for its intended purposes or if such use ceases, the applicant assumes the responsibility for having to convert the project, as described in Section 550 of this chapter, at the sole cost of the applicant. (1-1-94)

05. Limitations on Use. Property rights obtained with Waterways Improvement Fund grant moneys shall be free of all reservations or encumbrances which would limit the use of the site disproportionate to the public benefit. (1-1-94)

651. -- 699. (RESERVED).

700. PURCHASE AND BIDDING REQUIREMENTS.

All local, state and federal laws pertaining to the expenditure of Waterways Improvement Fund grant moneys shall be followed by the applicant. (1-1-94)

701. -- 749. (RESERVED).

750. PERMITS.

All local, state and federal permits required for the construction or development of projects shall be legally acquired by the applicant before the relevant Waterways Improvement Fund grant moneys can be expended. (1-1-94)

751. -- 799. (RESERVED).

800. PROJECT LIABILITY.

Project applicants, through a signed agreement, shall assume all project liability and hold the department harmless. (1-1-94)

801. -- 849. (RESERVED).

850. PUBLIC USE/NONDISCRIMINATION.

Physical facilities and real property purchased with Waterways Improvement Fund grant moneys shall be available for public use, regardless of race, color, religion, national origin, gender, age, or disability. No fees for the use of such facilities shall be charged unless approved by the board. Facilities constructed with grant funds shall meet the requirements as set by the requirements as set by the Americans with Disabilities Act. (1-1-94)

851. -- 899. (RESERVED).

900. ACKNOWLEDGMENT OF WATERWAYS IMPROVEMENT FUND ASSISTANCE.

Suitable permanent public acknowledgment of Waterways Improvement Fund assistance at project sites involving real property or facilities, and on vessels and motor vehicles, is required by the department. Such acknowledgment shall be made immediately at the completion of the project; and it shall be located on or near the affected site and on equipment, to the extent feasible, so as to indicate that the action taken is a product of funding made available through the Waterways Improvement Fund. Such acknowledgment may indicate the percentage and dollar amounts financed by state and non-state funds and that the source of the state funding includes monies derived from Idaho boat gas tax receipts. Such acknowledgment shall represent an appropriate state-local-federal partnership role in creating new high quality recreational boating areas, facilities and equipment. The acknowledgment of Waterways Improvement Fund assistance shall be checked during compliance inspections. (1-1-94)

901. -- 999. (RESERVED).