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**IDAPA 02
TITLE 05
CHAPTER 03**

**02.05.03 - RULES FOR ADMINISTRATION OF AGRICULTURAL WATER
QUALITY COST-SHARE PROGRAM FOR IDAHO**

000. LEGAL AUTHORITY.

This chapter is being adopted under the legal authority of Title 22, Chapter 27, Idaho Code. (4-5-00)

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.05.03, "Rules for Administration of Agricultural Water Quality Cost-Share Program for Idaho". (4-5-00)

02. Scope. These rules shall govern the procedures and requirements for establishing, implementing, and administering a state cost-share program for providing financial assistance to eligible applicants to reduce or control agricultural nonpoint source water pollution. (4-5-00)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (4-5-00)

003. ADMINISTRATIVE APPEALS.

Hearing and appeal rights are set forth in Title 67, Chapter 52, Idaho Code. (4-5-00)

004. PUBLIC RECORDS ACT.

The records associated with this chapter are subject to Title 9, Chapter 3, Idaho Code, to the extent these documents are not confidential pursuant to Section 63-3076 or 9-340, Idaho Code. (4-5-00)

005. POLICY.

It is the policy of the Idaho Soil Conservation Commission and Idaho State Department of Agriculture to jointly administer the Agricultural Water Quality Cost-Share Program for the purpose of conserving and enhancing the quality and value of the water resources of the State of Idaho by financing agricultural and grazing conservation improvements for eligible applicants. It is also the policy and intent of the Idaho Soil Conservation Commission to work through soil conservation districts in providing local program delivery. The Idaho Soil Conservation Commission will develop an application schedule and assign a priority ranking for cost-share contracts and projects that will most significantly improve the quality and value of the water resources of the State. (4-5-00)

006. DEFINITIONS.

For the purpose of this chapter the following terms and phrases are used as defined herein: (4-5-00)

01. Administrative Costs. Fund transfer costs, including allowable costs incurred in contract administration. Administrative costs also include direct and indirect personnel, travel, equipment, material, supply costs, and education outreach activities. (4-5-00)

02. Administrator. Administrator of the Idaho Soil Conservation Commission. (4-5-00)

03. Agriculture Project Priority List. A prioritized ranking by the Idaho Soil Conservation Commission of approved individual and project sponsored applications that support or address water quality or other environmental concerns and used as a guide for cost-share funding. (4-5-00)

04. Application Cycle. The period and schedule established by the Idaho Soil Conservation Commission for receiving and processing applications for water quality plans or project plans of operation. (4-5-00)

05. Average Cost. The reasonable cost of construction, installation, implementation, application and maintenance of a Best Management Practice (BMP) based on actual costs and current cost estimates. (4-5-00)

06. Basin Advisory Group (BAG). A regional water quality advisory group as defined in Section 39-

3613, Idaho Code. (4-5-00)

07. Best Management Practices (BMP). A component practice or combination of component practices identified in the Idaho Agricultural Pollution Abatement Plan which is determined to be the most effective, practicable means of preventing or reducing the amount of pollution generated by nonpoint sources. (4-5-00)

08. BMP Cost. The amount actually paid or engaged to be paid by the participant for equipment use, materials, and services for installing a BMP not to exceed actual cost, the average cost or specified maximum cost or flat rate as determined by the commission and the conservation district. If the participant uses personal resources, the BMP cost includes the value of personal labor, equipment, and materials calculated at usual, reasonable, and customary rates. Loss of income cannot be considered a BMP cost. (4-5-00)

09. Commission. The Idaho Soil Conservation Commission as defined in Section 22-2718, Idaho Code. (4-5-00)

10. Conservation District. A soil (and water) conservation district as defined in Section 22-2717, Idaho Code. (4-5-00)

11. Cost-Share Rate. The percentage of the BMP cost paid to the participant by the commission or project sponsor. The commission shall establish the cost-share rate. The cost-share rate cannot exceed ninety percent (90%) of the BMP cost. (4-5-00)

12. Critical Areas or Sources. Areas identified by the commission based on recommendations from local entities producing significant nonpoint source pollution impacts or areas deemed necessary for protection or improvement for the attainment or support of beneficial uses. (4-5-00)

13. Department. The Idaho State Department of Agriculture as defined in Section 101, Title 22, Idaho Code. (4-5-00)

14. Director. The Director of the Idaho State Department of Agriculture. (4-5-00)

15. Eligible Applicant. Individual agricultural owner, operator, partnership, corporation, conservation district, irrigation district, canal company or other agricultural or grazing interests. (4-5-00)

16. Eligible Project Areas. Agricultural water quality project areas which include water bodies identified in the following documents which are hereby incorporated by reference: Idaho's 303(d) list, 33 U.S.C. Sections 1251 et seq. (1997), ground water quality protection areas identified in the Agricultural Ground Water Quality Protection Program for Idaho, Section 39-102 et seq., Idaho Code, water bodies identified in the Idaho Agricultural Pollution Abatement Plan pursuant to Section 208 of PL 92-500 (the 1972 Clean Water Act), water bodies containing habitat for species listed as threatened or endangered under the Endangered Species Act, 16 U.S.C. Sections 1531 et seq. (1988), and water bodies of special concern. Copies of the referenced documents are available at the office of the Idaho State Department of Agriculture/ Soil Conservation Commission, 2270 Old Penitentiary Road, P.O. Box 790, Boise, Idaho 83701-0790, and the Law Library, Supreme Court Building, 451 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0051. (4-5-00)

17. Flat Rate. A method of cost-share based on a dollar-per-unit basis, used where it is difficult to estimate actual cost. (4-5-00)

18. Fund Transfer Cost. The cost of transferring funds from one entity to another. (4-5-00)

19. Idaho Agricultural Pollution Abatement Plan. A plan developed by the commission for the State of Idaho pursuant to Section 208 of PL 92-500 (the 1972 Clean Water Act) to manage agricultural nonpoint source pollution. (4-5-00)

20. Identifiable Units. Units of an eligible BMP that, when constructed, installed, implemented or applied, can be clearly identified as a segment in the sequence of implementing the BMP. (4-5-00)

- 21. Maximum Cost.** The maximum amount approved by the Commission for BMP costs, on which cost-share rates and matching funds will be calculated. (4-5-00)
- 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. (4-5-00)
- 23. Participant.** Individual agricultural owner, operator, partnership, private corporation, conservation district, irrigation district, canal company, or other agricultural or grazing interest approved by the commission for cost-sharing in an eligible project area; or an individual agriculture owner or operator, partnership, or private corporation approved by a project sponsor in an eligible project area. (4-5-00)
- 24. Participant Matching Funds.** That portion of the costs provided by the participant, including in-kind services and/or out-of-pocket expenses for BMP implementation for both cost-shared and non cost-shared BMPs. Matching funds shall not include technical and financial assistance from State sources. (4-5-00)
- 25. Priority Ranking.** A process used by the commission to establish funding priorities. (4-5-00)
- 26. Program.** The Agricultural Water Quality Cost-Share Program for Idaho developed in accordance with Sections 22-2728(a)(4) and 22-2728(b), Idaho Code. (4-5-00)
- 27. Project.** The total system of planning, including water quality assessment, BMP cost-sharing, technical assistance, and administrative activities as approved and authorized by the Commission in an eligible project area. (4-5-00)
- 28. Project Agreement.** The legal document executed by the Commission and a project sponsor identifying terms and conditions by which the project sponsor will conduct an agricultural water quality project. (4-5-00)
- 29. Project Costs.** Those costs associated with planning, water quality assessment, BMP cost-sharing, technical assistance, and administrative activities for participant cost-sharing, or those costs associated with a water quality project approved by the commission in an eligible project area. (4-5-00)
- 30. Project Life Span.** The duration of the project as specified in the project plan of operation and the project agreement. The project will emphasize short-term one to five (1-5) year implementation contract periods, with a maximum of ten (10) years. (4-5-00)
- 31. Project Matching Funds.** Required project matching funds may also include the cost of technical and financial assistance provided by federal agencies and other sources. Matching funds shall not include technical and financial assistance from State sources. (4-5-00)
- 32. Project Plan of Operation.** The document prepared by the project sponsor with concurrence of the commission setting forth the procedure and schedule for carrying out the project. The project plan of operation shall be part of the project agreement. (4-5-00)
- 33. Project Sponsor.** A conservation district, irrigation district, canal company or other agriculture or grazing interest as determined appropriate by the commission that enters into a water quality project agreement with the commission. (4-5-00)
- 34. Technical Assistance Costs.** Those costs incurred in the planning and/or implementation of BMPs, water quality monitoring, and the development and implementation of outreach and education activities for an approved participant's water quality plan or for an approved water quality project. (4-5-00)
- 35. Technical Entity.** The entity(ies) designated by the commission to provide technical assistance and quality control in BMP planning and implementation. (4-5-00)
- 36. Total Maximum Daily Load (TMDL).** The sum of individual point source and non-point source pollutant loads and natural background expressed in mass/time, toxicity, or other appropriate measure. Section 22-

2702(5), Idaho Code. (4-5-00)

37. TMDL Assessment. A written assessment of water quality problems and contributing pollutant sources. The TMDL assessment specifies the amount that a pollutant must be reduced to meet water quality standards, allocates pollutant load reductions among pollutant sources in a watershed and provides the basis for taking actions needed to restore a water body. (4-5-00)

38. TMDL Schedule. The schedule which the state is required to meet in submitting TMDLs to the Environmental Protection Agency (EPA) for approval. (4-5-00)

39. Water Quality Contract. The legal document executed by the commission or the project sponsor identifying terms and conditions between the commission or the project sponsor and an individual cost-share participant. (4-5-00)

40. Water Quality Plan. The plan developed cooperatively by the participant, technical agency and the commission or project sponsor which identifies the critical areas and nonpoint sources of water pollution on the participant's operation and sets forth BMPs that may reduce water pollution from these critical areas and sources. (4-5-00)

41. Watershed Advisory Group (WAG). A local watershed advisory group, as defined in Section 39-3615, Idaho Code. (4-5-00)

007. -- 010. (RESERVED).

011. RESPONSIBILITIES.

- 01. The Commission Shall:** (4-5-00)
- a.** Administer the funds appropriated by the state for the agricultural water quality cost-share program; (4-5-00)
 - b.** Assist conservation districts with local program delivery; (4-5-00)
 - c.** Provide technical, financial, administrative, and educational outreach assistance to participants for approved water quality contracts, as funds are available; (4-5-00)
 - d.** Establish and maintain an agricultural water quality project priority list; (4-5-00)
 - e.** Develop an application process schedule and assign a priority ranking for water quality contracts and water quality projects; (4-5-00)
 - f.** Assist in determining cost-share rates for BMPs in consultation with project sponsors, appropriate agencies, and potential recipients; (4-5-00)
 - g.** Establish methods for project administration and for providing technical assistance to participants; (4-5-00)
 - h.** Review and approve or disapprove project plans of operation for project sponsors; (4-5-00)
 - i.** Review and approve or disapprove water quality plans for individual participants; (4-5-00)
 - j.** Enter into water quality project agreements with water quality project sponsors; (4-5-00)
 - k.** Enter into water quality contracts with individual participants; (4-5-00)
 - l.** Evaluate, on an ongoing basis, the effectiveness of each project and the overall program efforts in reducing agricultural and grazing nonpoint source pollution; (4-5-00)

- m.** Review project administration and financial management as required by Section 22-2718, Idaho Code; and (4-5-00)
- n.** Review and render decisions on contract modifications and violations. (4-5-00)
- 02. The Department Shall:** (4-5-00)

 - a.** Assist the commission in administering the funds appropriated by the State for the agricultural water quality cost-share program; (4-5-00)
 - b.** Assist the commission in developing methods for project financial administration; (4-5-00)
 - c.** Provide, to the extent feasible, water quality monitoring in project areas; and (4-5-00)
 - d.** Provide legal assistance to the commission. (4-5-00)
- 03. The Conservation Districts Shall:** (4-5-00)

 - a.** Provide assistance to the commission for local program delivery; (4-5-00)
 - b.** Establish and maintain a current five (5) year resource conservation plan containing local natural resource priorities; (4-5-00)
 - c.** Identify critical agricultural and grazing lands within eligible project areas and provide local input to the development of project plans of operation and water quality plans with assistance from the commission and technical entities; (4-5-00)
 - d.** Review plans of operation for projects occurring within the conservation district and submit a recommendation to the commission for consideration; (4-5-00)
 - e.** Approve participant installation of BMPs with assistance from the commission and the appropriate technical entity; (4-5-00)
 - f.** Assist the commission in determining cost-share rates for BMPs; and (4-5-00)
 - g.** Identify and/or receive and provide technical, financial, administrative and education outreach for water quality cost-share contracts or water quality project agreements. Solicit multiple sources and programs to provide assistance, and coordinate entities. (4-5-00)
- 04. Participant, Acting as an Individual Shall:** (4-5-00)

 - a.** Develop with assistance from appropriate technical entities a water quality plan for the installation of BMPs and submit such plan to the commission or project sponsor as appropriate; (4-5-00)
 - b.** Install BMPs identified in the water quality plan as scheduled and according to technical standards and maintain BMPs for the life of the water quality contract or the design life of the practice, whichever is greater; (4-5-00)
 - c.** Ensure that the participant matching share of the cost of the water quality contract is provided; (4-5-00)
 - d.** Coordinate the water quality plan with other appropriate technical assistance and cost-share programs; and (4-5-00)
 - e.** Obtain any and all permits required for BMP installation from appropriate agencies and comply with all applicable local, state, and federal laws. (4-5-00)

05. Participant Acting as a Project Sponsor. Participant, acting as a project sponsor, shall, during the life of an approved project: (4-5-00)

a. Develop, with assistance from appropriate technical entities, a project plan of operation for the installation of BMPs and submit such plan to the conservation district; (4-5-00)

b. Review and approve or disapprove water quality plans for individual participants; (4-5-00)

c. Ensure BMPs identified in the project plan of operations are installed as scheduled and according to technical standards and maintained for the life of the water quality contract or the design life of the practice, whichever is greater; (4-5-00)

d. Ensure that the individual participant matching share of the cost of the water quality contract is provided; (4-5-00)

e. Coordinate the water quality cost-share project with other appropriate entities and cost-share programs; (4-5-00)

f. Ensure any and all permits required for BMP installation are obtained from appropriate agencies and comply with all applicable local, state and federal laws; and (4-5-00)

g. Develop and use a financial accounting system consistent with the financial accounting system established by the commission for this program. (4-5-00)

012. APPLICABILITY.

01. Availability of Funds. The provisions of the program are subject to: (4-5-00)

a. The appropriation of funds by the legislature to the commission. (4-5-00)

b. Funds accruing to the resource conservation and rangeland development account authorized in Section 22-2730, Idaho Code. (4-5-00)

02. Obligation of State Funds. The obligation of state funds to the participants is to be made on the basis of total water quality plan or project costs. (4-5-00)

03. Relation to Other Cost-Share Programs. Cost-share payments made under this program may be used in conjunction with other federal, state, and local programs for cost-sharing of BMPs, provided the combined total cost-share rate for any BMP does not exceed one hundred percent (100%) of the BMP cost. (4-5-00)

013. AGRICULTURAL PROJECT PRIORITY LIST.

01. Purpose. The purpose of the agricultural project priority list is to maintain a list and schedule of potentially fundable projects. (4-5-00)

02. Establishment. The agricultural project priority list shall be established by the commission through an application, evaluation, and ranking process based on water quality and habitat needs and impacts, beneficial uses, costs, economic and technical feasibility, availability of program funds, and other sources of funding. (4-5-00)

03. Agricultural Project Priority List Modification. The agricultural project priority list shall be reviewed periodically and modified as necessary to assure up-to-date status of all water quality plans and project plans of operation and compatibility with applicable state rules and requirements. (4-5-00)

04. Agricultural Project Bypass. An approved application that does not or will not meet criteria allowing for timely utilization of anticipated resources may be by-passed. (4-5-00)

014. APPLICATION, EVALUATION, RANKING, AND ACCEPTANCE.

01. Applications Solicited from Applicants Within Eligible Project Area. Applications will be solicited from applicants within eligible project areas for consideration of placement on the agricultural project priority list. (4-5-00)

02. Forms Prescribed by the Commission. Applications must be submitted on forms prescribed by the commission to the local conservation district or the commission. (4-5-00)

a. Applications received by the local conservation district will be reviewed by the conservation district and forwarded to the commission with recommendations within thirty (30) days of receipt of the application. (4-5-00)

b. Applications received by the commission will be reviewed by the commission with the local conservation district for recommendations within thirty (30) days of receipt of the application. (4-5-00)

03. Commission Will Determine Suitability and Conformity of Application. The commission will determine each application's suitability and conformity with eligible project areas. (4-5-00)

a. Applications determined to be unsuitable, or that do not conform to eligible project areas will be returned to the applicant with a letter of explanation. (4-5-00)

b. Applications determined to be suitable and that conform to eligible project areas will be retained for evaluation. (4-5-00)

04. Applications Evaluated by Commission. Applications determined to be suitable and which conform to eligible project areas will be evaluated by the commission and other appropriate technical entities and interests on the basis of the following criteria: (4-5-00)

a. 303(d) listing status; and (4-5-00)

b. TMDL assessments; and (4-5-00)

c. TMDL schedule; and (4-5-00)

d. Beneficial uses; and (4-5-00)

e. Eligible project area; and (4-5-00)

f. Relative ability of proposed water quality plans and project plans of operations to protect and/or improve beneficial uses; and (4-5-00)

g. Applicants readiness; and (4-5-00)

h. Availability of technical assistance; and (4-5-00)

i. Availability of other funding sources. (4-5-00)

05. Agricultural Project Priority List. The commission will establish the agricultural project priority list based on the evaluation and in consideration of the recommendation of reviewing entities and interests. (4-5-00)

06. Funding Based Upon Priority Ranking. Consideration for funding will be based upon the priority ranking determined by the commission. (4-5-00)

07. Priority Ranking Subject to Change. The priority ranking of an application is subject to change based on the quantity and quality of current and future applications or programs or program focus. (4-5-00)

08. Applicant will Be Notified in Writing. The commission shall notify the applicant in writing of the initial priority ranking and funding potential and any subsequent changes in the priority ranking and funding potential within thirty (30) days from the date such action occurs. (4-5-00)

09. Grants Based on Project Priority List Ranking and Available Funding. Grants will be offered to districts and other eligible applicants with the highest ranking based on the project priority list and available funding. (4-5-00)

015. PROJECT AGREEMENTS.

01. Function and Content. Project agreements may be entered into between the commission and project sponsor. Project agreements shall detail the working arrangements and fund obligations of each party to the agreement. A project plan of operation shall be an integral part of a project agreement. (4-5-00)

02. Conditions. The commission may place conditions in the project agreement to enhance the effectiveness of the project. (4-5-00)

03. Amendment. A project agreement may be amended by mutual consent of the parties to the agreement. Such amendment shall be written and signed, and will become a part of the agreement. (4-5-00)

016. SUSPENSION OF PROJECT AGREEMENT.

01. Order to Suspend. Work on a project or a portion or phase of a project may be suspended by written order of the commission to the project sponsor. The administrator shall give not less than ten (10) days' notice to the project sponsor of the order to suspend. (4-5-00)

02. Existing Water Quality Contracts. Suspension does not affect properly installed and existing BMPs at the time the suspension order is issued, or the project sponsors' responsibility to make payments under such contracts unless specifically prohibited in the order to suspend. (4-5-00)

03. Cause of Suspension. Suspension may be required for cause, such as default by the project sponsor, including, but not limited to, failure to comply with the terms and conditions of the project agreement, or failure to comply with the agreed upon BMP standards and specifications at the time the project agreement was approved. Suspension may also be ordered due to a lack of available funding, modification of the program, or the result of advancements in technology, which render current procedures less effective. (4-5-00)

04. Compliance With Order. Upon receipt of a suspension order, the project sponsor shall immediately comply with the order. (4-5-00)

017. TERMINATION OF PROJECT AGREEMENT.

01. Cause of Termination. A project agreement may be terminated for cause, which includes, but is not limited to one (1) or more of the following: (4-5-00)

a. Failure or inability of the project sponsor to perform in accordance with the provisions of the project agreement; (4-5-00)

b. Failure through no fault of the project sponsor to achieve an adequate level of participation as determined by the commission; (4-5-00)

c. Other evidence that the action planned in the project agreement will not be achieved; or (4-5-00)

d. Continuation of the project will not be of benefit to the State. (4-5-00)

02. Commission Authorization. After the participant has been afforded an opportunity for consultation with the commission, the administrator can request authorization from the commission to terminate the

project agreement in whole or in part. (4-5-00)

03. Termination. The administrator shall, based on any of the causes identified in Subsection 017.01, issue a notice of intent to terminate the agreement. The administrator shall give not less than ten (10) days written notice to the project sponsor of intent to terminate the agreement in whole or in part. (4-5-00)

04. Termination Notice. Termination of all or part of the project agreement may be carried out by issuance of a project agreement termination notice by the administrator. The notice shall establish the effective date of termination of the project agreement, the basis for settlement of project agreement termination costs, and the amount and date of payment of any sums due either party. (4-5-00)

05. Project Sponsor Responsibilities. In those cases where cause for project agreement termination is based on the project sponsor's failure or inability to perform, the project sponsor shall refund to the commission unexpended project funds. (4-5-00)

a. The project sponsor, with approval of the administrator may retain funds needed to meet existing project obligations. (4-5-00)

b. The participant shall not make any new commitments or fund obligations, or enter into any new water quality contracts subsequent to written notice of termination. (4-5-00)

c. Upon termination of the project agreement, the responsibility for administering existing water quality contracts in the project area shall be transferred immediately to the commission. (4-5-00)

06. Other Causes. In those cases where cause for project agreement termination is through no fault of the project sponsor, the project sponsor shall be allowed to fulfill the obligations of its existing water quality contracts. The project sponsor shall not enter into any new water quality contracts without commission approval. (4-5-00)

018. WATER-QUALITY CONTRACTS.

01. Function and Content. Water-quality contracts may be entered into between the commission or project sponsor and a participant. Water quality contracts shall detail the working arrangements and fund obligations of each party to the contract. A participant water quality plan shall be an integral part of the contract. (4-5-00)

02. Conditions. The commission or project sponsor may place conditions in the water quality contract to enhance the effectiveness of the contract. (4-5-00)

03. Amendment. A water quality contract may be amended by mutual consent of signatories to the contract. Such amendment shall be written and signed and become a part of the contract. (4-5-00)

04. Application for Cost-Share Assistance. The commission shall ensure that a procedure exists for applying for cost-share assistance. Said procedure shall include, but not be limited to: (4-5-00)

a. A standard application form as provided by the commission; and (4-5-00)

b. A method of determining priorities for assistance; and (4-5-00)

c. A method of approving or disapproving applications for cost-share assistance. (4-5-00)

05. Water Quality Plan. The participant's water quality plan, developed by the participant with technical assistance from the appropriate technical entity, shall include but not be limited to the following; (4-5-00)

a. BMPs that reduce or abate agricultural nonpoint source pollution; (4-5-00)

b. BMPs for critical areas or pollution sources on the participant's operation; (4-5-00)

c. A time schedule for implementation of BMPs and cost estimates of BMP application that includes, total cost, cost-share rate, cost-share payment, and participant's share; (4-5-00)

d. Certification by the technical entity of the technical adequacy of the water quality plan and of subsequent modifications; (4-5-00)

e. Map(s), photograph(s), or illustration(s) showing location of proposed BMPs; and (4-5-00)

f. Technical solutions or practices recommended by the conservation district which are not currently listed as BMPs will be considered for cost-share by the commission or project sponsor. (4-5-00)

06. Cost-Sharing. (4-5-00)

a. The BMP cost-share rate, not to exceed ninety percent (90%) of the BMP cost, shall be determined by the commission through consultation with the local conservation district. (4-5-00)

b. A participant entering into a water quality contract under this program may not receive more than the total maximum amount of cost-share established by the commission under this program. (4-5-00)

c. Cost-sharing will not be provided for: (4-5-00)

i. Measures installed primarily for bringing additional land into agricultural or grazing production; or (4-5-00)

ii. Measures installed primarily for increasing production on existing agricultural or grazing land; or (4-5-00)

iii. Measures having flood protection as the primary purpose. (4-5-00)

07. Relation to Other Cost-Share Programs. Cost-share payments made under this program may be used in conjunction with other federal, state, and local programs for cost-sharing of BMPs, provided the combined total cost-share rate for any BMP does not exceed one hundred percent (100%) of the BMP cost. (4-5-00)

019. COST-SHARE PAYMENTS.

01. Cost-Share Payments. Cost-share payments are to be made by the commission or project sponsor upon determination by the commission or project sponsor, local conservation district and appropriate technical entity that the BMPs or identifiable units thereof have been properly installed and meet the standards and specifications effective at the time of water quality contract approval. (4-5-00)

02. Request for Cost-Share Payments. Request for cost-share payment must be submitted to the commission or project sponsor and supported by such cost receipts as required by the commission or project sponsor. It is the participant's responsibility to request payments. (4-5-00)

03. Payments. Cost-share payments shall be made to the participant by the commission or project sponsor within thirty (30) days receipt of request. (4-5-00)

04. Payments Pending Non-Compliance Decision. No cost-share payments shall be made pending a decision on whether non-compliance in a water quality contract has occurred or whether or not a water quality contract shall be terminated. (4-5-00)

020. CONTRACTING.

01. Commission as Beneficiary. The commission shall be specified as an intended beneficiary of all participant contracts and shall be empowered to enforce the terms of such contracts. (4-5-00)

02. Participation. To participate, an applicant must enter into a water quality contract that includes a

water quality plan. (4-5-00)

03. Contract Signatories. All persons or designated representatives who own, control, or share control of the land described in the water quality contract. (4-5-00)

04. Evidence of Control. The participant must furnish satisfactory evidence of ownership or control of the land described in the water quality contract during the contract period. (4-5-00)

05. No Cost-Share for Previously Installed BMPs. Cost-share payments cannot be provided for any BMP that has been installed or initiated before the participant(s) and the commission or the project sponsor signs the water quality contract. (4-5-00)

06. Water Quality Contract Requirements. The water quality contract shall include, but not be limited to, the following: (4-5-00)

- a. Basic contract document; (4-5-00)
- b. Special provisions as needed; (4-5-00)
- c. Water quality plan; and (4-5-00)
- d. Any other information deemed necessary by the commission or project sponsor. (4-5-00)

07. BMP Standards and Specifications. A participant shall install BMPs according to the standards and specifications effective at the time the water quality plan is prepared. (4-5-00)

08. Operation and Maintenance. The water quality contract shall require that BMPs are operated and maintained by the participant to accomplish the purpose for which they were designed at no cost to the commission or project sponsor. All BMPs installed and cost-shared under water quality contracts shall be maintained without benefit of additional cost-sharing for one (1) year or design life of the practice, whichever is greater. (4-5-00)

09. Water Quality Contract Period. The water quality contract period shall be not less than one (1) and not more than ten (10) years. (4-5-00)

10. Participant's Responsibilities. A participant is responsible for the following: (4-5-00)

- a. Complying with the terms of the water quality contract; (4-5-00)
- b. Keeping the commission informed of the participant's current mailing address; (4-5-00)
- c. Obtaining and maintaining any required permits necessary to perform the planned work; and (4-5-00)
- d. Installing, operating, and maintaining BMPs set forth in the water quality contract. (4-5-00)

021. WATER QUALITY CONTRACT MODIFICATION.

01. Contract Modification Approval. Water quality contracts may be modified upon recommendation of the local conservation district and the appropriate technical entity subject to approval by the project sponsor and commission. (4-5-00)

02. Land Transfer. In the event land under a water quality contract is transferred in whole or in part by sale or other transfer action: (4-5-00)

- a. That portion of the contract applicable to the land transferred is terminated with the original participant of such land; (4-5-00)
- b. The original participant: (4-5-00)

- i. Forfeits all rights to any future cost-share payment on the land transferred. (4-5-00)
- ii. Must refund all cost-share payments that have been made on the transferred land unless the new owner or operator becomes a party to a water quality contract, or it is determined by the commission or project sponsor that the established BMPs will provide water quality benefits for the design life of the BMP, in which case the payment may be retained. (4-5-00)
- c. A new participant may enter into a water quality contract essentially containing the original terms and conditions for the transferred land as the water quality contract with the original participant, unless otherwise modified by the project sponsor and commission. (4-5-00)
- d. Water quality contracts for both the original and new participant shall be modified to accommodate the land transfer while maintaining the integrity of the original water quality contract. (4-5-00)

022. WATER QUALITY CONTRACT COMPLIANCE.

01. Non-Compliance. A participant shall be in non-compliance of the water quality contract for causes including but not limited to one (1) or more of the following: (4-5-00)

- a. Knowingly or negligently destroys, abandons, or modifies a BMP implemented in accordance with the water quality plan, unless prior written approval is given by the project sponsor and commission. (4-5-00)
- b. Files a request for cost-share payment for BMPs not installed or carried out, or for BMPs implemented in a manner that does not meet specifications. (4-5-00)

02. Notice of Non-Compliance. (4-5-00)

- a. If the project sponsor or commission determine that non-compliance has occurred which would call for a forfeiture, refund, payment adjustment, or termination, written notice thereof shall be given to the participant(s). (4-5-00)
- b. The written notice shall set forth the nature of the alleged non-compliance and shall inform the participant that an opportunity will be given to appear at a compliance review before the project sponsor or commission. A written request shall be filed by the participant for such review no later than thirty (30) days after the issuance of the notice of non-compliance. (4-5-00)

03. Non-Compliance Review. (4-5-00)

- a. Upon a timely receipt of request for non-compliance review, the project sponsor or commission shall notify the participant in writing of the time, date, and place set for the review. (4-5-00)
- b. If the participant does not file a timely written request for review, or fails to appear at the review so requested, the participant shall have no further right to a review before the project sponsor or commission. (4-5-00)

04. Notification of Review Determination. The project sponsor or commission shall notify the participant in writing of the determination. (4-5-00)

05. Forfeiture of Further Cost-Share Payments. A participant determined by the project sponsor or commission to be in non-compliance of the water quality contract shall forfeit all rights to further cost-share payments under the water quality contract. (4-5-00)

06. Refund of Cost-Share Payments. A participant determined by the project sponsor or commission to be in non-compliance of the water quality contract shall make refunds of cost-share payments received under the water quality contract or accept payment adjustments in the contract. (4-5-00)

07. Appeal of Review Determination. Appeal of the review determination may be made by any participant adversely affected by the determination in accordance with Title 67, Chapter 52, Idaho Code. (4-5-00)

a. A participant determined to be in non-compliance by a project sponsor may request, in writing, review by the commission within thirty (30) days of issuance of notification of non-compliance determination. (4-5-00)

b. All appeals to the commission shall be conducted in accordance with Title 67, Chapter 52, Idaho Code. (4-5-00)

023. QUALITY CONTROL.

01. Rights of Access. The commission or project sponsor shall have the right of access, at reasonable times and upon proper notification, to land under contract, and the right to access and examine any contract and cost-share records. Right of access is limited to furnishing technical assistance and to inspecting work performed under the contract. (4-5-00)

02. BMP Inspections. Spot checks to ensure proper BMP design installation and maintenance shall be conducted in a manner consistent with the policies and procedures of the commission or project sponsor and appropriate technical entities. (4-5-00)

03. Inspection Report. The participant shall report the findings of BMP inspections annually to the commission or project sponsor. (4-5-00)

024. PROJECT AND PROGRAM EVALUATIONS.

01. Purpose. The purpose of project and program evaluations is to assess the effectiveness of the various projects and the overall program in reducing water pollution from agricultural and grazing nonpoint sources. (4-5-00)

02. Project Evaluation. Project evaluations shall be conducted annually by the commission, project sponsor, appropriate technical entity, and the participant to determine BMP implementation progress and resulting improvements in water quality. (4-5-00)

03. Project Evaluation Criteria. Criteria for the evaluation of project effectiveness shall include, but not be limited to: (4-5-00)

a. Achievement of project goals for reduction of pollutant loadings; (4-5-00)

b. Achievement of a minimum level of participation; (4-5-00)

c. Achievement of project goals for installation of BMPs; (4-5-00)

d. Project's contribution toward meeting state water quality goals; (4-5-00)

e. Project's contribution toward implementing the Idaho Agricultural Pollution Abatement Plan; and (4-5-00)

f. Prudent use and management of public funds. (4-5-00)

04. Agricultural Water Quality Cost-Share Program Evaluation. Program evaluations shall be conducted annually by the commission, conservation districts, technical entities, and participants to determine the overall effectiveness of the program in improving water quality. (4-5-00)

025. INCLUSIVE GENDER

For the purposes of these rules, words used in the masculine gender include the feminine, or vice-versa, where appropriate. (4-5-00)

026. -- 999. (RESERVED).

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