

Dear Senators HEIDER, Brackett, Stennett, and
Representatives VANDER WOUDE, Amador, Smith:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
Department of Environmental Quality:

IDAPA 58.01.12 - Rules for Administration of Water Pollution Control Loans - Proposed Rule
(Docket No. 58-0112-1901);

IDAPA 58.01.20 - Rules for Administration of Drinking Water Loan Program (Chapter Repeal) -
Proposed Rule (Docket No. 58-0120-1901).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 12/05/2019. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 01/06/2020.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Environment, Energy & Technology Committee

FROM: Deputy Division Manager - Katharine Gerrity

DATE: November 15, 2019

SUBJECT: Department of Environmental Quality

IDAPA 58.01.12 - Rules for Administration of Water Pollution Control Loans - Proposed Rule (Docket No. 58-0112-1901)

IDAPA 58.01.20 - Rules for Administration of Drinking Water Loan Program (Chapter Repeal) - Proposed Rule (Docket No. 58-0120-1901)

1. IDAPA 58.01.12 - Rules for Administration of Water Pollution Control Loans

Summary and Stated Reasons for the Rule

The Department of Environmental Quality submits notice of proposed rule at IDAPA 58.01.12 - Rules for Administration of Water Pollution Control Loans. The rulemaking was initiated as part of the Red Tape Reduction Act. The department states that it determined that its two revolving loan rule chapters could be simplified and consolidated into a single chapter. The department confirms that the rulemaking does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was conducted.

Statutory Authority

The rulemaking appears to be authorized pursuant to Chapters 1 and 36, Title 39, Idaho Code.

2. IDAPA 58.01.20 - Rules for Administration of Drinking Water Loan Program (Chapter Repeal)

Summary and Stated Reasons for the Rule

The Department of Environmental Quality submits notice of proposed rule at IDAPA 58.01.20 - Rules for Administration of Drinking Water Loan Program. This is a chapter repeal. The rulemaking was initiated as part of the Red Tape Reduction Act. The department states that it determined that its two revolving loan rule chapters could be simplified and consolidated into a single chapter. The department confirms that the

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

Tel: 208-334-2475
www.legislature.idaho.gov

rulemaking does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was conducted.

Statutory Authority

The rulemaking appears to be authorized pursuant to Chapters 1 and 76, Title 39, Idaho Code.

cc: Department of Environmental Quality
Paula J. Wilson

***** PLEASE NOTE *****

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.12 – RULES FOR ADMINISTRATION OF WATER POLLUTION CONTROL LOANS

DOCKET NO. 58-0112-1901

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. The 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 November 20, 2019. If no such written request is received, a public hearing will not be held.

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

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

After consideration of public comments, DEQ intends to present the final proposal to the Idaho Board of Environmental Quality (Board) in 2020 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2021 legislative session if adopted by the Board and approved by the Legislature.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: N/A

NEGOTIATED RULEMAKING: The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220. On August 1, 2019, DEQ posted notice of the negotiated rulemaking on its website, and a preliminary draft rule was made available for public review. The Notice of Negotiated Rulemaking was published in the August 2019 issue of the Idaho Administrative Bulletin, [Vol. 19-8, pages 156–157](#), and a meeting was held on August 27, 2019. Key information was posted on the DEQ website and distributed to the public. No comments were received.

At the conclusion of the negotiated rulemaking process, DEQ formatted the draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule. The negotiated rulemaking record, which includes the negotiated rule draft, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at www.deq.idaho.gov/58-0112-1901.

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

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Tim Wendland at tim.wendland@deq.idaho.gov or (208) 373-0439.

SUBMISSION OF WRITTEN COMMENTS: 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 December 4, 2019.

Dated this 6th day of November, 2019.

Paula J. Wilson
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706
Phone: (208) 373-0418
Fax: (208) 373-0481
paula.wilson@deq.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0112-1901
(Only Those Sections With Amendments Are Shown.)

IDAPA 58
TITLE 01
CHAPTER 12

58.01.12 – RULES FOR ADMINISTRATION OF ~~WASTEWATER POLLUTION CONTROL AND~~
~~DRINKING WATER LOANS~~ ~~FUNDS~~

000. LEGAL AUTHORITY.

The Idaho Board of Environmental Quality, pursuant to authority granted in Chapters 1 ~~and~~, 36, ~~and~~ 76, Title 39, Idaho Code, did adopt the following rules for the administration of ~~a~~ ~~the~~ ~~Wastewater Pollution Control and Drinking Water Loan Program in Idaho~~ ~~Funds~~. (5-3-03)()

001. TITLE AND SCOPE.

01. **Title.** These rules are titled IDAPA 58.01.12, “Rules for Administration of ~~Wastewater Pollution Control and Drinking Water~~ Loans ~~Funds~~.” (3-30-01)()

02. **Scope.** The provisions of these rules will establish administrative procedures and requirements for establishing, implementing and administering ~~a~~ ~~two~~ state loan programs for providing financial assistance to eligible applicants of ~~wastewater and drinking~~ water ~~pollution control~~ projects. The U.S. Environmental Protection Agency provides annual capitalization grants to the state of Idaho for ~~this~~ ~~these~~ programs. Financial assistance projects must be in conformance with the requirements of the Subchapter VI of the federal Clean Water Act (33 U.S.C. Sections 1381 et seq.) ~~and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.)~~. (3-29-12)()

002. ~~WRITTEN INTERPRETATIONS. (RESERVED)~~

~~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. (5-3-03)~~

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED MATERIAL.

01. **Incorporation by Reference.** These rules do not contain documents incorporated by reference. (5-8-09)

02. **Availability of Referenced Material.** The “Wastewater ~~Facilities~~ Loan Handbook ~~of Procedures and the Drinking Water Loan Handbook~~” (Handbook) is available at the Idaho Department of Environmental Quality, Water Quality Division Loan Program, 1410 N. Hilton, Boise, ID 83706-1255, (208) 373-0502, or DEQ website <http://www.deq.idaho.gov>. ~~(5-8-09)~~()

(BREAK IN CONTINUITY OF SECTIONS)

006. POLICY.

It is the policy of the Idaho Board of Environmental Quality through the Idaho Department of Environmental Quality, to administer the ~~Wastewater Pollution Control Loan Program~~ Loan Fund for the purpose of protecting and enhancing the quality and value of the water resources of the state of Idaho by financially assisting in the prevention, control and abatement of water pollution and the Drinking Water Loan Fund for the purpose of providing assistance to eligible public drinking water systems for the planning, design, and construction of facilities to ensure safe and adequate drinking water. It is also the intent of the Idaho Board of Environmental Quality to assign a priority rating to those projects ~~which that~~ will most significantly improve the quality of the waters of the state and most adequately protect the public health. ~~(3-30-01)~~()

007. DEFINITIONS.

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

01. **Applicant.**

a. When used in the context of wastewater loan fund, applicant is defined as ~~A~~ municipality or nonpoint source project sponsor ~~which that~~ has the ability to establish and maintain a loan repayment source. Individuals and for-profit corporations are not eligible. ~~(5-8-09)~~()

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

02. **Best Management Practice.** A practice or combination of practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan which are determined to be the most cost-effective and practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality needs. (3-30-01)

03. **Board.** The Idaho Board of Environmental Quality. (5-8-09)

04. **Categorical Exclusion (CE).** Category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental information document nor an environmental impact statement is required. (5-8-09)

05. **Close or Closing.** The date on which the loan recipient issues and physically delivers to the Department the bond or note evidencing the loan to the loan recipient, specifically determining the principal, interest and fee amounts that shall be repaid and the schedule for payment. (3-29-12)

06. **Collector Sewer.** That portion of the wastewater treatment facility whose primary purpose is to receive sewage from individual residences and other individual public or private structures and which is intended to convey wastewater to an interceptor sewer or a treatment plant. (1-1-89)

07. Community Water System. A public drinking water system that: ()

a. Serves at least fifteen (15) service connections used by year round residents of the area served by the system; or ()

b. Regularly serves at least twenty-five (25) year-round residents. ()

~~078.~~ **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 start-up of the associated facilities. (3-29-12)

09. Contaminant. Any physical, chemical, biological, or radiological substance or matter in water. ()

108. **Department.** The Idaho Department of Environmental Quality. (1-1-89)

~~0911.~~ **Director.** The Director of the Idaho Department of Environmental Quality or his/her designee. (5-3-03)

102. **Disadvantaged Community.** The service area of a wastewater treatment facility that meets affordability criteria established by the Department of Environmental Quality after public review and comment. (3-29-12)

143. **Disadvantaged Loans.** Loans made to a disadvantaged community. (3-29-12)

14. Distribution System. Any combination of pipes, tanks, pumps, and other equipment that delivers water from the source(s), treatment facility(ies), or a combination of source(s) and treatment facility(ies) to the consumer. Chlorination may be considered as a function of a distribution system. ()

125. **Eligible Costs.** Costs which are necessary for planning, designing and/or constructing wastewater treatment facilities or implementation of water pollution control projects. To be eligible, costs must be reasonable and not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 041. (5-3-03)

136. **Environmental Impact Statement (EIS).** A document prepared by the applicant when the Department determines that the proposed construction project may significantly affect the environment. The major purpose of the EIS will be to describe fully the significant impacts of the project and how these impacts can be either avoided or mitigated. The environmental review procedures contained in Chapter 5 of the Handbook may be used as guidance when preparing the EIS. (3-29-12)

147. **Environmental Information Document (EID).** Any written environmental assessment prepared by the applicant describing the environmental impacts of a proposed wastewater construction project. This document will be of sufficient scope to enable the Department to assess the environmental impacts of the proposed project and ultimately determine if an EIS is warranted. (3-29-12)

158. **Financial Management System.** Uniform method of recording, summarizing and analyzing financial information about the water pollution control loan applicant. (3-30-01)

162. **Finding of No Significant Impact (FONSI).** A document prepared by the Department presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an EIS will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it. (3-29-12)

~~1720.~~ **Handbook.** The “Wastewater ~~Facilities~~ Loan ~~Fund and Drinking Water Loan Fund~~ Handbook ~~of Procedures.~~” (5-8-09)()

- 218. 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)
- ~~1922.~~ **Ineligible Costs.** Costs which are not eligible for funding pursuant to these rules. (3-29-12)
- 203. 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)
- 214. Loan Recipient.** An applicant who has been awarded a loan. (3-29-12)
- ~~22. National Pollutant Discharge Elimination System. Point source permitting program established pursuant to Section 402 of the federal Clean Water Act (33 U.S.C. Section 1342). (3-30-01)~~
- 25. Managerial Capability.** The capability of the loan applicant to support the proper financial and technical operation of the system. ()
- 26. Maximum Contaminant Level (MCL).** The maximum permissible level of a contaminant in water which is delivered to any user of a public water system. ()
- 27. Noncommunity Water System.** A public water system that is not a community water system. ()
- 238. Nondomestic Wastewater.** Wastewaters originating primarily from industrial or commercial processes which carry little or no pollutants of human origin. (5-3-03)
- 249. Nonpoint Source Pollution.** Water pollution that enters the waters of the state from nonspecific and diffuse sources and is the result of runoff, precipitation, drainage, seepage, hydrological modification or land disturbing activities. (5-8-09)
- ~~2530.~~ **Nonpoint Source Project Sponsor.** Any applicant for ~~wastewater pollution control~~ loan funds for ~~to address~~ nonpoint source pollution ~~project~~. (5-8-09)()
- 2631. Operation and Maintenance Manual.** For wastewater treatment facilities, a guidance and training manual outlining the optimum operation and maintenance of the wastewater treatment facility or its components. For nonpoint source water pollution control projects, a plan that incorporates applicable sections of the Natural Resources Conservation Service Field Office Technical Guide, for implementation of best management practices. (3-29-12)
- ~~2732.~~ **Planning Document.** A document which describes the condition of a public wastewater system and presents a cost effective and environmentally sound alternative to achieve or maintain regulatory compliance. Engineering reports and facility plans are examples of such planning documents. The planning documents shall be prepared by or under the responsible charge of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Requirements for planning documents prepared using loan funds are provided in Section 030 of these rules and in the Handbook. (3-29-12)
- ~~2833.~~ **Plan of Operation.** A schedule of specific actions and completion dates for construction, start-up and operation of the ~~wastewater treatment~~ facility or for implementation of ~~wastewater pollution control or drinking water~~ projects. (5-3-03)()
- ~~2934.~~ **Point Source.** Any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be discharged to the waters of the state. This term as used in these rules does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition. (5-8-09)

~~305.~~ **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)

~~316.~~ **Priority List.** An integrated list of proposed wastewater treatment facility and nonpoint source pollution control projects rated as described in Section 020; or a list of proposed drinking water projects rated by severity of risk to public health, the necessity to ensure compliance with IDAPA 58.01.08, Idaho Rules for Public Drinking Water Systems, and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.), population affected, and need on a household basis for protection of Idaho's public drinking water. (~~5-3-03~~)()

~~32.~~ **Rehabilitation.** *The repair or replacement of limited segments of intercepter or collector sewers.* (~~5-3-03~~)

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

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

~~339.~~ **Reserve Capacity.** That portion of the ~~treatment works~~ facility that is designed and incorporated in the constructed facilities to handle future ~~sewage flows and loadings~~ demand upon the system. (~~1-1-89~~)()

~~340.~~ **Sewer Use Ordinance/Sewer Use Resolution.** An ordinance or resolution ~~which~~ that requires new sewers and connections to be properly designed and constructed, prohibits extraneous sources of inflow and prohibits introduction of wastes into the sewer in an amount that endangers the public safety or the physical or operational integrity of the wastewater treatment facility. (~~5-8-09~~)()

~~351.~~ **State.** The state of Idaho. (12-31-91)

~~362.~~ **Supplemental Grants.** A state funded grant awarded in conjunction with a loan from the water pollution control loan account. (3-29-12)

~~373.~~ **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)

~~384.~~ **Sustainability.** Sustainability will include efforts for energy and water conservation, extending the life of capital assets, green building practices, and other environmentally innovative approaches to infrastructure repair, replacement and improvement. (3-29-12)

~~395.~~ **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)

~~406.~~ **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)

~~417.~~ **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)

428. 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)

439. 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)

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

008. OFFICE HOURS — MAILING ADDRESS AND STREET ADDRESS ELIGIBLE SYSTEMS.
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. (5-8-09)

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

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

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

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

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

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

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

009. (RESERVED) INELIGIBLE SYSTEMS.

01. Basic Considerations. Systems not eligible for project loans are described in Subsection 009.02. ()

02. Systems Not Eligible. The following systems will not be considered eligible for project loans: ()

- a. Wastewater systems that are owned by individuals or for-profits; ()
- b. Drinking water systems in significant noncompliance with any requirement of IDAPA 58.01.08, Idaho Rules for Public Drinking Water Systems, and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.); ()
- c. Drinking water systems under disapproval designation as outlined in IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems"; or ()
- d. Systems delinquent in payment of fines, state revolving fund loans, penalties, or fee assessments due to DEQ. ()

010. FINANCIAL AND MANAGEMENT CAPABILITY ANALYSIS.

No loans shall be awarded for projects unless the applicant has demonstrated and certified that it has the legal, technical, managerial, and financial capabilities as provided for in these rules to ensure construction, operation and maintenance, and to repay principal and interest which would be due on a loan. (5-3-03)

01. Information Needed. Before an application will be considered complete, the applicant must submit all necessary information on a form prescribed by the Department along with substantiating documentation. The information may include, but not be limited to, demographic information of the applicant, estimated construction or implementation costs, annual operating costs, and information regarding the financing of the project, including the legal debt limit of the applicant and the existence and amount of any outstanding bonds or other indebtedness which may affect the project. (5-8-09)

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; (5-8-09)
- ii. The corporation is authorized to incur indebtedness to construct, improve or repair wastewater ~~treatment~~ or drinking water facilities and/or implement water pollution control nonpoint source projects; (5-8-09)()
- iii. The corporation is authorized to secure indebtedness by pledging corporation ~~property~~ assets, including any revenues raised through a user charge system; (5-8-09)()
- 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 nonpoint source project to an incorporated nonprofit applicant which are necessary to carry out the provisions of these rules and the provisions of Chapter 36 or 76, Title 39, Idaho Code. (3-30-01)()

03. Cost Allocation. An applicant proposing a point source wastewater, drinking water or nonpoint source ~~water pollution control~~ project designed to serve two (2) or more entities must show how the costs will be allocated among the participating entities. Such applicants must provide an executed intermunicipal service agreement which, at a minimum, incorporates the following information: (5-8-09)()

- a. The basis upon which the costs are allocated; (5-8-09)

- 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; (5-8-09)
- b. There is documentation of a service relationship in the absence of a formal agreement; or (1-1-89)
- c. An applicant exhibits sufficient financial strength to continue the project if one (1) or more of the applicants fails to participate. (5-8-09)

011. -- 019. (RESERVED)

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 and readiness to proceed. Projects are rated by the Department on a standard priority rating form using public health, sustainability, the condition of the existing system and water quality criteria. ~~(3-29-12)~~()

01. Purpose. An ~~integrated~~ priority rating system shall be utilized by the Department to annually allot available funds to wastewater quality and drinking water projects determined eligible for funding assistance under ~~the water pollution control loan program in accordance with~~ these rules. ~~(5-3-03)~~()

02. Wastewater Priority Rating. The priority rating system shall be based on a numerical point system. Priority criteria shall contain the following points: (3-29-12)

- a. Public health emergency or hazard certified by the Idaho Board of Environmental Quality, the Department, a District Health Department or by a District Board of Health -- one hundred and fifty (150) points. (5-8-09)
- b. Regulatory compliance issues (e.g., noncompliance and resulting legal actions relating to infrastructure deficiencies at a wastewater facility) -- up to one hundred (100) points. (3-29-12)
- c. Watershed restoration (e.g., implementation of best management practices or initiation of construction at wastewater collection and treatment facilities as part of an approved total maximum daily load plan, implementation of nonpoint source management actions in protection of a threatened water, or is part of a special water quality effort) -- up to one hundred (100) points. (3-29-12)
- d. Watershed protection from impacts (e.g., improvement of beneficial use(s) in a given water body, evidence of community support, or recognition of the special status of the affected water body) -- up to one hundred (100) points. (3-29-12)
- e. Preventing impacts to uses (nonpoint source pollution projects) -- up to one hundred (100) points. (3-29-12)
- f. Sustainability efforts (e.g., prospective efforts at energy conservation, water conservation, extending the life of capital assets, green building practices, and other environmentally innovative approaches to infrastructure repair, replacement and improvement) -- up to fifty (50) points. (3-29-12)
- g. Affordability (current system user charges exceed state affordability guidelines) -- ten (10) points. (3-29-12)

03. Drinking Water Priority Rating. The priority rating system shall be based on a numerical points

system. Priority criteria shall contain the following points. ()

a. Public Health Hazard. Any condition that creates, or may create, a danger to the consumer's health, which may include any one (1) or more of the following, may be awarded a maximum of one hundred (100) points: ()

i. Documented unresolved violations of the primary drinking water standards including maximum contaminant levels, action levels, and treatment techniques (to include maximum contaminant levels for acute and chronic contaminants): ()

ii. Documented unresolved violations of pressure requirements; ()

iii. Documented reduction in source capacity that impacts the system's ability to reliably serve water; ()

iv. Documented significant deficiencies (e.g., documented in a sanitary survey) in the physical system that are causing the system to not reliably serve safe drinking water; or ()

v. Documented unregulated contaminants that have been shown by EPA to be a risk to public health. ()

b. General Conditions of Existing Facilities. Points shall be given based on deficiencies, which would not constitute a public health hazard, for pumping, treating, and delivering drinking water - up to sixty (60) points. ()

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

d. Consent Order, Compliance Agreement Schedule, or Court Order. Points shall be given if the system is operating under and in compliance with a Consent Order, Compliance Agreement Schedule, or Court Order and the proposed construction project will address the Consent Order, Compliance Agreement Schedule, or Court Order - up to thirty (30) points. ()

e. Incentives. Bonus points shall be awarded to systems that promote source water protection, conservation, economy, proper operation maintenance, and monitoring - up to ten (10) points. ()

f. Affordability. Points shall be given when current system user charges exceed state affordability guidelines - ten (10) points. ()

034. Rating Forms. Rating criteria for ~~Sub~~section 020.02 is set forth in a rating form that is available in the Handbook. (3-29-12)()

045. ~~Integrated~~ Priority List. A list shall be developed from projects rated according to ~~Sub~~section 020.02. ~~Such list shall be~~, submitted for public review and comment, and ~~shall thereafter be~~ submitted to the Board for approval. (3-29-12)()

a. Priority Reevaluation. Whenever significant changes occur, which in the Department's judgment would affect the design parameters or treatment requirements by either increasing or decreasing the need for or scope of any project, a reevaluation of that priority rating will be conducted. (1-1-89)

~~**b. Priority Target Date.** An eligible applicant whose project is on the approved priority list, and for which funding is available, will be contacted by the Department and a target date for submission of a completed loan application will be established.~~ (5-3-03)

eb. Project Bypass. A project that does not or will not meet the ~~project target date or a~~ Department schedule that allows for timely utilization of loan funds may be bypassed, substituting in its place the next highest

ranking project(s) that is ready to proceed. An eligible applicant that is bypassed will be notified in writing of the reasons for being bypassed. (3-29-12)()

056. Amendment of ~~Integrated~~ **a** Priority List. The Director may amend ~~the Integrated~~ **a** Priority List as set forth in Section 995 of these rules. (5-8-09)()

021. DISADVANTAGED LOANS.

Disadvantaged Loan Awards. In conjunction with the standard loans, the Department may award disadvantaged loans to applicants deemed disadvantaged using the following criteria: (3-29-12)

01. Qualifying for a Disadvantaged Loan. In order to qualify for a disadvantaged loan, a loan applicant must have an ~~annual residential~~ user rate for ~~either drinking water or~~ wastewater services ~~for residential customers which that~~ exceeds two percent (2%) of the applicant community's median household income or, if the user rate is between one and one-half percent (1½%) and two percent (2%) of the applicant community's median household income, the community must also have: unemployment that exceeds the state average; and a decreasing population. The applicant shall agree to a thirty (30) year loan unless the design life of the project is documented to be less than thirty (30) years. The annual user rate would be based on all operating, maintenance, replacement, and debt service costs (both for the existing system and for upgrades). If the applicant's service area is not within the boundaries of a municipality, or if the applicant's service area's median household income is not consistent with the municipality as a whole, the applicant may use the census data for the county in which it is located or may use a representative survey, conducted by a Department approved, objective third party, to verify the median household income of the applicant's service area. (3-25-16)()

02. Adjustment of Loan Terms. DEQ will equally apportion funds available for principal forgiveness to all prospective disadvantaged loan recipients. ~~For wastewater loan funding, the length of the repayment period is set at the borrower's discretion, up to the maximum repayment period of thirty (30) years. For drinking water loan funding, extensions of repayment term to thirty (30) years are only allowed for disadvantaged applicants.~~ Consistent with achieving user rates as per the criteria set forth in ~~Subsection 021-01~~, and where possible with available funds, loan terms may be adjusted in the following order: decreasing the interest rate and providing principal forgiveness. (3-25-16)()

a. Decreasing Interest Rate. The loan interest rate may be reduced from the rate established by the Director for standard loans to a rate that results in an annual user rate equaling the criteria set forth in ~~Subsection 021-01~~. The interest rate may be reduced to as low as zero percent (0%). (3-25-16)()

b. Principal Forgiveness. If even at zero percent (0%) interest, the annual user rate per residential user still exceeds the criteria set forth in ~~Subsection 021-01~~, then the principal ~~which that~~ causes the user charge to exceed the criteria set forth in ~~Subsection 021-01~~ may be partially forgiven or reduced. The principal reduction cannot exceed fifty percent (50%) of the total loan, ~~unless the user rate will exceed \$100 per month (in which case the principal reduction may exceed fifty percent (50%)).~~ Principal forgiveness terms may be revised (from initial estimates established in the annual Intended Use Plan) based upon final construction costs, such that loan terms do not result in user rates that are below the criteria set forth in ~~Subsection 021-01~~. (3-25-16)()

022. SUPPLEMENTAL GRANTS.

In conjunction with loans, the Department may award state funded supplemental grants, not to exceed ninety percent (90%) of total eligible costs, to loan recipients in the following manner: (3-29-12)

01. Projects Not Funded by Loans. Planning and design projects may receive grant assistance up to ninety percent (90%) funding of eligible costs not funded by a loan; and (1-1-89)

02. Costs in Excess of Financial Ability. (3-30-01)

a. Loan recipients may receive supplemental grant assistance for eligible costs that exceed the amount a loan recipient is able to pay. In order to qualify for a supplemental grant, a loan recipient must have the following: (3-29-12)

i. An annual user rate per household which exceeds one and one-half percent (1 1/2%) of the median

household income from the most recent census data. If the loan recipient's service area is not within the boundaries of a municipality, the loan recipient may use the census data for the county in which it is located or may use an income survey approved by the Department; and (3-29-12)

ii. The annual user rate includes all operating, maintenance, replacement and debt service costs, both for the existing system and for upgrades. (3-29-12)

b. If a loan recipient meets the requirement of ~~Subsections 022.02.i. and 022.02.ii.~~, a supplemental grant may be made for the amount of the project that causes the annual user rate for wastewater service per household to exceed one and one-half percent (1 1/2%) of the median household income, subject to available funds. (3-29-12)()

~~03. **Accrued Interest on Loans with Supplemental Grants.** Interest will not be accrued during the design and construction phases on loan projects that also have a supplemental grant. (3-30-01)~~

023. -- 029. (RESERVED)

030. PROJECT SCOPE AND FUNDING.

Loan funds awarded under this program may be used to prepare a ~~wastewater treatment~~ facility planning document which identifies the cost effective and environmentally sound alternative to achieve or maintain compliance with IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," the Safe Drinking Water Act, 42 U.S.C., Sections 300f et seq., IDAPA 58.01.16, "Wastewater Rules," and the Clean Water Act, 33 U.S.C. Sections 1381 et seq., and which is approvable by the Department. Loan funds may also be used for design and construction of the chosen alternative. (3-29-12)()

01. Nonpoint Source Implementation Funding. Eligible nonpoint source water pollution control projects may be funded when all of the following criteria are met: (3-30-01)

- a. Consistent with and implements the Idaho Nonpoint Source Management Plan. (3-30-01)
- b. Data is used to substantiate a nonpoint source pollutant problem or issue exists and is described or directly referenced. (3-30-01)
- c. Completed project implementation plan or work plan. (3-30-01)
- d. Project commitment documentation through demonstrated ability for loan repayment. (3-30-01)
- e. The project includes documentation that the project owner(s), manager(s), or the sponsoring agency will maintain the project for the life of the project (e.g., Maintenance Agreement). (3-30-01)
- f. The project provides adequate tracking and evaluation of the effectiveness of the water quality improvements being funded by either the project owner/manager or the sponsoring agency throughout the life of the project. (3-30-01)
- g. The project demonstrates nexus/benefit to municipality through a letter of support from one (1) or more affected municipalities. (3-30-01)

02. ~~Wastewater Treatment Facility Funding.~~ Projects may be funded in steps: (3-30-01)()

- a. Step 1. Planning document prepared in accordance with the Handbook. (3-29-12)
- 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 shall not be awarded until a final cost effective and environmentally sound alternative has been selected by the Step 1 planning document and approved by the Department. If the planning document has not been completed pursuant to IDAPA 58.01.0422, "Rules for Administration of ~~Wastewater Treatment Facility~~ Planning Grants for Drinking Water and Wastewater Facilities," then the loan recipient shall provide an opportunity for the public to comment on the draft planning document. The public comment period shall be held after alternatives have been developed and the Department has approved the draft planning document. The loan recipient shall provide written notice of the public comment period and hold at least one (1) public meeting within the jurisdiction of the loan recipient during the public comment period. At the public meeting, the draft planning document shall be presented by the loan recipient with an explanation of the alternatives identified. The cost effective and environmentally sound alternative selected shall consider public comments received from those affected by the proposed project. After the public meeting and public comment period, the final alternative will be selected and the Environmental Information Document will be prepared. (3-29-12)()

g. Funding For ~~Wastewater~~ Reserve Capacity. Funding for reserve capacity of a treatment plant will not exceed a twenty (20) year population growth and funding for reserve capacity of an interceptor will not exceed a forty (40) year population growth as determined by the Department. (1-1-89)()

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

031. LIMITATION OF PRELOAN ENGINEERING REVIEWS.

Preloan engineering documents prepared by consulting engineers will be reviewed by Department staff only when accompanied by a certificate that the consulting engineer carries professional liability insurance in accordance with ~~Subsection 050.05.d.~~ (5-3-03)()

032. LOAN FEE.

01. Loan Fee. The Department may elect to impose a loan fee when necessary to offset the costs of administering the loan program, to provide planning assistance, or to otherwise facilitate the operation of the ~~Clean Water Act State Revolving Fund (CWSRF)~~ loan efforts. ~~The Department may impose a loan fee on loans scheduled to close after January 4, 2006.~~ The loan fee shall not exceed one percent (1%) of the unpaid balance of the loan at the time each loan payment is due. (5-8-09)()

~~02. Determination of Loan Fee. The Department shall determine the amount of the loan fee on a yearly basis and shall assess a loan fee based upon each loan recipient's total interest rate. The amount of the loan fee shall be included in the Intended Use Plan, as described by Section 606(e) of the Clean Water Act. In determining the amount of the loan fee, the Department shall consider: (3-29-12)~~

~~a. The Department's anticipated costs of administering the loan program for the upcoming fiscal year, including salaries and overhead; (3-19-07)~~

~~b. Any Department costs related to providing technical assistance for the loan program for the upcoming fiscal year; (5-8-09)~~

~~c. The amount of money generated from loan fees in previous fiscal years available for use in the upcoming fiscal year; and (3-19-07)~~

~~d. The anticipated demand for planning assistance to supplement regular appropriations and other~~

~~related needs to support the CWSRF loan program.~~

~~(5-8-09)~~

032. Effect on Loan Interest Rate. The loan interest rate, as described in ~~Subsection 050-05~~, will be reduced by the corresponding percentage of the loan fee. ~~(3-19-07)()~~

043. Payment of Loan Fee. The loan fee shall be due and payable concurrently with scheduled loan principal and interest repayments over the repayment period. (3-19-07)

033. -- 039. (RESERVED)

040. LOAN APPLICATION AND REVIEW.

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

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

a. A lawful resolution passed by the governing body authorizing an elected official or officer of the applicant to execute a loan contract and sign subsequent loan disbursement requests; (5-8-09)

b. Contracts for engineering or other technical services and the description of costs and tasks set forth therein shall be in sufficient detail for the Department to determine whether the costs associated with the tasks are eligible costs pursuant to Section 041; (5-8-09)

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

~~i. Be procured for design and/or services during construction or previously procured for planning services through the selection guidelines and procedures prescribed under Section 67-2320, Idaho Code; (5-8-09)~~

~~ii.~~ Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; (5-8-09)

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

~~i+ii.~~ Be covered by professional liability insurance in accordance with ~~Subsection 050-05.d.~~ of these rules. A certification of liability insurance shall be included in the application-; ~~(5-8-09)()~~

d. A description of other costs, not included in the contracts for engineering or other technical services, for which the applicant seeks funding. The description of the costs and tasks for such costs must be in sufficient detail for the Department to determine whether the costs are eligible costs pursuant to Section 041; (5-8-09)

e. A demonstration that the obligation to pay the costs for which funding is requested is the result or will be the result of the applicant's compliance with applicable competitive bidding requirements for construction and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code; (3-29-12)

f. Step 1 -- Scope of work describing the work tasks to be performed in the preparation of the planning document if required in accordance with ~~Subsection 030-02~~, a schedule for completion of the work tasks and an estimate of staff hours and costs to complete the work tasks; ~~(3-29-12)()~~

g. Step 2 -- Design, or Step 4 -- Design and Construction: (1-1-89)

- i. Planning document, including a final environmental document and decision in accordance with Section 042; (3-29-12)
- ii. Financial and management capability analysis as provided in ~~Subsection 010-01~~; and ~~(12-31-91)~~()
- iii. Intermunicipal service agreements between all entities within the scope of the project, if applicable; (5-8-09)
- h.** Step 3 -- Construction: (1-1-89)
- i. Documented evidence of all necessary easements and land acquisition; (5-8-09)
- ii. Biddable plans and specifications of the approved wastewater treatment facility alternative; (5-8-09)
- iii. A plan of operation and project schedule; (5-8-09)
- iv. A user charge system, sewer use or water system protection ordinance and financial management system; and ~~(1-1-89)~~()
- v. A staffing plan and budget; (5-8-09)
- i.** Step 4 -- Design and Construction. Loan applicants must submit all documentation specified in ~~Subsection 040-02-h~~ prior to advertising for bids on construction contracts; ~~(5-8-09)~~()
- j.** Nonpoint Source Implementation Funding: (5-8-09)
- i. Information demonstrating that the project is consistent with and implements the Idaho Nonpoint Source Management Plan; (5-8-09)
- ii. Data that substantiates a nonpoint source pollution problem or issue exists; (5-8-09)
- iii. A project implementation plan or workplan; (5-8-09)
- iv. Project commitment documentation that demonstrates the ability for loan repayment; (5-8-09)
- v. Documentation that the project owner, manager or sponsoring agency will maintain the project for the life of the project; (5-8-09)
- vi. A demonstration that there will be adequate tracking and evaluation of the effectiveness of the water quality improvements being funded by either the project owner/manager or the sponsoring agency throughout the life of the project; and (5-8-09)
- vii. A description of the nexus/benefit to a municipality and a letter of support from one (1) or more affected municipalities. (5-3-03)
- 03. Determination of Completeness of Application.** The Department ~~shall~~ will review the application to determine whether it includes all of the information required by ~~Subsection 040-02~~. ~~(5-3-03)~~()
- 04. Notification of Incompleteness of Application.** Written notification if an application is incomplete, including an explanation of missing documentation will be sent to the applicant. The applicant may provide the missing documentation. (5-3-03)
- 05. Reapplication for Loan.** The action of disapproving, recalling or terminating a loan in no way precludes or limits the former applicant from reapplying for another loan when the project deficiencies are resolved and project readiness is secured. (1-1-89)

041. DETERMINATION OF ELIGIBILITY OF COSTS.

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

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

a. Necessary costs; (3-29-12)

b. Reasonable costs; and (3-29-12)

c. Costs that are not ineligible as described in ~~Sub~~section 041.05. ~~(5-3-03)~~()

02. Necessary Costs. The Department ~~shall~~ **will** determine whether costs are necessary by comparing the tasks for which the costs will be incurred to the scope of the project as described in the plan of study for facility planning ~~planning~~ documents, the project implementation plan or work plan for nonpoint source projects, and any other relevant information in the application that describes the scope of the project to be funded. ~~(3-29-12)~~()

03. Reasonable Costs. Costs ~~shall~~ **will** be determined by the Department to be reasonable if the obligation to pay the costs is the result of or will be the result of the applicant's compliance with applicable competitive bidding requirements for construction and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code. ~~(5-8-09)~~()

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

a. Costs of salaries, benefits, and expendable material the applicant incurs in the project except ordinary operating expenses of local government, such as salaries and expenses of mayors, city council members, attorneys, commissioners, board members, or managers; (5-8-09)

b. Costs under construction contracts bid and executed in compliance with state public works construction laws; (5-3-03)

c. Professional and consulting services utilizing a lump sum contract, a negotiated hourly rate contract, a time and materials contract, or cost plus a fixed fee contract; (5-3-03)

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

e. ~~Sewer~~sSystem evaluations; ~~(5-3-03)~~()

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

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

h. Landscaping; (5-3-03)

i. Removal and relocation or replacement of utilities for which the applicant is legally obligated to pay; (5-8-09)

j. Material acquired, consumed, or expended specifically for the project; (5-3-03)

k. A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations; (5-3-03)

l. Preparation of an operation and maintenance manual; (5-3-03)

- m. Preparation of a plan of operation; (5-3-03)
 - n. Start-up services; (5-3-03)
 - o. Project identification signs; (5-3-03)
 - p. Public participation for alternative selection; (5-3-03)
 - q. Development of user charge and financial management systems; (5-3-03)
 - r. Development of sewer use or water system protection ordinance; ~~(5-3-03)~~()
 - s. Staffing plans and budget development; (5-3-03)
 - t. Certain direct and other costs as determined eligible by the Department; (5-3-03)
 - u. Costs of complying with the Federal Water Pollution Control Act (P.L. 92-500) as amended, 33 USC Section 1251 et seq. and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq), loan requirements applied to specific projects; and ~~(5-3-03)~~()
 - v. Site acquisition costs, including ~~sewer~~ right of way, ~~sewage treatment~~ plant site, wastewater land application sites and sludge disposal areas. Land purchase shall be from a willing seller. ~~(3-29-12)~~()
- 05. Ineligible Project Costs.** Costs which are ineligible for funding include, but are not limited to: (5-3-03)
- a. Basin or area wide planning not directly related to the project; (5-3-03)
 - b. Bonus payments not legally required for completion of construction before a contractual completion date; (5-3-03)
 - c. Personal injury compensation or damages arising out of the project; (5-3-03)
 - d. Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; (5-3-03)
 - e. Costs outside the scope of the approved project; (5-3-03)
 - f. Ordinary operating expenses of local government, such as salaries and expenses of mayors, city council members, attorneys, commissioners, board members, or managers; (5-8-09)
 - g. Construction of privately owned wastewater treatment facilities; (5-3-03)
 - h. Cost of land in excess of that needed for the proposed project; (5-3-03)
 - i. Cost of refinancing existing indebtedness; (3-29-12)
 - ~~j.~~ Engineering costs incurred without professional liability insurance; ()
 - ~~k.~~ Costs of condemnation; ()
 - ~~j.l.~~ Reserve funds; and (3-29-12)
 - ~~k.m.~~ Costs incurred prior to acceptance of the loan unless specifically approved in writing as eligible pre-award costs by the Department. (3-29-12)

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

(5-3-03)()

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

(5-3-03)

042. ENVIRONMENTAL REVIEW.

01. Environmental Documentation. ~~Projects may be a nonpoint source activity or a wastewater treatment facility or other point source facility.~~ Guidance on how to complete an environmental review ~~may be~~ is found in Chapter 5 of the applicable Handbook. For eligible ~~point source~~ projects funded solely with non-federal funds (~~i.e.g.~~ State Revolving Loan Fund repayments), see ~~Subsection 042.10~~. For eligible ~~point source~~ projects, the loan recipient shall complete an environmental review as part of and in conjunction with a planning document. Projects funded exclusively as nonpoint or estuary management projects may not be required to complete an environmental review. The loan recipient shall consult with the Department at an early stage in the loan process to determine the required level of environmental review. Based on review of existing information, and assessment of environmental impacts, the loan recipient shall complete one (1) of the following per the Department's instruction:

(3-29-12)()

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

(5-8-09)

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

(5-8-09)

or

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

(5-8-09)

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

(3-29-12)()

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

(3-29-12)()

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

(3-29-12)()

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

(3-29-12)

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

(5-8-09)

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

(5-8-09)

c. The Department *shall will* review the draft EID and either request additional information about one (1) or more potential impacts, or *shall* draft a “finding of no significant impact” (FONSI). (5-8-09)()

04. Final Finding of No Significant Impact. The Department *shall will* publish the draft FONSI in a local newspaper in the geographical area of the proposed project and *shall will* allow a minimum thirty (30) day public comment period. Following the required period of public review and comment, and after any public concerns about project impacts are addressed, the FONSI *shall will* become final. The Department *shall will* assess the effectiveness and feasibility of the mitigation measures identified in the FONSI and EID prior to the issuance of the final FONSI and approval of the planning document. (3-29-12)()

05. Environmental Impact Statement (EIS) Requirements. If an (EIS) is required, the loan recipient shall: (3-29-12)

a. Consult with all affected federal and state agencies, and other interested parties, to determine the required scope of the document; (5-8-09)

b. Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment; (5-8-09)

c. Conduct a public meeting which may be in conjunction with a planning document meeting; and (3-29-12)

d. Prepare and submit a final EIS incorporating all agency and public input for Department review and approval. (5-8-09)

06. Final ~~Environmental Impact Statement (EIS)~~. Upon completion of the EIS by the loan recipient and approval by the Department of all requirements listed in ~~Subsection 042-05~~, the Department *shall will* issue a record of decision, documenting the mitigation measures ~~which shall to~~ be required of the loan recipient. The loan agreement can be completed once the final EIS has been approved by the Department. (3-29-12)()

07. Partitioning the Environmental Review. Under certain circumstances, the building of a component/partition of a ~~wastewater~~ system may be justified in advance of all environment review requirements for the remainder of the system. The Department *shall will* approve partitioning the environment review in accordance with established procedures. (3-29-12)()

08. Use of Environmental Reviews Conducted by Other Agencies. If environmental review for the project has been conducted by another state, federal, or local agency, the Department may, at its discretion, issue its own determination by adopting the document and public participation process of the other agency. (5-8-09)

09. Validity of Review. Environmental reviews, once completed by the Department, are valid for five (5) years from the date of completion. If a loan application is received for a project with an environmental review which is more than five (5) years old, the Department *shall will* reevaluate the project, environmental conditions and public views and *shall will*: (3-29-12)()

a. Reaffirm the earlier decision; or (1-1-89)

b. Require supplemental information to the earlier EIS, EID, or request for CE. Based upon a review of the updated document, the Department *shall will* issue and distribute a revised notice of CE, FONSI, or record of decision. (5-8-09)()

10. Exemption From Review. Loan projects may be exempt from certain federal crosscutting authorities at the discretion of the Department as long as in any given year the annual amount of loans, equal to the most recent federal capitalization grant, complies with all of the federal crosscutting authorities. (3-29-12)

043. -- 049. (RESERVED)

050. LOAN OFFER AND ACCEPTANCE.

01. Loan Offer. Loan offers will be delivered to successful applicants by representatives of the Department or by registered mail. (1-1-89)

02. Acceptance of Loan Offer. Applicants have sixty (60) days in which to officially accept the loan offer on prescribed forms furnished by the Department. The sixty (60) day acceptance period commences from the date indicated on the loan offer notice. If the applicant does not accept the loan offer within the sixty (60) day period the loan funds may be offered to the next project of priority. (1-1-89)

03. Acceptance Executed as a Contract Agreement. Upon signature by the Director and upon signature by the authorized representative of the eligible applicant, the loan offer shall become a contract. Upon accepting a loan offer, an eligible applicant becomes a loan recipient. The disbursement of funds pursuant to a loan contract is subject to a finding by the Director that the loan recipient has complied with all loan contract conditions and has prudently managed the project. The Director may, as a condition of disbursement, require that a loan recipient vigorously pursue any claims it has against third parties who will be paid in whole or in part, directly or indirectly, with loan funds. No third party shall acquire any rights against the state or its employees from a loan contract. ~~(5-3-03)~~()

04. Estimate of Reasonable Cost. All loan contracts will include the eligible costs of the project. Some eligible costs may be estimated and disbursements may be increased or decreased as provided in Section 060. (5-3-03)

05. Terms of Loan Offers. The loan offer shall contain such terms as are prescribed by the Department including, but not limited to: (1-1-89)

a. Terms consistent with these rules, the project step to be funded under the loan offer, and Title 39, Chapter 36, Idaho Code; (5-8-09)

b. Special clauses as determined necessary by the Department for the successful investigation, design, construction and management of the project; (5-8-09)

c. Terms consistent with applicable state and federal laws pertaining to planning documents, design, and construction, including the Public Works Contractors License Act and the Public Contracts Bond Act, Chapter 19, Title 54, Idaho Code, and the federal Clean Water Act and Safe Drinking Water Act requirements for projects funded with loan moneys of federal origin; ~~(3-29-12)~~()

d. Requirement for the prime engineering firm(s) and their principals retained for engineering services to carry professional liability insurance to protect the public from the engineer's negligent acts and errors and omissions of a professional nature. The total aggregate of the engineer's professional liability insurance shall be one hundred thousand dollars (\$100,000) or twice the amount of the engineer's fee, whichever is greater. Professional liability insurance must cover all such services rendered for all project phases, whether or not such services or phases are state funded, until the certification of project performance is accepted by the Department; (3-29-12)

e. The project shall be bid, contracted and constructed according to the current edition of Idaho Standards for Public Works Construction unless the loan recipient has approved and adopted acceptable public works construction standards approved by the Department; (3-29-12)

f. The loan interest rate for loans made during the state fiscal year beginning July 1 will be established by the Director. The interest rate will be a fixed rate in effect for the life of the loan. The rate may equal but shall not exceed the current market rate; (5-8-09)

g. The loan fee pursuant to Section 032; (5-8-09)

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

repayments at the time the loan is finalized; and

(3-29-12)()

i. Repayment default will occur when a scheduled loan repayment is thirty (30) days past due. If default occurs, the Department may invoke appropriate loan contract provisions and/or bond covenants. (5-3-03)

051. ACCOUNTING AND AUDITING PROCEDURES.

Loan recipients must maintain project accounts in accordance with generally accepted accounting principles. ~~Eligible nonpoint source water pollution control implementation funding projects~~ sponsors may be audited on an annual basis according to government auditing standards issued by the U.S. ~~General Accounting~~ Governmental Accountability Office. (3-29-12)()

(BREAK IN CONTINUITY OF SECTIONS)

995. WAIVER OF REQUIREMENTS AND AMENDMENT OF ~~INTEGRATED~~ PRIORITY LIST.

~~01. Conditions for Waiver.~~ The Director may amend the ~~integrated~~ Priority List and grant a waiver from the requirements of these rules on a case-by-case basis upon full demonstration by the loan recipient requesting the waiver that the following conditions exist. See also ~~Subsection 020.05~~ of these rules. (3-29-12)()

~~a01. Health Hazard.~~ A significant public health hazard exists; (5-8-09)

~~b02. Water Contamination.~~ A significant water contamination problem exists; (5-8-09)

~~e03. Pollution.~~ A significant point source of pollution exists causing a violation of Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards"; or (3-29-12)

~~d04. Affordability Criteria Exceeded.~~ The project will exceed affordability criteria adopted by the Department in the event the waiver is not granted. (3-29-12)

~~02. Availability of Federal Funds.~~ The waiver will not affect the availability of federal funds for the project where such funding is required by the loan recipient requesting the waiver. (3-29-12)

996. -- 999. (RESERVED)

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.20 – RULES FOR ADMINISTRATION OF DRINKING WATER LOAN PROGRAM

DOCKET NO. 58-0120-1901 (CHAPTER REPEAL)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. The 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 November 20, 2019. If no such written request is received, a public hearing will not be held.

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

Prospective grant and loan recipients, consulting engineers, grant and loan administrators, other funding agencies, public officials representing various counties and cities, and the public at large may be interested in commenting on this proposed rule.

After consideration of public comments, DEQ intends to present the final proposal to the Idaho Board of Environmental Quality (Board) in 2020 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2021 legislative session if adopted by the Board and approved by the Legislature.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: N/A

NEGOTIATED RULEMAKING: The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220. On August 1, 2019, DEQ posted notice of the negotiated rulemaking on its website, and a preliminary draft rule was made available for public review. The Notice of Negotiated Rulemaking was published in the August 2019 issue of the Idaho Administrative Bulletin, [Vol. 19-8, pages 158–159](#), and a meeting was held on August 27, 2019. Key information was posted on the DEQ website and distributed to the public. No comments were received.

At the conclusion of the negotiated rulemaking process, DEQ formatted the draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule. The negotiated rulemaking record, which includes the negotiated rule draft, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at www.deq.idaho.gov/58-0120-1901.

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

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Tim Wendland at tim.wendland@deq.idaho.gov or (208) 373-0439.

SUBMISSION OF WRITTEN COMMENTS: 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 December 4, 2019.

Dated this 6th day of November, 2019.

Paula J. Wilson
Phone: (208) 373-0418 / Fax: (208) 373-0481
paula.wilson@deq.idaho.gov

Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706