IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.22 – RULES FOR ADMINISTRATION OF PLANNING GRANTS FOR DRINKING WATER AND WASTEWATER FACILITIES

DOCKET NO. 58-0122-2401 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This 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 September 18, 2024. If no such written request is received, a public hearing will not be held. Two public scoping meets were held before the negotiated rulemaking process and three public meetings were held during the negotiated rulemaking process.

DESCRIPTIVE SUMMARY: DEQ initiated this rulemaking in compliance with Executive Order No. 2020-01, Zero-Based Regulation (EO 2020-01), issued by Governor Little on January 16, 2020. Pursuant to EO 2020-01, each rule chapter effective on June 30, 2020, shall be reviewed by the agency that promulgated the rule. The review will be conducted according to a schedule established by the Division of Financial Management, Office of the Governor (DFM), posted at https://adminrules.idaho.gov/forms_menu.htm. This is one of the DEQ rule chapters up for review in 2024. The goal of the rulemaking is to perform a critical and comprehensive review of the entire chapter in an attempt to reduce overall regulatory burden, streamline various provisions, and increase clarity and ease of use.

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. If adopted by the Idaho Board of Environmental Quality and approved by concurrent resolution of the 2025 Idaho State Legislature, the rule will become effective on July 1, 2025, unless otherwise specified in the concurrent resolution.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars ($10,000) during the fiscal year resulting from this rulemaking: Not applicable.

NEGOTIATED RULEMAKING: Negotiated rulemaking was conducted pursuant to Section 67-5220, Idaho Code. On April 3, 2024, the Notice of Intent to Promulgate Rules – Zero-Based Regulation (ZBR) Negotiated Rulemaking was published in the Idaho Administrative Bulletin. At the conclusion of the negotiated rulemaking process, DEQ submitted the draft rule to the Division of Financial Management for review. DEQ formatted the draft for publication as a proposed rule and is now seeking public comment. The negotiated rulemaking record, which includes the negotiated rule drafts, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at https://www.deq.idaho.gov/drinking-water-and-wastewater-grants-docket-no-58-0122-2401/.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Not applicable

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule is an amendment to a long-standing rule that regulates an activity not regulated by the federal government and has previously been approved as meeting the requirements of Section 39-107D, Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this proposed rulemaking, contact MaryAnna Peavey at maryanna.peavey@deq.idaho.gov, (208) 373-0122.

SUBMISSION OF WRITTEN COMMENTS: Anyone may submit written comments regarding this proposed rule. The Department will consider all written comments received on or before September 25, 2024. Submit written comments to:

MaryAnna Peavey
Department of Environmental Quality
1410 N. Hilton, Boise, ID 83706
maryanna.peavey@deq.idaho.gov

Dated this 4th day of September, 2024.

Janeena White
Senior Operations Analyst
Department of Environmental Quality
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0122-2401
(ZBR Chapter Rewrite)

58.01.22 – RULES FOR ADMINISTRATION OF PLANNING GRANTS FOR DRINKING WATER AND WASTEWATER FACILITIES

000. LEGAL AUTHORITY.
~~The Idaho State Board of Environmental Quality, pursuant to authority granted in~~ Chapters 1 and 36, Title 39, Idaho Code~~, adopted the following rules for the administration of Drinking Water and Wastewater Planning Grant Programs in Idaho~~. ~~(3-31-22)~~( )

001. ~~TITLE AND~~ SCOPE.

~~01.~~ ~~Title~~. ~~These rules will be known and cited as Rules of the Idaho Department of Environmental Quality, IDAPA 58.01.22, "Rules for Administration of Planning Grants for Drinking Water and Wastewater Facilities."~~ ~~(3-31-22)~~

~~02.~~ ~~Scope~~. ~~The provisions of t~~These rules ~~will~~ establish administrative procedures ~~and requirements~~ for establishing, implementing, and administering a state planning grant program providing financial assistance to qualifying entities to prepare a drinking water or wastewater facility planning document. ~~(3-31-22)~~( )

002. (RESERVED)

003. ADMINISTRATIVE APPEALS.
Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Contested Case Rules and Rules for Protection and Disclosure of Records." (3-31-22)

004. ~~INCORPORATION BY REFERENCE AND AVAILABILITY OF~~ REFERENCED MATERIAL.

~~01.~~ ~~Incorporation by Reference~~. ~~These rules do not contain documents incorporated by reference.~~ ~~(3-31-22)~~

~~02. Availability of Referenced Material.~~ The "Customer Handbook Grants and Loans Program" (Handbook) is available at the Idaho Department of Environmental Quality, ~~Water Quality Division Loan Program~~ Drinking Water Protection and Finance Division, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502, or ~~www.deq.idaho.gov~~ http://www.deq.idaho.gov/SRF. ~~(3-31-22)~~( )

~~005. CONFIDENTIALITY.~~
~~Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 1, Title 74, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality."~~ ~~(3-31-22)~~

~~006. POLICY.~~
~~It is the policy of the Idaho Board of Environmental Quality, through the Idaho Department of Environmental Quality, to administer the Drinking Water and Wastewater Grant Programs. The Drinking Water and Wastewater Grant Programs provide assistance to eligible public drinking water and wastewater systems for the planning of facilities to help ensure safe and adequate supplies of drinking water and appropriate processing and disposal of wastewater. It is the intent of the Idaho Board of Environmental Quality to assign a priority rating to those projects to facilitate the compliance of any eligible public drinking water system with national primary drinking water regulations applicable to the system, IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act, 42 U.S.C. Sections 300f et seq., and to administer the Wastewater Treatment Facility Grant Program to protect and enhance 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 in accordance with IDAPA 58.01.16, Wastewater Rules.~~ ~~(3-31-22)~~

~~007. SYSTEM ELIGIBILITY.~~

~~01. Eligible Drinking Water Systems. Community water systems and nonprofit noncommunity water systems.~~ ~~(3-31-22)~~

~~02. Eligible Wastewater Systems. Any county, city, special service district, nonprofit corporation, or other governmental entity, or a combination thereof, having authority to collect, treat or dispose of wastewater.~~ ~~(3-31-22)~~

~~03. Systems Not Eligible. The following systems will not be considered eligible for project planning grants:~~ ~~(3-31-22)~~

~~a. Systems that do not have the financial capability to pay their non-grant share of a planning project.~~ ~~(3-31-22)~~

~~b. Systems delinquent in payment of the annual state drinking water fee, Idaho Pollutant Discharge Elimination System (IPDES) permit assessments or state revolving fund loan repayments.~~ ~~(3-31-22)~~

00~~8~~5. -- 009. (RESERVED)

010. DEFINITIONS.
~~For the purpose of the rules contained in this chapter, the following definitions apply:~~The terms "board," "department," "director," "person," and "state" have the meaning provided for those terms in Section 39-103, Idaho Code. ~~(3-31-22)~~( )

01. **Applicant**. Any qualifying entity making application for planning grant funds. (3-31-22)

~~02. Board. The Idaho Board of Environmental Quality.~~ ~~(3-31-22)~~

0~~3~~2. **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. (3-31-22)

~~04. Collector Sewer. That portion of the wastewater treatment facility whose primary purpose is to~~

~~receive sewage from individual residences and other individual public or private structures and which is intended to convey wastewater to an interceptor sewer or a treatment plant.~~ ~~(3-31-22)~~

0~~5~~3. **Community Water System**. As defined in IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems." ~~(3-31-22)~~( )

~~a. Serves at least fifteen (15) service connections used by year-round residents of the area served by the system; or~~ ~~(3-31-22)~~

~~b. Regularly serves at least twenty-five (25) year-round residents.~~ ~~(3-31-22)~~

~~06. Contaminant. Any physical, chemical, biological, or radiological substance or matter in water.~~ ~~(3-31-22)~~

~~07. Department. The Idaho Department of Environmental Quality.~~ ~~(3-31-22)~~

~~08. Director. The Director of the Idaho Department of Environmental Quality or the Director's designee.~~ ~~(3-31-22)~~

~~09. Distribution System. Any combination of pipes, tanks, pumps, and other equipment which 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.~~ ~~(3-31-22)~~

~~10. Domestic Wastewater. Wastewater derived from public or private residences, business buildings or institutions and similar establishments and which contains water and human body wastes, specifically excreta and urine, along with such products designed to come in contact with excreta and urine in the practice of personal hygiene.~~ ~~(3-31-22)~~

~~11~~04. **Eligible Costs**. Costs which are necessary for planning. To be eligible, costs must also be reasonable and not ineligible costs. The determination of eligible costs ~~shall~~ will be made by the Department pursuant to Section 032. ~~(3-31-22)~~( )

~~12~~05. **Environmental Impact Statement (EIS)**. A document prepared by the applicant when the Department determines that the proposed drinking water project will significantly affect the environment. The major purpose of the EIS will be to describe fully the significant impacts of the project and how these impacts can be either avoided or mitigated. The Environmental Review Procedures contained in the Handbook may be used as guidance when preparing the EIS. (3-31-22)

~~13~~06. **Environmental Information Document (EID)**. Any written environmental assessment prepared by the applicant describing the environmental impacts of a proposed drinking water or wastewater construction project. This document will be of sufficient scope to enable the Department to assess the environmental impacts of the proposed project ~~and ultimately determine if an environmental impact statement (EIS) is warranted~~. ~~(3-31-22)~~( )

~~14~~07. **Financial Capability**. The ability to raise and manage funds to provide the necessary resources for proper operation of the system. (3-31-22)

~~15~~08. **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 ~~environmental impact statement (~~ EIS~~)~~ will not be prepared. It ~~shall~~ will include the environmental ~~information document~~ assessment or a summary of it and will note any other environmental documents related to it. ~~(3-31-22)~~( )

~~16~~09. **Grant Recipient**. An applicant who has been awarded a grant. (3-31-22)

~~17. Handbook. "Customer Handbook Grants and Loans Program".~~ ~~(3-31-22)~~

180. Idaho Pollutant Discharge Elimination System (IPDES). Point source permitting program established pursuant to Section 402 of the federal Clean Water Act (33 U.S.C. Section 1342). (3-31-22)( )

191. Ineligible Costs. Costs which are not eligible for funding pursuant to these rules. (3-31-22)

20. Interceptor Sewer. That portion of the wastewater treatment facility whose primary purpose is to transport domestic sewage or nondomestic wastewater from collector sewers to a treatment plant. (3-31-22)

21. Maximum Contaminant Level (MCL). The maximum permissible level of a contaminant in water which is delivered to any user of a public drinking water system. (3-31-22)

22. Managerial Capability. The capabilities of the qualified entity to support the proper financial management and technical operation of the system. (3-31-22)

2312. Noncommunity Water System. A public water system that is not a community water system As defined in IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems." (3-31-22)( )

24. Nondomestic Wastewater. Wastewaters originating primarily from industrial or commercial processes which carry little or no pollutants of human origin. (3-31-22)

2513. Nonprofit Noncommunity Water System. A public drinking water system that is not a community water system and is governed by Section 501 of the Internal Revenue Code and includes, but is not limited to, state agencies, municipalities and nonprofit organizations such as churches and schools. (3-31-22)

26. Nontransient Noncommunity Water System. A public drinking water system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year. (3-31-22)

27. Operation and Maintenance Manual. A guidance and training manual delineating the optimum operation and maintenance of the facility or its components. (3-31-22)

28. Person. An individual, corporation, company, association, partnership, state agency, municipality, or federal agency (and includes officers, employees, and agents of any corporation, company, association, state agency, municipality, or federal agency). (3-31-22)

2914. Planning Document. A document which describes the condition of a public drinking water or 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 must be prepared by or under the responsible charge of an Idaho licensed professional engineer and bear the imprint of the engineer's seal. Requirements for planning documents prepared using grant funds are provided in Section 030 of these rules and in the Handbook. (3-31-22)( )

3015. Point Source. Any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be discharged. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition. (3-31-22)

31. Pollutant. Any chemical, biological, or physical substance whether it be solid, liquid, gas, or a quality thereof, which if released into the environment can, by itself or in combination with other substances, create a nuisance or render that environment harmful, detrimental, or injurious to public health, safety or welfare or to domestic, commercial, industrial, recreational, aesthetic or other beneficial uses. (3-31-22)

3216. Priority List. A ranked list of proposed projects as described in Section 020. (3-31-22)( )

3317. 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."~~ As defined in IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems." ~~(3-31-22)~~( )

~~34~~18. **Qualifying Entity**. Any county, city, special service district, nonprofit or investor-owned corporation, or other governmental entity, or a combination thereof, which owns or operates a public drinking water system, irrigation system, or wastewater system. (3-31-22)

~~35. **Rehabilitation**. The repair or replacement of segments of drinking water facilities.~~ ~~(3-31-22)~~

~~36. **Reserve Capacity**. That portion of the system in the planned facilities to handle future drinking water demand.~~ ~~(3-31-22)~~

~~37. **Sewer Use Ordinance/Sewer Use Resolution**. An ordinance or resolution which requires new sewers and connections to be properly designed and constructed, prohibits extraneous sources of inflow and prohibits introduction of wastes into the sewer in an amount that endangers the public safety or the physical or operational integrity of the wastewater treatment facility.~~ ~~(3-31-22)~~

~~38. **State**. The state of Idaho.~~ ~~(3-31-22)~~

~~3~~19. **Suspension**. An action by the Director to suspend a grant contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (3-31-22)

~~4~~20. **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. (3-31-22)

~~41. **Technical Capability**. The ability of the public drinking water or wastewater system to comply with existing and expected rules.~~ ~~(3-31-22)~~

~~4~~21. **Termination**. An action by the Director to permanently terminate a grant contract prior to project completion for a specific cause. Terminated contracts will not be reinstated. (3-31-22)

~~43. **User Charge System**. A system of rates and service charges applicable to specific types of users, including any legal enforcement mechanism as may be required, and which provides sufficient reserves and/or revenues for debt retirement, operation and maintenance, and replacement of the wastewater treatment facility.~~ ~~(3-31-22)~~

~~44~~22. **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.~~ As defined in IDAPA 58.01.16, "Wastewater Rules." ~~(3-31-22)~~( )

~~45~~23. **Wastewater ~~Treatment~~ Facility**. Any facility, including land, equipment, furnishings and appurtenances thereof, for the purpose of collecting, treating, neutralizing or stabilizing wastewater and removing pollutants from wastewater or otherwise provide direct water quality benefits. This includ~~ing~~es the treatment plant, collectors, interceptors, outfall and outlet sewers, pumping stations, sludge treatment and handling systems and land disposal systems. ~~(3-31-22)~~( )

~~46. **Water Treatment Plant**. That portion of the public drinking water system whose primary purpose is to remove contaminants.~~ ~~(3-31-22)~~

011. -- 01~~9~~8. (RESERVED)

019. ELIGIBILITY.

01. Eligible Drinking Water Systems. Community water systems and nonprofit noncommunity water systems. ( )

02. Eligible Wastewater Systems. Counties, cities, special service districts, other governmental entities, and nonprofit corporations with authority to collect, treat, or dispose of wastewater or otherwise provide direct water quality benefits. ( )

03. Systems Not Eligible. The following systems will not be considered eligible for project planning grants: ( )

a. Systems that do not have the financial capability to pay their non-grant share of a planning project; and ( )

b. Systems delinquent in payment of the annual state drinking water fee, IPDES permit assessments, or state revolving fund loan repayments. ( )

020. PRIORITY RATING SYSTEM.

~~Projects are identified for placement on priority lists by surveying eligible entities directly on an annual basis. Grant funds are awarded to projects based on priority ratings. Projects are rated by the Department on a standard priority rating form using public health, sustainability, and water quality criteria and condition of the existing system.~~ ~~(3-31-22)~~

01. Purpose. A priority rating system ~~shall~~ will be utilized by the Department to annually allot available funds to projects determined eligible for funding assistance in accordance with these rules. ~~(3-31-22)~~( )

02. Priority Rating for Drinking Water Systems. The priority rating system ~~shall~~ will be based on a numerical point system. Priority criteria ~~shall~~ will contain the following points~~:~~. ~~(3-31-22)~~( )

a. Public Health Hazard. Any documented condition which creates, or may create, a danger to the consumer's health, which may include any one (1) or more of the following, may be awarded a maximum of one hundred (100) points: ~~(3-31-22)~~( )

i. ~~Documented u~~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 contaminates); ~~(3-31-22)~~( )

ii. ~~Documented u~~Unresolved violations of pressure requirements; ~~(3-31-22)~~( )

iii. ~~Documented r~~Reduction in source capacity that impacts the system's ability to reliably serve water; ~~(3-31-22)~~( )

iv. ~~Documented s~~Significant deficiencies (e.g., documented in a sanitary survey) in the physical system that is causing the system to not be able to reliably serve safe drinking water. ~~(3-31-22)~~( )

v. ~~Documented u~~Unregulated contaminants that have been shown to be a hazard to public health. ~~(3-31-22)~~( )

b. General Conditions of Existing Facilities. Points ~~shall~~ will be given based on deficiencies (which ~~would~~ may not constitute a public health hazard) for pumping, treating, storing, and delivering drinking water - up to sixty (60) points. ~~(3-31-22)~~( )

c. Sustainability ~~E~~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. ~~(3-31-22)~~( )

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~~Regulatory compliance issues (e.g., noncompliance and resulting legal actions relating to infrastructure deficiencies of the public drinking water system) - up to thirty (30) points. ~~(3-31-22)~~( )

e. Incentives. Bonus points ~~shall~~ will be awarded to systems that promote source water protection, conservation, ~~economy,~~ proper operation and maintenance, and monitoring - up to ten (10) points. ~~(3-31-22)~~( )

f. Affordability. Points ~~shall~~ will be given when current system user charges exceed state affordability guidelines - ~~ten (10)~~ up to fifty (50) points. ~~(3-31-22)~~( )

03. Priority Rating for Wastewater Systems. The priority rating system ~~shall~~ will be based on a numerical point system. Priority criteria ~~shall~~ will contain the following points. ~~(3-31-22)~~( )

~~**a.** Public health emergency or hazard certified by the Idaho Board of Environmental Quality, the Department, a District Health Department, or by a District Board of Health - one hundred fifty (150) points.~~ ~~(3-31-22)~~

~~**b**~~**a.** Regulatory compliance issues (e.g., noncompliance and resulting legal actions relating to infrastructure deficiencies at a wastewater facility) – up to one hundred (100) points. (3-31-22)

~~**c**~~**b.** 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. (3-31-22)

~~**d**~~**c.** 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. (3-31-22)

~~**e**~~**d.** Preventing impacts to uses (nonpoint source pollution projects) – up to one hundred (100) points. (3-31-22)

~~**f**~~**e.** 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. (3-31-22)

~~**g**~~**f.** Affordability (current system user charges exceed state affordability guidelines) – ~~ten~~ up to fifty (~~10~~50) points. ~~(3-31-22)~~( )

~~**04. Rating Forms**. Rating criteria for Subsections 020.02 and 020.03 is set forth in a rating form that is available at www.deq.idaho.gov.~~ ~~(3-31-22)~~

0~~5~~4. **Priority List**. A list ~~shall~~ will be developed from projects rated according to the priority rating system, submitted for public review and comment, and submitted to the Board for approval and adoption. ~~(3-31-22)~~( )

a. ~~**Priority Reevaluation.**~~ Whenever significant changes occur, which in the Department's judgment ~~would~~ affects the design parameters or treatment requirements by either increasing or decreasing the need for or scope of any project, a reevaluation of that priority rating will be conducted. ~~(3-31-22)~~( )

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 grant

application will be established. ~~(3-31-22)~~( )

c. ~~**Project Bypass.**~~ A project that does not or will not meet the ~~project target date or a Department schedule that allows for timely utilization of grant funds~~ priority target date for submission of a completed application may be bypassed, substituting in its place the next highest ranking project that is ready to proceed. An eligible applicant that is bypassed will be notified in writing of the reasons for being bypassed. ~~(3-31-22)~~( )

0~~6~~5. **Amendment of Priority List**. The ~~Director~~ Department may amend the ~~P~~priority ~~L~~list as set forth in Section 080 ~~of these rules~~. ~~(3-31-22)~~( )

021. -- 029. (RESERVED)

030. PROJECT SCOPE AND FUNDING.
Grant funds awarded under this program will be used entirely to prepare a planning document to identify the cost effective and environmentally sound alternative to achieve or maintain compliance with IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act, 42 U.S.C. Sections 300f et seq.~~;~~ or~~,~~ maintain compliance with IDAPA 58.01.16, "Wastewater Rules," and the federal Clean Water Act, 33 U.S.C. Sections 1381 et seq. The planning document must be approved by the Department. ~~(3-31-22)~~( )

01. Planning Document. (3-31-22)

a. A planning document ~~shall~~ must include all items ~~required by~~ listed in IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Subsection 503.03 or 502.04 or IDAPA 58.01.16, "Wastewater Rules," Subsection 411.03 or 410.04, and project specific efforts committed to in the Letter of Interest submitted for the project. A planning document checklist can be found in the Handbook. ~~Should~~ If the grant recipient proceeds to construction using federal funds (e.g., a state revolving fund loan), then the items listed in Subsection 030.01.b. ~~of these rules~~ will be ~~required~~ necessary prior to construction. ~~(3-31-22)~~( )

b. A planning document that is prepared anticipating the use of federal funds ~~shall~~ must include an environmental review ~~that~~ and will require the Department approval of both a technical draft and final planning document. ~~(3-31-22)~~( )

i. ~~The draft planning document shall include all items required by IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Subsection 502.04 or 503.03, as well as the following; or 58.01.16, "Wastewater Rules," Subsection 411.03 or 410.04~~ In addition to the provisions of Subsection 030.01.a., the technical draft planning document must include: ~~(3-31-22)~~( )

(1) Description of existing conditions for the proposed project area; (3-31-22)

(2) Description of future conditions for the proposed project area; (3-31-22)

(3) Development and initial screening of alternatives; and ~~(3-31-22)~~( )

(4) Development of an environmental review specified by the Department as described in Section 040. (3-31-22)

ii. The grant recipient must provide an opportunity for the public to comment on the technical draft planning document after alternatives have been developed and the Department has approved the technical draft planning document. In addition, the recipient must: ( )

(1) Provide documentation of the public notice, comment period, and at least one (1) public meeting within the jurisdiction of the grant recipient was held during the public comment period; ( )

(2) Present the technical draft planning document with an explanation of the alternatives identified; ( )

(3) Consider public comments received from those affected by the proposed project in evaluating and

selecting the cost effective and environmentally sound alternative; ( )

(4) Identify the selected alternative after the public meeting and comment period; and ( )

(5) Prepare the environmental documentation. ( )

~~ii~~iii. The final planning document ~~shall~~ must include all items required of the technical draft planning document as well as the following: ~~(3-31-22)~~( )

(1) Final ~~screening~~ evaluation of ~~principal~~ alternatives ~~and plan adoption~~ including documentation of public comment period and results; ~~(3-31-22)~~( )

(2) ~~S~~Description of the selected alternative, plan ~~description and~~ adoption, and implementation arrangements; ~~and~~ ~~(3-31-22)~~( )

(3) Relevant engineering data supporting the ~~final~~ selected alternative.; and ~~(3-31-22)~~( )

(4) Assessment of the cost and effectiveness, to the maximum extent practicable, of efficient water use, reuse, recapture and conservation, and energy conservation, with cost including construction, operation and maintenance, and replacement. (3-31-22)

~~iii. The grant recipient shall provide an opportunity for the public to comment on the draft planning document. The public comment period shall be held after alternatives have been developed and the Department has approved the draft planning document. The grant recipient shall provide written notice of the public comment period and hold at least one (1) public meeting within the jurisdiction of the grant recipient during the public comment period. At the public meeting, the grant recipient shall present the draft planning document with an explanation of the alternatives identified. The cost effective and environmentally sound alternative selected shall consider public comments received from those affected by the proposed project. After the public meeting and public comment period, the final alternative will be selected and the Environmental Information Document may be prepared.~~ ~~(3-31-22)~~

c. The technical draft and final planning document ~~shall~~ must bear the imprint of an Idaho licensed professional engineer's seal that is both signed and dated by the engineer. ~~(3-31-22)~~( )

d. The technical draft and final planning documents must be reviewed and approved by the Department. ~~(3-31-22)~~( )

e. The planning period ~~shall~~ must be twenty (20) years for all facilities except for distribution and transmission systems which may be forty (40) years. Build-out conditions must also be considered for collection systems. ~~(3-31-22)~~( )

02. Limitation on Funding Assistance. The maximum grant funding provided in a state planning grant award ~~shall~~ will not exceed fifty percent (50%) of the total eligible costs for grants awarded. ~~(3-31-22)~~( )

03. Professional Services. The engineering firm retained to prepare the planning document must be selected based on qualifications in accordance with Section 67-2320, Idaho Code, and at a minimum is: ( )

a. A registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; ( )

b. Not debarred or otherwise prevented from providing services under another federal or state financial assistance program; and ( )

c. Covered by professional liability insurance in accordance with Subsection 050.05.d. ( )

031. REVIEW AND EVALUATION OF GRANT APPLICATIONS.

01. Submission of Application. Those eligible systems which received high priority ranking ~~shall~~ will

be invited to ~~submit an application~~ apply. The applicant ~~shall~~ must submit to the Department, by the priority target date, a completed application ~~in~~ on a form prescribed by the Department. ~~(3-31-22)~~( )

02. Application ~~Requirements~~ Contents. Applications ~~shall~~ must contain the following documentation, as applicable: ~~(3-31-22)~~( )

a. An authorizing resolution passed by a majority of the governing body authorizing an elected official or officer of the qualifying entity to commit funding; ~~and~~ ~~(3-31-22)~~( )

b. Contracts for engineering services or other technical services and the description of costs and tasks set forth therein ~~shall~~ must be in sufficient detail for the Department to determine whether the costs associated with the tasks are eligible costs pursuant to Section 032; ~~and~~ ~~(3-31-22)~~( )

c. A ~~plan of study~~ scope of work describing the work tasks to be performed in the planning document, a schedule for completion of the work tasks and an estimate of staff hours and costs to complete the work tasks; ~~and~~ ~~(3-31-22)~~( )

~~**d.** Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum: (3-31-22)~~

~~i. Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; and (3-31-22)~~

~~ii. Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and (3-31-22)~~

~~iii. Be covered by professional liability insurance in accordance with Subsection 050.05.d. A certification of liability insurance shall be included in the application; and (3-31-22)~~

~~e~~**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 032; ~~and~~ ~~(3-31-22)~~( )

~~f~~**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 requirements for competitive bidding ~~requirements~~ and ~~requirements for~~ professional service contracts, including without limitation, the ~~requirements~~ provisions set forth in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code; ~~and~~ ~~(3-31-22)~~( )

~~g~~**f.** A statement regarding how the non-grant portion of the project will be funded; and (3-31-22)

~~h~~**g.** For incorporated nonprofit applicants only, Articles of Incorporation and ~~/or~~ Bylaws showing nonprofit and incorporated status according to Chapter 3, Title 30, Idaho Code. ~~(3-31-22)~~( )

03. Determination of Completeness of Application. Applications will be reviewed to determine whether they contain all of the information ~~required by~~ listed in Subsection 031.02. ~~(3-31-22)~~( )

04. Notification Regarding Incompleteness of Application. Written notification if an application is incomplete, including an explanation of missing documentation, will be sent to the applicant. (3-31-22)

05. Reapplication for Grant. The action of disapproving, recalling, or terminating a grant in no way precludes or limits ~~the former~~ an applicant from reapplying for another grant when the project deficiencies are resolved and project readiness is secured. ~~(3-31-22)~~( )

032. DETERMINATION OF ELIGIBILITY OF COSTS.
The Department will review the application, including ~~any~~ necessary contracts ~~required~~ to be submitted with the application, to determine whether the costs are eligible costs for funding. ~~(3-31-22)~~( )

01. Eligible Costs. Eligible costs are those determined by the Department to be: (3-31-22)

a. Necessary costs; (3-31-22)

b. Reasonable costs; and (3-31-22)

c. Costs that are not ineligible as described in Subsection 032.05. (3-31-22)

02. Necessary Costs. The Department 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~~ scope of work for the planning document. ~~(3-31-22)~~( )

03. Reasonable Costs. Costs 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 requirements for competitive bidding ~~requirements~~ and ~~requirements for~~ professional service contracts, including without limitation, the ~~requirements~~ provisions set forth in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code. ~~(3-31-22)~~( )

04. Examples of Costs That May Be Eligible. Examples of costs that may be eligible, if determined necessary, and reasonable ~~and not ineligible costs include~~: ~~(3-31-22)~~( )

a. Costs of salaries, benefits, and expendable material the qualified entity incurs in the project except ordinary expenses such as salaries and expenses of a mayor; city council members; board; or a city, district or board attorney; (3-31-22)

b. Professional and consulting services, specifying costs of individual tasks. (3-31-22)

c. Engineering costs specifying costs of individual tasks, directly related to the planning of facilities including but not limited to the preparation of a planning document and environmental review ~~report~~; ~~(3-31-22)~~( )

d. Financial, technical and management capability analysis; (3-31-22)

e. Public participation for alternative selection; (3-31-22)

f. Certain direct and other costs as determined eligible by the Department; and (3-31-22)

g. Legal costs necessary to allow for the completion of the ~~facility plan~~ planning document. ~~(3-31-22)~~( )

05. Ineligible Project Costs. ~~C~~Examples of costs which are ineligible for funding include, but are not limited to: ~~(3-31-22)~~( )

a. Planning not directly related to the project; (3-31-22)

b. Personal injury compensation or damages arising out of the project; (3-31-22)

c. Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; (3-31-22)

d. Costs outside the scope of the approved project; (3-31-22)

e. Ordinary operating expenses such as salaries and expenses of a mayor, city council members, city attorney, district or association personnel costs, and acquiring project funding; (3-31-22)

f. Preparation of a grant application; (3-31-22)

g. All costs related to assessment, defense and settlement of disputes~~, unless such costs are integral to the completion of the project~~; ~~(3-31-22)~~( )

h. Costs of supplying ~~required~~ permits or waivers; and ~~(3-31-22)~~( )

i. Costs incurred prior to award of the grant unless specifically approved in writing as eligible pre-award costs by the Department in advance of incurring costs~~;~~. ~~(3-31-22)~~( )

06. Notification Regarding Ineligible Costs. Prior to providing a grant offer, the Department will notify the applicant that certain costs are not eligible for funding and the reasons for the Department's determination. ~~If such costs are included in the engineering contract, the Department will also provide notification to the engineer.~~ The applicant may provide the Department with additional information in response to the notice. ~~(3-31-22)~~( )

07. Eligible Costs and the Grant Offer. The grant offer will reflect those costs determined by the Department to be eligible costs. The grant offer, however, may include estimates of some eligible costs ~~that have not yet been set~~. Actual eligible costs may differ from ~~such~~ estimated costs set forth in the grant offer. In addition, grant disbursements may be increased or decreased if eligible costs are modified. ~~(3-31-22)~~( )

033. -- 039. (RESERVED)

040. ENVIRONMENTAL REVIEW.

01. Environmental Documentation. The grant recipient may complete an environmental review as part of and in conjunction with a planning document. Guidance on how to complete an environmental review may be found in the Handbook. If the grant recipient prepares an environmental review, then the Department will be consulted at an early stage in the preparation of the planning document to determine the ~~required~~ necessary level of environmental review. Based on review of existing information and assessment of environmental impacts, the grant recipient may complete at least one (1) of the following: ~~(3-31-22)~~( )

a. ~~Submit a request for~~ Categorical Exclusion (CE) with supporting backup documentation as specified by the Department; ~~(3-31-22)~~( )

b. ~~Prepare an~~ Environmental Information Document (EID) in a format specified by the Department; or ~~(3-31-22)~~( )

c. ~~Prepare an~~ Environmental Impact Statement (EIS) in a format specified by the Department. ~~(3-31-22)~~( )

02. ~~Categorical Exclusions~~CE. ~~If the grant recipient requests a CE, t~~The Department will ~~review the request and, based upon the supporting documentation,~~ take one (1) of the following actions: ~~(3-31-22)~~( )

a. Determine if an action is consistent with categories eligible for exclusion whereupon the Department will issue a notice of CE from further substantive environmental review. Once the CE is granted for the selected alternative(s), the Department will publish a notice of CE in a local newspaper~~, following which the planning document can be approved~~; or ~~(3-31-22)~~( )

b. Determine if an action is not consistent with categories eligible for exclusion and that issuance of a CE is not appropriate. If issuance of a CE is not appropriate, the Department will notify the grant recipient of the need to prepare an EID. (3-31-22)

03. ~~Environmental Information Document Requirements~~EID. When an EID is required, the grant recipient ~~shall~~ must prepare the EID in accordance with the following Department procedures: ~~(3-31-22)~~( )

a. Various laws and executive orders related to environmentally sensitive resources ~~shall~~ must be considered as the EID is prepared. Appropriate state and federal agencies ~~shall~~ must be consulted regarding these laws and executive orders. ~~(3-31-22)~~( )

b. A full range of relevant impacts, both direct and indirect, of the proposed project ~~shall~~ must be discussed in the EID, including measures to mitigate adverse impacts, cumulative impacts, and impacts that ~~shall~~ will cause irreversible or irretrievable commitment of resources. ~~(3-31-22)~~( )

c. The Department will review the draft EID and either request additional information about one (1) or more potential impacts, or will draft a "finding of no significant impact" (FONSI). (3-31-22)

04. ~~**Final Finding of No Significant Impact**~~**FONSI**. The Department will publish the draft FONSI in a newspaper of general circulation 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 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. ~~(3-31-22)~~( )

05. ~~**Environmental Impact Statement (**~~**EIS**~~**) Requirements**~~. If an EIS is required, the grant recipient ~~shall~~ must: ~~(3-31-22)~~( )

a. Contact all affected state agencies, and other interested parties, to determine the ~~required~~ scope of the document; ~~(3-31-22)~~( )

b. Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment; (3-31-22)

c. Conduct a public meeting which may be held in conjunction with a planning document meeting; and (3-31-22)

d. Prepare and submit a final EIS incorporating all agency and public input for Department review and approval. (3-31-22)

06. Final EIS. Upon completion of the EIS by the grant recipient and approval by the Department of all ~~requirements~~ preovisions listed in Subsection 040.05, the Department will issue a record of decision, documenting the mitigative measures to be required of the grant recipient. The planning document ~~can~~ may be completed once the final EIS has been approved by the Department. ~~(3-31-22)~~( )

07. Use of Environmental Reviews Conducted by Other Agencies. If an environmental review for the project has been conducted by another state, federal, or local agency, the Department may, at its discretion, issue its own determination by adopting the document and public notification process of the other agency. (3-31-22)

08. Validity of Review. Environmental reviews, once completed by the Department, are valid for five (5) years from the date of completion. If a grant application is received for a project with an environmental review which is more than five (5) years old, the Department will reevaluate the project, environmental conditions, and public comments and will: (3-31-22)

a. Reaffirm the earlier decision; or (3-31-22)

b. ~~Require~~Request supplemental information to the earlier ~~Environmental Impact Statement, Environmental Information Document, or request for Categorical Exclusion~~ EIS, EID, or request for CE. Based upon a review of the updated document, the Department will issue and distribute a revised notice of ~~Categorical Exclusion, finding of no significant impact,~~ CE, FONSI, or record of decision. ~~(3-31-22)~~( )

041. -- 049. (RESERVED)

050. GRANT OFFER AND ACCEPTANCE.

01. Grant Offer. Grant offers will be delivered ~~by certified mail~~ to applicants who received high priority ranking, were invited to ~~submit an application~~ apply, and provided a complete application. ~~(3-31-22)~~( )

02. Acceptance of Grant Offer. Applicants have sixty (60) days in which to officially accept the grant offer on prescribed forms furnished by the State. The sixty (60) day acceptance period commences from the date indicated on the grant offer notice. If the applicant does not accept the grant offer within the sixty (60) day period, the grant funds may be offered to the next project of priority. (3-31-22)

03. Acceptance Executed as a Contract Agreement. Upon signature by the Director or the Director's designee as the grantor, and upon signature by the authorized representative of the qualifying entity, as the grant recipient, the grant offer will become a grant contract agreement. The disbursement of funds pursuant to an agreement is subject to a finding by the Director that the grant recipient has complied with all agreement conditions and has prudently managed the project. The Director may, as a condition of payment, require that a grant recipient vigorously pursue any claims it has against third parties who will be paid in whole or in part, directly or indirectly, with grant funds or transfer its claim against such third parties to the Department. Grant contract agreements ~~shall~~ will be interpreted according to the law of grants in aid. No third party ~~shall~~ may acquire any rights against the State or its employees from a grant contract agreement. ~~(3-31-22)~~( )

04. Estimate of Reasonable Cost. Each grant project contract will include the eligible cost of conducting the planning study. Some eligible costs may be estimated, and payments may be increased or decreased as provided in Section 060. ~~(3-31-22)~~( )

05. Terms of Agreement. The grant offer ~~shall~~ will contain terms of agreement ~~as prescribed by the Department including, but not limited to~~ and special conditions as determined ~~necessary~~ by the Department for the successful planning of the project, including but not limited to:~~.~~ ~~(3-31-22)~~( )

a. Terms consistent with these rules and consistent with the scope of the grant project; ~~and~~ ~~(3-31-22)~~( )

b. Special clauses as determined necessary by the Department for the successful investigation and management of the project; ~~and~~ ~~(3-31-22)~~( )

c. Terms consistent with applicable state provisions pertaining to planning documents; and ~~(3-31-22)~~( )

d. Requirement for the prime engineering firm(s) retained for engineering services to carry professional liability insurance to protect the public from the engineer's negligent acts and errors of omission of a professional nature. The total aggregate of the engineer's professional liability ~~shall~~ must be one hundred thousand dollars ($100,000) or twice the amount of the engineer's fee, whichever is greater. Professional liability insurance must cover all such services rendered for all project steps, whether or not such services or steps are state funded, until the certification of project performance is accepted by the Department. ~~(3-31-22)~~( )

051. -- 059. (RESERVED)

060. PAYMENTS.

01. Eligibility Determination. Grant funds will only be provided for eligible costs as defined at Section 010 and determined in accordance with Section 032. (3-31-22)

02. Payments for State Grants. Requests for payment ~~shall~~ must be submitted to the Department on a form provided by the Department. The Department will pay for those costs that are determined to be eligible. ~~(3-31-22)~~( )

03. Grant Increases. Grant amendment increase requests as a result of an increase in eligible project costs ~~will~~ may be considered, provided funds are available. Documentation and justification supporting the unavoidable need for a grant increase must be submitted to the Department for approval prior to incurring any costs above the approved eligible cost ceiling. ~~(3-31-22)~~( )

04. Grant Decreases. If the actual eligible cost is determined to be lower than the estimated eligible

cost the grant amount ~~will~~ may be reduced proportionately. ~~(3-31-22)~~( )

05. Final Project Review to Determine Actual Eligible Costs. The Department may conduct a final project review to determine the actual eligible costs. The financial records of the grant recipient may be reviewed by the Department. (3-31-22)

06. Final Payment. The final payment consisting of five percent (5%) of the total state grant will not be made until the ~~requirements contained~~ provisions in the grant agreement have been satisfied. ~~(3-31-22)~~( )

061. -- 069. (RESERVED)

070. SUSPENSION OR TERMINATION OF GRANT.

01. Causes. The Director may suspend or terminate any grant for failure by the ~~grantee~~ grant recipient or its agents, including his engineering firm(s), contractor(s) or subcontractor(s) to perform. A grant may be suspended or terminated for good cause including, but not limited to, the following: ~~(3-31-22)~~( )

a. Commission of fraud, embezzlement, theft, forgery, bribery, misrepresentation, conversion, malpractice, misconduct, malfeasance, misfeasance, falsification or unlawful destruction of records, or receipt of stolen property, or any form of tortious conduct; or (3-31-22)

b. Commission of any crime for which the maximum sentence includes the possibility of one (1) or more years imprisonment or any crime involving or affecting the project; or (3-31-22)

c. Violation(s) of any term of agreement of the grant offer or contract agreement; or (3-31-22)

d. Any willful or serious failure to perform within the scope of the project; or (3-31-22)

e. Debarment of an engineering firm, contractor or subcontractor for good cause by any federal or state agency from working on public work projects funded by that agency. (3-31-22)

02. Notice. The Director will notify the grant~~ee~~ recipient in writing and by certified mail of the intent to suspend or terminate the grant. The notice of intent ~~shall~~ will state: ~~(3-31-22)~~( )

a. Specific acts or omissions which form the basis for suspension or termination; and (3-31-22)

b. That the grant~~ee~~ recipient may be entitled to appeal the suspension or termination pursuant to ~~IDAPA 58.01.23, "Contested Case Rules and Rules for Protection and Disclosure of Records."~~ Section 003. ~~(3-31-22)~~( )

~~**03. Determination**. A determination will be made by the Board pursuant to IDAPA 58.01.23, "Contested Case Rules and Rules for Protection and Disclosure of Records." (3-31-22)~~

0~~4~~3. Reinstatement of Suspended Grant. Upon written request by the grant~~ee~~ recipient and evidence that the cause(s) for suspension no longer exist, the Director may, if funds are available, reinstate the grant. ~~(3-31-22)~~( )

0~~5~~4. Reinstatement of Terminated Grant. No terminated grant ~~shall~~ will be reinstated. ~~(3-31-22)~~( )

071. -- 079. (RESERVED)

080. WAIVERS.

~~Waivers from the requirements of these rules may be granted by the Department on a case-by-case basis upon full demonstration that a significant public health hazard exists~~The Department may amend the priority list or grant a waiver from the provisions of these rules on a case-by-case basis upon full demonstration that the following conditions exist. See Subsection 020.05.~ ~~(3-31-22)~~( )

01. **Public Health Protection**. The requirement is not necessary for the protection of public health and the environment and does not affect the priority ranking status of the project. ( )

02. **Affordability Criteria Exceeded**. The project will exceed affordability criteria adopted by the Department in the event the waiver is not granted. ( )

081. -- 999. (RESERVED)