IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.12 – RULES FOR ADMINISTRATION OF WASTEWATER AND DRINKING WATER LOAN FUNDS

DOCKET NO. 58-0112-2501 (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, 36, 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 September 17, 2025. If no such written request is received, a public hearing will not be held. Two 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: Link. This is one of the DEQ rule chapters up for review in 2025. 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.

DEQ added flexibility in professional liability insurance that had been requested in a previous rulemaking. This flexibility allows for a reduction in the amount of coverage based upon demonstration that public funds and project risk are protected.

A definition of affordability was added as well as points associated with affordability. A new tiered system to determine affordability was added that recognizes varying degrees of disadvantaged communities and affordability indicators. By establishing Tier 1, Tier 2, and Tier 3 criteria, DEQ can better tailor financial assistance based on varying levels of economic hardship and affordability challenges, helping to ensure that support is directed where it is most impactful.

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 2026 Idaho State Legislature, the rule will become effective on July 1, 2026, unless otherwise specified in the concurrent resolution.

FEE SUMMARY: This rulemaking does not impose or increase a fee beyond what was previously submitted to and reviewed by the Idaho Legislature in prior rules. This rule chapter includes a loan fee imposed when necessary to offset costs of administering of the loan program and to provide direct planning and project assistance to funding applicants. The fee is authorized by Idaho Code §§ 39-119 and 39-3627(4).

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 resulting from this rulemaking: Not applicable.

NEGOTIATED RULEMAKING: Negotiated rulemaking was conducted pursuant to Section 67-5220, Idaho Code. On April 2, 2025, 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/public-information/laws-guidance-and-orders/rulemaking/drinking-water-and-wastewater-loans-docket-no-58-0112-2501/.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this rulemaking, contact MaryAnna Peavey at maryanna.peavey@deq.idaho.gov or (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 24, 2025. Submit written comments to the undersigned.

Dated this 3rd day of September, 2025.

Diane Cutler
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0112-2501
(ZBR Chapter Rewrite.)

58.01.12 – RULES FOR ADMINISTRATION OF WASTEWATER AND DRINKING WATER LOAN FUNDS

000. LEGAL AUTHORITY.
~~The Idaho Board of Environmental Quality, pursuant to authority granted in~~ Chapters 1, 36, and 76, Title 39, Idaho Code~~, did adopt the following rules for the administration of the Wastewater and Drinking Water Loan Funds~~.
~~(3-24-22)~~( )

001. ~~TITLE AND~~ SCOPE.

~~**01. Title.** These rules are titled IDAPA 58.01.12, "Rules for Administration of Wastewater and Drinking Water Loan Funds."~~ ~~(3-24-22)~~

~~**02. Scope.** The provisions of t~~These rules ~~will~~ establish administrative procedures ~~and requirements~~ for establishing, implementing and administering two (2) state loan programs for providing financial assistance to eligible applicants of wastewater and drinking water projects. The U.S. Environmental Protection Agency provides annual capitalization grants to the state of Idaho for these programs. Financial assistance projects must be in conformance with the ~~requirements~~ provisions 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 300j et seq.). ~~(3-24-22)~~( )

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." (3-24-22)

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

~~**01. Incorporation by Reference**. These rules do not contain documents incorporated by reference. (3-24-22)~~

0~~2~~1. ~~Availability of Referenced Material~~Customer Handbook Grants And Loans Program (Handbook). ~~The "Customer Handbook Grants and Loans Program" (Handbook) is a~~ Available at the Idaho Department of Environmental Quality, Drinking Water Protection and Finance Division, 1410 N. Hilton, Boise, ID 83706-1255, (208) 373-0502, or ~~DEQ website~~ https://www.deq.idaho.gov. ~~(3-24-22)~~( )

02. Idaho Standards for Public Works Construction. This document is available for a fee from the Local Highway Technical Assistance Council (LHTAC) at LHTAC, 3330 Grace Street, Boise, ID, 83703, (208)344-0565, http://lhtac.org/resources/ispwc. ( )

~~**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." (3-24-22)~~

~~**006. POLICY.**~~
~~It is the policy of the Idaho Board of Environmental Quality through the Idaho Department of Environmental Quality, to administer the Wastewater 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 that will most significantly improve the quality of the waters of the state and most adequately protect the public health. (3-24-22)~~

005. -- 006. (RESERVED)

007. DEFINITIONS.
~~For the purpose of the rules contained in this chapter, the following definitions apply:~~The terms "Board," "Department," "Director" and "State" are defined in Section 39-103, Idaho Code. The term "Public Drinking Water System" (which includes "Community Water System," and "Non-community Water System") is defined in IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems." The terms "Wastewater," and "Wastewater System" are defined in IDAPA 58.01.16, "Wastewater Rules." ~~(3-24-22)~~( )

01. Affordability. An applicant's ability to pay for drinking water or wastewater service and infrastructure improvements while maintaining reasonable water and sewer rates for residents. ( )

02. Annual User Rate. The rate for drinking water or wastewater service for residential users based on all operating, maintenance, replacement and debt service costs for the existing system and for upgrades of proposed alternative. ( )

0~~1~~3. Applicant. An eligible system or nonpoint source project sponsor that has the ability to establish and maintain a loan repayment. ( )

~~**a.** When used in the context of wastewater loan fund, applicant is defined as a municipality or nonpoint source project sponsor that has the ability to establish and maintain a loan repayment source. Individuals and for-profit corporations are not eligible. (3-24-22)~~

~~**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.~~ ~~(3-24-22)~~

~~**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.~~ ~~(3-24-22)~~

~~**03. Board**. The Idaho Board of Environmental Quality.~~ ~~(3-24-22)~~

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. (3-24-22)

~~**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.~~ ~~(3-24-22)~~

~~**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.~~ ~~(3-24-22)~~

~~**07. Community Water System**. A public drinking water system that:~~ ~~(3-24-22)~~

~~**a.** Serves at least fifteen (15) service connections used by year-round residents of the area served by the system; or~~ ~~(3-24-22)~~

~~**b.** Regularly serves at least twenty-five (25) year-round residents.~~ ~~(3-24-22)~~

~~**08. Construction**. The erection, building, acquisition, alteration, reconstruction, improvement or extension of wastewater treatment or drinking water facilities, including preliminary planning to determine the economic and engineering feasibility, 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 or drinking water facilities; the inspection and supervision of the construction; and start-up of the associated facilities.~~ ~~(3-24-22)~~

0~~9~~5. **Contaminant**. Any physical, chemical, biological, or radiological substance or matter in water. (3-24-22)

~~**10. Department**. The Idaho Department of Environmental Quality.~~ ~~(3-24-22)~~

~~**11. Director**. The Director of the Idaho Department of Environmental Quality or his/her designee.~~ ~~(3-24-22)~~

~~12~~06. **Disadvantaged Community**. ~~The service area of a wastewater treatment facility or a public water system that meets affordability criteria established by the Department of Environmental Quality after public review and comment~~ A community or service area of a drinking water or wastewater system that meets the affordability criteria in Section 021 and may be eligible for loan modification, additional subsidy, or assistance. ~~(3-24-22)~~( )

~~13~~07. **Disadvantaged Loans**. Loans made to a disadvantaged community. (3-24-22)

~~**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.~~ ~~(3-24-22)~~

~~15~~08. **Eligible Costs**. Costs which are necessary for planning, designing and/or constructing drinking water or wastewater ~~treatment facilities~~ systems, or implementation of water pollution control projects. To be eligible, costs must be reasonable and not ineligible costs. The determination of eligible costs ~~shall~~ will be made by

the Department pursuant to Section 041. ~~(3-24-22)~~( )

~~16~~09. **Environmental Impact Statement (EIS)**. A document prepared by the applicant when the Department determines that the proposed construction project ~~may~~ 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 Chapter 5 of the Handbooks may be used as guidance when preparing the EIS. ~~(3-24-22)~~( )

1~~7~~0. **Environmental Information Document (EID)**. Any written environmental assessment prepared by the applicant describing the environmental impacts of a proposed wastewater or drinking water 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~~. ~~(3-24-22)~~( )

1~~8~~1. **Financial Management System**. Uniform method of recording, summarizing and analyzing financial information about the loan applicant. (3-24-22)

1~~9~~2. **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~~ must include the environmental assessment or a summary of it and shall note any other environmental documents related to it. ~~(3-24-22)~~( )

~~20. **Handbook**. The "Customer Handbook Grants and Loans Program." (3-24-22)~~

~~21~~13. **Implementation Plan**. ~~Completed~~ Nonpoint source 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. ~~(3-24-22)~~( )

~~22~~14. **Ineligible Costs**. Costs which are not eligible for funding pursuant to these rules. (3-24-22)

~~23. **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. (3-24-22)~~

~~24~~15. **Loan Recipient**. An applicant who has been awarded a loan. (3-24-22)

~~25. **Managerial Capability**. The capability of the loan applicant to support the proper financial and technical operation of the system. (3-24-22)~~

~~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. (3-24-22)~~

~~27. **Noncommunity Water System**. A public water system that is not a community water system. (3-24-22)~~

~~28. **Nondomestic Wastewater**. Wastewaters originating primarily from industrial or commercial processes which carry little or no pollutants of human origin. (3-24-22)~~

~~29~~16. **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. (3-24-22)

~~30~~17. **Nonpoint Source Project Sponsor**. Any applicant for wastewater loan funds to address nonpoint source pollution. (3-24-22)

18. **Nonprofit Noncommunity Water System**. A public drinking water system that is not a community water system and is governed by 26 U.S.C 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. ( )

~~31~~19. **Operation and Maintenance Manual**. For wastewater or drinking water facilities, a guidance and training manual outlining the optimum operation and maintenance of the facilities and their 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. (3-24-22)

~~32~~20. **Planning Document**. A document which describes the condition of a public wastewater or drinking water 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 ~~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~~s~~. ~~(3-24-22)~~( )

~~33. Plan of Operation. A schedule of specific actions and completion dates for construction, start up and operation of the facility or for implementation of wastewater or drinking water projects. (3-24-22)~~

~~34. 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. (3-24-22)~~

~~35. 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. (3-24-22)~~

~~36~~21. **Priority List**. An integrated list of proposed wastewater ~~treatment facility~~ system 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 300j et seq.), population affected, and need on a household basis for protection of Idaho's public drinking water. ~~(3-24-22)~~( )

~~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." (3-24-22)~~

~~38~~22. **Readiness to Proceed**. The progress which a loan applicant has made toward~~s~~ completion of ~~time-consuming~~ tasks necessary to ~~complete a loan application~~ receive a loan (e.g. bond election, local improvement district formation, judicial confirmation towards debt authority, completion of facility plan). ~~(3-24-22)~~( )

~~39~~23. **Reserve Capacity**. That portion of the facility that is designed and incorporated in the constructed facilities to handle future demand upon the system. (3-24-22)

~~40~~24. **Sewer Use Ordinance/Sewer Use Resolution**. An ordinance or resolution 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~~ system. ~~(3-24-22)~~( )

~~41. State. The state of Idaho. (3-24-22)~~

~~42~~25. **Supplemental Grants**. ~~A state funded g~~ Grant funds awarded in conjunction with a loan ~~from the water pollution control loan account~~ or as a standalone to the project. ~~(3-24-22)~~( )

~~43~~26. **Suspension**. An action by the Director to suspend a loan contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (3-24-22)

~~44~~27. **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. (3-24-22)

~~45~~28. **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. (3-24-22)

~~46~~29. **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~~ that provides sufficient reserves and/or revenues for debt retirement, operation and maintenance, and replacement of the installed equipment or structures. ~~(3-24-22)~~( )

~~47. **Wastewater**. A combination of the liquid and water-carried wastes from dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any groundwater, surface water and storm water that may be present; liquid and water that is physically, chemically, biologically, or rationally identifiable as containing excreta, urine, pollutants or domestic or commercial wastes; sewage. (3-24-22)~~

~~48. **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. (3-24-22)~~

~~49~~30. **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~~ in the State Water Quality Management Plan. This includes the planning, design, construction/implementation or any other distinct stage or phase of a project. ~~(3-24-22)~~( )

~~50~~31. **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. (3-24-22)

008. ELIGIBLE SYSTEMS.

01. ~~Basic~~ Eligible Drinking Water ~~Considerations~~ Systems. ~~Public and private c~~ Community public water systems and nonprofit noncommunity water systems. ~~(3-24-22)~~( )

02. ~~Basic~~ Eligible Wastewater ~~Considerations~~ Systems. ~~Municipal or non-profit owned wastewater point source treatment facilities, lagoons, reuse facilities, and systems using nonpoint source methodologies of wastewater disposal~~ 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. ~~(3-24-22)~~( )

03. Assistance to Ensure Compliance. Public water systems are not eligible for ~~project loans may receive assistance if~~ a loan unless: ~~(3-24-22)~~( )

a. The use of the assistance will ensure compliance; (3-24-22)

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); and (3-24-22)( )

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 achieve compliance. (3-24-22)( )

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 300j et seq.), the Department conducts a review to determine whether this section applies to the system. (3-24-22)

009. INELIGIBLE SYSTEMS.

01. Basic Considerations. Systems not eligible for project loans are described in Subsection 009.02. (3-24-22)

02. Systems Not Eligible. The following systems will not be considered eligible for project loans: (3-24-22)

a**01. Ineligible Wastewater Systems**. Wastewater systems that are owned by individuals or for-profits; (3-24-22)( )

b**02. Ineligible Drinking Water Systems**. 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 300j et seq.);. (3-24-22)( )

c. Drinking water systems under disapproval designation as outlined in IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems"; or (3-24-22)

d**03. Delinquent Systems**. Systems delinquent in payment of fines, state revolving fund loans, penalties, or fee assessments due to DEQ the Department. (3-24-22)( )

010. FINANCIAL AND MANAGEMENT CAPABILITY ANALYSIS.
No loans shall will 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 and any fees that may be due on a loan. (3-24-22)( )

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 Applicants are to submit a completed application for financial and management capability analysis as outlined in Section 040. (3-24-22)( )

02. Incorporated Nonprofit Applicants. (3-24-22)

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 the corporation is: (3-24-22)( )

i. The corporation is nNonprofit and lawfully incorporated pursuant to Chapter 3, Title 30, Idaho Code; (3-24-22)( )

ii. The corporation is aAuthorized to incur indebtedness to construct, improve or repair wastewater or drinking water facilities and/or implement water pollution control nonpoint source projects; (3-24-22)( )

iii. ~~The corporation is a~~Authorized to secure indebtedness by pledging corporation assets, including any revenues raised through a user charge system; ~~(3-24-22)~~( )

iv. ~~The corporation is c~~Capable of raising revenues sufficient to repay a loan~~.~~; and ~~(3-24-22)~~( )

~~i~~v. ~~The corporation e~~Exists either perpetually or for a period long enough to repay a project loan~~; and~~. ~~(3-24-22)~~( )

b. The Department may impose conditions on the making of a facility loan or water pollution control nonpoint source project to an incorporated nonprofit applicant ~~which~~ that are necessary to carry out the provisions of these rules and ~~the provisions of~~ Chapters 1, 36, and or 76, Title 39, Idaho Code. ~~(3-24-22)~~( )

03. Cost Allocation. An applicant proposing a wastewater, drinking water or nonpoint source 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: (3-24-22)

a. The basis upon which the costs are allocated; (3-24-22)

b. The formula by which the costs are allocated; and (3-24-22)

c. The manner in which the cost allocation system will be implemented. (3-24-22)

04. Waivers. The ~~requirement~~ provision in Subsection 010.03 may be waived by the Department if the applicant can demonstrate: ~~(3-24-22)~~( )

a. Such an agreement is already in place; (3-24-22)

b. There is documentation of a service relationship in the absence of a formal agreement; or (3-24-22)

c. An applicant exhibits sufficient financial strength to continue the project if one (1) or more of the applicants fails to participate. (3-24-22)

011. -- 019. (RESERVED)

020. PRIORITY RATING SYSTEM.
~~Projects are identified for placement on priority lists by surveying eligible entities directly on an annual basis. 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.~~ ~~(3-24-22)~~

01. Purpose. A priority rating system ~~shall~~ will be utilized by the Department to annually allot available funds to wastewater and drinking water projects determined eligible for funding assistance under these rules. ~~(3-24-22)~~( )

~~**02. Wastewater Priority Rating**. The priority rating system shall be based on a numerical point system. Priority criteria shall contain the following points:~~ ~~(3-24-22)~~

~~**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 and fifty (150) points.~~ ~~(3-24-22)~~

~~**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.~~ ~~(3-24-22)~~

~~**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.~~ ~~(3-24-22)~~

~~**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.~~ ~~(3-24-22)~~

~~**e.** Preventing impacts to uses (nonpoint source pollution projects) -- up to one hundred (100) points.~~ ~~(3-24-22)~~

~~**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.~~ ~~(3-24-22)~~

~~**g.** Affordability (current system user charges exceed state affordability guidelines) -- ten (10) points.~~ ~~(3-24-22)~~

0~~3~~2. Priority Rating for Drinking Water ~~Priority Rating~~ Systems. The priority rating system ~~shall~~ will be based on a numerical points system. Priority criteria ~~shall~~ will contain the following points. ~~(3-24-22)~~( )

a. ~~Public Health Hazard.~~ Any documented condition that creates, or may create, a public health hazard or 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: ~~(3-24-22)~~( )

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~~ contaminants); ~~(3-24-22)~~( )

ii. ~~Documented u~~Unresolved violations of pressure requirements; ~~(3-24-22)~~( )

iii. ~~Documented r~~Reduction in source capacity that impacts the system's ability to reliably serve water; ~~(3-24-22)~~( )

iv. ~~Documented s~~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 ~~(3-24-22)~~( )

v. ~~Documented u~~Unregulated contaminants ~~that have been~~ shown by EPA to be a risk to public health. ~~(3-24-22)~~( )

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, and delivering drinking water - up to sixty (60) points. ~~(3-24-22)~~( )

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. ~~(3-24-22)~~( )

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 drinking water system) - up to thirty (30) points. ~~(3-24-22)~~( )

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

points. ~~(3-24-22)~~( )

f. Affordability. ~~Points shall be given when current system user charges exceed state affordability guidelines - ten (10)~~ Systems that meet the state affordability criteria and are defined as a disadvantaged community - up to fifty (50) points. ~~(3-24-22)~~( )

03. Priority Rating for Wastewater Systems. The priority rating system will be based on a numerical point system. Priority criteria will contain the following points: ( )

a. Regulatory compliance issues (e.g., noncompliance and resulting legal actions relating to infrastructure deficiencies of a wastewater system) - up to one hundred (100) points. ( )

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. ( )

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. ( )

d. Preventing impacts to uses (nonpoint source pollution projects) - up to one hundred (100) points. ( )

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. ( )

f. Affordability. Systems that meet the state affordability criteria and are defined as a disadvantaged community – up to fifty (50) points. ( )

~~**04. Rating Forms**. Rating criteria for Section 020 set forth in rating forms that are available in the Handbooks.~~ ~~(3-24-22)~~

0~~5~~4. **Priority List**. A list ~~shall~~ will be developed from projects rated according to Section 020, submitted for public review and comment, and submitted to the Board for approval. ~~(3-24-22)~~( )

a. ~~Priority Reevaluation.~~ Whenever significant changes occur, which in the Department's judgment ~~would~~ may affect the design parameters or treatment requirements by either increasing or decreasing the need for or scope of any project, a reevaluation of that priority rating will be conducted. ~~(3-24-22)~~( )

b. ~~Project Bypass.~~ A project that does not or will not meet the 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. ~~(3-24-22)~~( )

0~~6~~5. **Amendment of a Priority List**. The Director may amend a ~~P~~priority ~~L~~list as set forth in Section 995 ~~of these rules~~. ~~(3-24-22)~~( )

021. DISADVANTAGED LOANS AND AFFORDABILITY.

~~Disadvantaged Loan Awards. In conjunction with the standard loans, t~~The Department may award disadvantaged loans to applicants deemed a disadvantaged community using the following criteria: ~~(3-24-22)~~( )

01. ~~Qualifying for a~~ Disadvantaged ~~Loan~~ Community. In order to qualify for a disadvantaged loan, ~~a loan applicant must have a residential user rate~~ A disadvantaged community may be designated by the Department as a Tier 1, Tier 2, or Tier 3 disadvantaged community if the following affordability criteria are met: ( )

a. Tier 1 disadvantaged community is considered disadvantaged if the community: ( )

i. Is at or below state median household income (MHI); or ( )

ii. Has an MHI equal to or less than one hundred twenty-five percent (125%) of the state MHI and the system meets one (1) of the following four (4) criteria: ( )

(1) Greater than the state poverty rate; ( )

(2) Greater than the state unemployment rate; ( )

(3) The population trend over the most recent five years shows a stagnant or decreasing trend; or ( )

(4) Annual user rate exceeds one and one-half percent of community's MHI. ( )

b. Tier 2 disadvantaged community is considered disadvantaged if the criteria in Subsection 021.01.a. is met and the annual user rates, based on all operating, maintenance, replacement, and debt service costs (both for the existing system and for upgrades of proposed alternative) for either drinking water or wastewater services ~~that~~ exceed two percent (2%) of the applicant community's MHI ~~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~~. ~~(3-24-22)~~( )

c. Tier 3 disadvantaged community is considered disadvantaged if the criteria in Subsections 021.01.a. and 021.01.b. are met and the MHI of the applicant's community is less than eight tenths (0.8) the current statewide MHI. ( )

d. Special conditions and adjustments may include the following. ( )

i. If the applicant's service area is not within the boundaries of a municipality, or if the applicant's service area's MHI is not consistent with the municipality as a whole, the applicant may use the census data for the county or the most representative area in which it is located or may use a representative survey, conducted by a Department approved, objective third party, to verify the MHI of the applicant's service area. ( )

ii. The affordability criteria may be adjusted by the Department on a case-by-case basis if there is a demonstration of special conditions and if approved by the Board as part of the Intended Use Plan. ( )

02. ~~Adjustment of Loan Terms~~Disadvantage Loans. ~~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 Section 021, and where possible with available funds, loan terms may be adjusted in the following order: decreasing the interest rate and providing principal forgiveness~~ The Department will prioritize loan modifications to Tier 3 disadvantaged communities, then Tier 2 and Tier 1 disadvantaged communities such that the loan modifications do not result in user rates below two percent (2%) of the MHI. ~~(3-24-22)~~( )

a. A disadvantaged loan may be a thirty (30) year loan unless the design life of the project is documented to be less than thirty (30) years. For wastewater loan funding, the length of the repayment period is set at

the loan recipient's discretion, up to the maximum repayment period of thirty (30) years. ( )

~~a~~**b.** ~~Decreasing Interest Rate.~~ The ~~loan~~ interest rate may be reduced from the rate established by the ~~Director for standard loans~~ Department to a rate that results in an annual user rate ~~equaling the criteria set forth in Section 021. The interest rate may be reduced to as low as zero percent (0%)~~ equal to two percent (2%) of the MHI. If the annual user rate still exceeds two percent (2%) of the MHI with the rate reduction, then the community may be provided with principal forgiveness. ~~(3-24-22)~~( )

~~**b.** Principal Forgiveness. If even at zero percent (0%) interest, the annual user rate per residential user still exceeds the criteria set forth in Section 021, then the principal that causes the user charge to exceed the criteria set forth in Section 021 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 Section 021.~~ ~~(3-24-22)~~

c. Principal forgiveness will be allocated proportionally among prioritized disadvantaged communities in the Intended Use Plan. The principal forgiveness may be revised from the initial estimates in the Intended Use Plan based upon review of the total indebtedness. ( )

d. The Department may make adjustments to the disadvantaged loan terms on a case-by-case basis if special conditions exist and are outlined in the Intended Use Plan for Board approval. ( )

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:~~ as determined by Director and Board approval. ~~(3-24-22)~~( )

~~**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~~ ~~(3-24-22)~~

~~**02. Costs in Excess of Financial Ability.**~~ ~~(3-24-22)~~

~~**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:~~ ~~(3-24-22)~~

~~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~~ ~~(3-24-22)~~

~~ii. The annual user rate includes all operating, maintenance, replacement and debt service costs, both for the existing system and for upgrades.~~ ~~(3-24-22)~~

~~**b.** If a loan recipient meets the requirement of Section 022, 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.~~ ~~(3-24-22)~~

023. -- 029. (RESERVED)

030. PROJECT SCOPE AND FUNDING.
Loan funds awarded under this program may be used to prepare a 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 300j 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 and project

specific efforts committed to in the Letter of Interest submitted for the project. ~~(3-24-22)~~( )

01. Nonpoint Source Implementation Funding. Eligible nonpoint source water pollution control projects may be funded when all of the following criteria are met: (3-24-22)

a. Consistent with and implements the Idaho Nonpoint Source Management Plan. (3-24-22)

b. Data is used to substantiate a nonpoint source pollutant problem or issue exists and is described or directly referenced. (3-24-22)

c. Completed project implementation plan or work plan. (3-24-22)

d. Project commitment documentation through demonstrated ability for loan repayment. (3-24-22)

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). (3-24-22)

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. (3-24-22)

g. The project demonstrates nexus/benefit to municipality through a letter of support from one (1) or more affected municipalities. (3-24-22)

02. Facility Funding. ( )

a. Projects may ~~be funded in steps~~ include: ~~(3-24-22)~~( )

~~a~~i. ~~Step 1.~~ Planning document prepared in accordance with the Handbook~~.~~; ~~(3-24-22)~~( )

~~b~~ii. ~~Step 2.~~ Design which includes the preparation of the detailed engineering plans and specifications necessary for the bidding and construction of the project~~.~~; ~~(3-24-22)~~( )

~~c~~iii. ~~Step 3.~~ Construction, which includes bidding and actual construction of the project~~.~~ or ~~(3-24-22)~~( )

~~d~~iv. ~~Step 4.~~ A combination of ~~Step 2 and Step 3~~ planning, design and construction listed above. ~~(3-24-22)~~( )

~~e~~**b.** ~~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 for planning and design will be amortized and a repayment schedule prepared by the Department. ~~(3-24-22)~~( )

~~f~~**c.** ~~Cost Effective Requirement. Step 2, Step 3 or Step 4 l~~Loans ~~shall~~ for construction will not be awarded until a final cost effective and environmentally sound alternative has been selected ~~by~~ in the ~~Step 1~~ planning document and approved by the Department. ( )

i. If the planning document has not been completed pursuant to IDAPA 58.01.22, "Rules for Administration of 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~~ must complete the following~~.~~: ~~(3-24-22)~~( )

(1) Public comment period is held after alternatives have been developed and the Department has approved the draft planning document; ( )

(2) 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; ( )

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

(4) Consider public comments received from those affected by the proposed project; and ( )

ii. After the public meeting and public comment period, the final alternative is selected and the state environmental review process completed. ( )

~~g~~**d.** ~~Funding For Wastewater Reserve Capacity.~~ Funding for reserve capacity of a wastewater treatment ~~plant~~ facility will not exceed a twenty (20) year population growth and funding for reserve capacity of ~~an interceptor~~ a wastewater collection system will not exceed a forty (40) year population growth as determined by the Department. ~~(3-24-22)~~( )

~~h~~**c.** ~~Funding for Drinking Water Reserve Capacity.~~ Funding for reserve capacity of a drinking water system ~~shall~~ will not exceed a twenty (20) year population growth, except that distribution and transmission lines which may be planned for a forty (40) year useful life. ~~(3-24-22)~~( )

03. Professional Services. The engineering firm selected must meet the following qualifications at a minimum: ( )

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

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

c. Be covered by professional liability insurance in accordance with Section 050. ( )

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 Section 050. ~~(3-24-22)~~( )

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 loan efforts. The loan fee ~~shall~~ will not exceed one percent (1%) of the unpaid balance of the loan at the time each loan payment is due. ~~(3-24-22)~~( )

02. Effect on Loan Interest Rate. The loan interest rate, as described in Section 050, will be reduced by the corresponding percentage of the loan fee. (3-24-22)

03. Payment of Loan Fee. The loan fee ~~shall~~ will be due and payable concurrently with scheduled loan principal and interest repayments over the repayment period. ~~(3-24-22)~~( )

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~~ will be invited to ~~submit an application~~ apply. The applicant ~~shall~~ must submit to the Department, a completed application on a form as prescribed by the Department. ~~(3-24-22)~~( )

02. Application ~~Requirements~~. Applications ~~shall~~ must contain the following documentation, as applicable: ~~(3-24-22)~~( )

a. The construction funding application and all the accompanying documentation requested. This information may include, but is not limited to, financial control policy, managerial policies, financial statements, annual operating costs, and information regarding the financing, including the legal debt limit of the applicant, and the existence and amount of any outstanding bonds or other funding which may affect the project; ( )

~~a~~**b.** ~~A lawful~~If applicable, a 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; ~~(3-24-22)~~( )

~~b~~**c.** Contracts for engineering 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 041; ~~(3-24-22)~~( )

~~c. Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum: (3-24-22)~~

~~i. Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; (3-24-22)~~

~~ii. Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and (3-24-22)~~

~~iii. Be covered by professional liability insurance in accordance with Section 050 of these rules. A certification of liability insurance shall be included in the application; (3-24-22)~~

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; (3-24-22)

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~~ for construction and ~~requirements for~~ professional service contracts, including without limitation, the ~~requirements set forth~~ provisions in Sections 67-2801 et seq., 67-2320, ~~59-1026,~~ and 42-3212, Idaho Code; ~~(3-24-22)~~( )

~~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 Section 030, a schedule for completion of the work tasks and an estimate of staff hours and costs to complete the work tasks; (3-24-22)~~

~~g. Step 2 -- Design, or Step 4 -- Design and Construction: (3-24-22)~~

~~i. Planning document, including a final environmental document and decision in accordance with Section 042; (3-24-22)~~

~~ii. Financial and management capability analysis as provided in Section 010; and (3-24-22)~~

~~iii~~**f.** Intermunicipal service agreements between all entities within the scope of the project, if applicable; (3-24-22)

~~h. Step 3 -- Construction: (3-24-22)~~

~~i~~**g.** Documented evidence of all necessary easements and land acquisition, if applicable; ~~(3-24-22)~~( )

~~ii. Biddable plans and specifications of the approved wastewater treatment facility alternative;~~ ~~(3-24-22)~~

~~iii. A plan of operation and project schedule;~~ ~~(3-24-22)~~

~~iv. A user charge system, sewer use or water system protection ordinance and financial management system; and~~ ~~(3-24-22)~~

~~v. A staffing plan and budget;~~ ~~(3-24-22)~~

~~i. Step 4 -- Design and Construction. Loan applicants must submit all documentation specified in Section 040 prior to advertising for bids on construction contracts;~~ ~~(3-24-22)~~

~~j~~**h.** Nonpoint ~~S~~source ~~I~~implementation ~~F~~funding: ~~(3-24-22)~~( )

i. Information demonstrating that the project is consistent with and implements the Idaho Nonpoint Source Management Plan; (3-24-22)

ii. Data that substantiates a nonpoint source pollution problem or issue exists, and how it will be addressed by the project; ~~(3-24-22)~~( )

iii. A project implementation plan or workplan; (3-24-22)

iv. Project commitment documentation that demonstrates the ability for loan repayment; (3-24-22)

v. Documentation that the project owner, manager or sponsoring agency will maintain the project for the life of the project; (3-24-22)

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 (3-24-22)

vii. A description of the nexus/benefit to a municipality and a letter of support from one (1) or more affected municipalities, if applicable. ~~(3-24-22)~~( )

03. Determination of Completeness of Application. The Department will review the application to determine whether it includes all of the information ~~required by~~ listed in Section 040. ~~(3-24-22)~~( )

04. Notification of Incompleteness of Application. ~~Written n~~ 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. ~~(3-24-22)~~( )

05. Reapplication for Loan. The action of disapproving, recalling or terminating a loan in no way precludes or limits ~~the former~~ an applicant from reapplying for another loan when the project deficiencies are resolved and project readiness is secured. ~~(3-24-22)~~( )

041. 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. ~~(3-24-22)~~( )

01. Eligible Costs. Eligible costs are those determined by the Department to be: (3-24-22)

a. Necessary ~~costs~~; ~~(3-24-22)~~( )

b. Reasonable ~~costs~~; and ~~(3-24-22)~~( )

c. ~~Costs that a~~Are not ineligible as described in Section 041. ~~(3-24-22)~~( )

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 for facility~~ 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. ~~(3-24-22)~~( )

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~~ for construction and ~~requirements for~~ professional service contracts, including without limitation, the ~~requirements set forth~~ provisions in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code. ~~(3-24-22)~~( )

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~~: ~~(3-24-22)~~( )

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; (3-24-22)

b. Costs under construction contracts bid and executed in compliance with state public works construction laws; (3-24-22)

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; (3-24-22)

d. Planning directly related to the projects; (3-24-22)

e. System evaluations; (3-24-22)

f. Financial and management capability analysis; (3-24-22)

g. Preparation of construction drawings, specifications, estimates, and construction contract documents; (3-24-22)

h. Landscaping; (3-24-22)

i. Removal and relocation or replacement of utilities for which the applicant is legally obligated to pay; (3-24-22)

j. Material acquired, consumed, or expended specifically for the project; (3-24-22)

k. A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations; (3-24-22)

l. Preparation of an operation and maintenance manual; (3-24-22)

~~**m.** Preparation of a plan of operation;~~ ~~(3-24-22)~~

~~**n**~~**m.** Start-up services; (3-24-22)

~~**o**~~**n.** Project identification signs; (3-24-22)

~~**p**~~**o.** Public participation for alternative selection; (3-24-22)

~~q~~p. Development of user charge and financial management systems; (3-24-22)

~~r~~q. Development of sewer use or water system protection ordinance; (3-24-22)

~~s~~r. Staffing plans and budget development; (3-24-22)

~~t~~s. Certain direct and other costs as determined eligible by the Department; (3-24-22)

~~u~~t. Costs of complying with the ~~Federal Water Pollution Control Act (P.L. 92-500)~~ Clean Water Act as amended, 33 USC Section 1251 et seq. and the Safe Drinking Water Act (42 U.S.C. Section 300j et seq, loan requirements applied to specific projects; and ~~(3-24-22)~~( )

~~v~~u. Site acquisition costs, including right of way, plant site, wastewater land application sites and sludge disposal areas. Land purchase ~~shall~~ must be from a willing seller. ~~(3-24-22)~~( )

05. Ineligible Project Costs. Costs which are ineligible for funding include, but are not limited to: (3-24-22)

a. Basin or area wide planning not directly related to the project; (3-24-22)

b. Bonus payments not legally required for completion of construction before a contractual completion date; (3-24-22)

c. Personal injury compensation or damages arising out of the project; (3-24-22)

d. Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; (3-24-22)

e. Costs outside the scope of the approved project; (3-24-22)

f. Ordinary operating expenses of local government, such as salaries and expenses of mayors, city council members, attorneys, commissioners, board members, or managers; (3-24-22)

g. Construction of privately owned wastewater ~~treatment facilities~~ systems; ~~(3-24-22)~~( )

h. Cost of land in excess of that needed for the proposed project; (3-24-22)

i. Cost of refinancing existing indebtedness; (3-24-22)

j. Engineering costs incurred without professional liability insurance; (3-24-22)

k. Costs of condemnation; (3-24-22)

l. Reserve funds; ~~and~~ ~~(3-24-22)~~( )

m. All costs related to assessment, defense and settlement of disputes; and ( )

~~m~~n. Costs incurred prior to acceptance of the loan unless specifically approved in writing as eligible pre-award costs by the Department. (3-24-22)

06. Notification Regarding Ineligible Costs. Prior to providing a loan offer, the Department 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 will also provide notification to the engineer.~~ The applicant may provide the Department with additional information in response to the notice. ~~(3-24-22)~~( )

07. Eligible Costs and the Loan Offer. The loan offer ~~shall~~ will 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. ~~(3-24-22)~~( )

042. ENVIRONMENTAL REVIEW.

01. Environmental Documentation. Guidance on how to complete an environmental review is found in the Handbook. ~~For eligible projects funded solely with non-federal funds (e.g. State Revolving Loan Fund repayments), see Section 042.~~ For eligible projects, the loan recipient ~~shall~~ must 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~~ must consult with the Department at an early stage in the loan application process to determine the ~~required~~ necessary level of environmental review. Based on review of existing information, and assessment of environmental impacts, the loan recipient ~~shall~~ must complete one (1) of the following per the Department's instruction: ~~(3-24-22)~~( )

a. ~~Submit a request for~~ Categorical Exclusion (CE) with supporting backup documentation as specified by the Department; ~~(3-24-22)~~( )

b. ~~Prepare an~~ Environmental Information Document (EID) in a format specified by the Department; or ~~(3-24-22)~~( )

c. ~~Prepare an~~ Environmental Impact Statement (EIS) in a format specified by the Department. ~~(3-24-22)~~( )

02. ~~Categorical Exclusions~~CE. ~~If the loan recipient requests a CE, t~~ The Department will ~~review the request and, based upon the supporting documentation,~~ take one (1) of the following actions: ~~(3-24-22)~~( )

a. Determine if the action is consistent with categories eligible for exclusion whereupon the Department will issue a notice of CE from 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 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 ~~(3-24-22)~~( )

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 will notify the loan recipient to prepare an EID.
(3-24-22)

03. ~~Environmental Information Document Requirements~~EID. When an EID is required, the loan recipient ~~shall~~ must prepare the EID in accordance with the following ~~Department procedures~~: ~~(3-24-22)~~( )

a. Various laws and executive orders related to environmentally sensitive resources ~~shall~~ must be considered as the EID is prepared~~.~~ and ~~A~~appropriate state and federal agencies ~~shall be~~ consulted regarding these laws and executive orders; ~~(3-24-22)~~( )

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; and ~~(3-24-22)~~( )

c. The Department will review the draft EID and either request additional information about one (1) or more potential impacts~~,~~ or draft a "finding of no significant impact" (FONSI). ~~(3-24-22)~~( )

04. ~~Final Finding of No Significant Impact~~FONSI. The Department will publish the draft FONSI in a local newspaper in the geographical area of the proposed project and 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 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~~. ~~(3-24-22)~~( )

05. ~~**Environmental Impact Statement (EIS) Requirements**~~**EIS**. If an ~~(~~EIS~~)~~ is required, the loan recipient ~~shall~~ must: ~~(3-24-22)~~( )

a. Consult with all affected federal and state agencies, and other interested parties, to determine the required scope of the document; (3-24-22)

b. Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment; (3-24-22)

c. Conduct a public meeting which may be in conjunction with a planning document meeting; and (3-24-22)

d. Prepare and submit a final EIS incorporating all agency and public input for Department review and approval. (3-24-22)

06. Final EIS. Upon completion of the EIS by the loan recipient and approval by the Department of all requirements listed in Section 042, the Department will issue a record of decision, documenting the mitigation measures to be required of the loan recipient. The loan agreement can be completed once the final EIS has been approved by the Department. (3-24-22)

07. Partitioning the Environmental Review. Under certain circumstances, the building of a component/partition of a system may be justified in advance of all environmental review requirements for the remainder of the system. The Department will approve partitioning the environment review in accordance with established procedures. ~~(3-24-22)~~( )

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. (3-24-22)

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 will reevaluate the project, environmental conditions and public views and will: (3-24-22)

a. Reaffirm the earlier decision; or (3-24-22)

b. ~~Require~~Request supplemental information to the earlier EIS, EID, or request for CE. Based upon a review of the updated document, the Department will issue and distribute a revised notice of CE, FONSI, or record of decision. ~~(3-24-22)~~( )

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. (3-24-22)

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~~. ~~(3-24-22)~~( )

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. (3-24-22)

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~~ will 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~~ may acquire any rights against the state or its employees from a loan contract. ~~(3-24-22)~~( )

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. ~~(3-24-22)~~( )

05. Terms of Loan Offers. The loan offer ~~shall~~ will contain such terms as are prescribed by the Department including~~,~~ but not limited to: ~~(3-24-22)~~( )

a. Terms consistent with these rules, the project ~~step~~ to be funded under the loan offer, and Title 39, Chapter 36, Idaho Code; ~~(3-24-22)~~( )

b. Special clauses as determined necessary by the Department for the successful investigation, design, construction and management of the project; (3-24-22)

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; (3-24-22)

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~~ 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 phases, whether or not such services or phases are state funded, until the certification of project performance is accepted by the Department~~;~~. The required professional liability insurance amount may be reduced if a written request is submitted for the Department's review and approval demonstrating that the reduced coverage will adequately protect public funds and the project from financial risk associated with engineering errors or omissions. The request must include: ~~(3-24-22)~~( )

i. A justification for reduced coverage; and ( )

ii. An alternative insurance or coverage mechanisms, if applicable, demonstrating other financial protections that provide an equivalent or greater level of coverage; ( )

e. The project ~~shall~~ must 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, which may include the current edition of Idaho Standards for Public Works Construction and the Handbook referenced in Section 004 or other acceptable public works construction standards; ~~(3-24-22)~~( )

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; ~~(3-24-22)~~( )

g. The loan fee pursuant to Section 032; (3-24-22)

h. All loans must be fully amortized within a period not to exceed thirty (30) years after project completion. The loan contract will 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 (3-24-22)

i. Repayment default will occur when a scheduled loan repayment is thirty (30) days past due. If default occurs, the Department may invoke all available remedies included but not limited to appropriate loan contract provisions and/or bond covenants. ~~(3-24-22)~~( )

051. ACCOUNTING AND AUDITING PROCEDURES.
Loan recipients must maintain project accounts in accordance with generally accepted accounting principles. Projects may be audited on an annual basis according to government auditing standards issued by the U.S. Governmental Accountability Office. (3-24-22)

052. -- 059. (RESERVED)

060. DISBURSEMENTS.

01. Loan Disbursements. Requests to the Department for actual disbursement of loan proceeds will be made by the loan recipient on forms provided by the Department. (3-24-22)

02. Loan Increases. An increase in the loan amount as a result of an increase in eligible project costs ~~will~~ may be considered, provided funds are available. Documentation supporting the need for an increase must be submitted to the Department for approval prior to incurring any costs above the eligible cost ceiling. ~~(3-24-22)~~( )

03. Loan Decreases. If the actual eligible cost is determined by the Department to be lower than the estimated eligible cost the loan amount ~~will~~ may be reduced proportionately. ~~(3-24-22)~~( )

04. Project Review to Determine Final Eligible Costs. A project review by the Department or a Department designee will determine the final eligible costs. (3-24-22)

05. Final Disbursement. The final loan disbursement consisting of five percent (5%) of the total loan amount ~~shall~~ will not be made until final inspection, final review, and a final loan repayment schedule have been completed. ~~(3-24-22)~~( )

061. LOAN CONSOLIDATION.
If two (2) or more loans are consolidated into one (1) loan, the interest rate for the consolidated loan will be at the same rate as the loan being consolidated with the lowest interest rate. (3-24-22)

062. -- 079. (RESERVED)

080. SUSPENSION OR TERMINATION OF LOAN CONTRACTS.

01. Causes. The Director may suspend or terminate any loan contract prior to final disbursement for failure by the loan recipient or its agents, including engineering firm(s), contractor(s) or subcontractor(s) to perform. A loan contract may be suspended or terminated for good cause including, but not limited to, the following: (3-24-22)

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 (3-24-22)

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 (3-24-22)

c. Violation(s) of any term of the loan contract; or (3-24-22)

d. Any willful or serious failure to perform within the scope of the project, ~~plan of operation~~ and project schedule, terms of engineering subagreements, or contracts for construction; or ~~(3-24-22)~~( )

e. Debarment of a contractor or subcontractor for good cause by any federal or state agency from working on public work projects funded by that agency. (3-24-22)

02. Notice. The Director will notify the loan recipient in writing and by certified mail of the intent to suspend or terminate the loan contract. The notice of intent ~~shall~~ will state: ~~(3-24-22)~~( )

a. Specific acts or omissions which form the basis for suspension or termination; and (3-24-22)

b. That the loan 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. ~~(3-24-22)~~( )

~~**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." (3-24-22)~~

043. Reinstatement of Suspended Loan. Upon written request by the loan recipient with evidence that the cause~~s~~(s) for suspension no longer exists, the Director may, if funds are available reinstate the loan contract. If a suspended loan contract is not reinstated, the loan will be amortized and a repayment schedule prepared in accordance with provisions of the loan contract. ~~(3-24-22)~~( )

054. Reinstatement of Terminated Loan. No terminated loan ~~shall~~ will be reinstated. Terminated loans will be amortized and a repayment schedule prepared in accordance with provisions of the loan contract. ~~(3-24-22)~~( )

081. -- 994. (RESERVED)

995. WAIVERS ~~OF REQUIREMENTS AND AMENDMENT OF PRIORITY LIST~~.
The Director may amend the ~~P~~priority ~~L~~list and grant a waiver from the ~~requirements~~ provisions 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 Section 020 of these rules.~~ ~~(3-24-22)~~( )

~~**01. Health Hazard**. A significant public health hazard exists; (3-24-22)~~

~~**02. Water Contamination**. A significant water contamination problem exists; (3-24-22)~~

~~**03. 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 (3-24-22)~~

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. ( )

042. Affordability Criteria Exceeded. The project will exceed affordability criteria adopted by the Department in the event the waiver is not granted. (3-24-22)

996. -- 999. (RESERVED)