

Idaho Rules for Public Drinking Water Systems

Negotiated Rulemaking

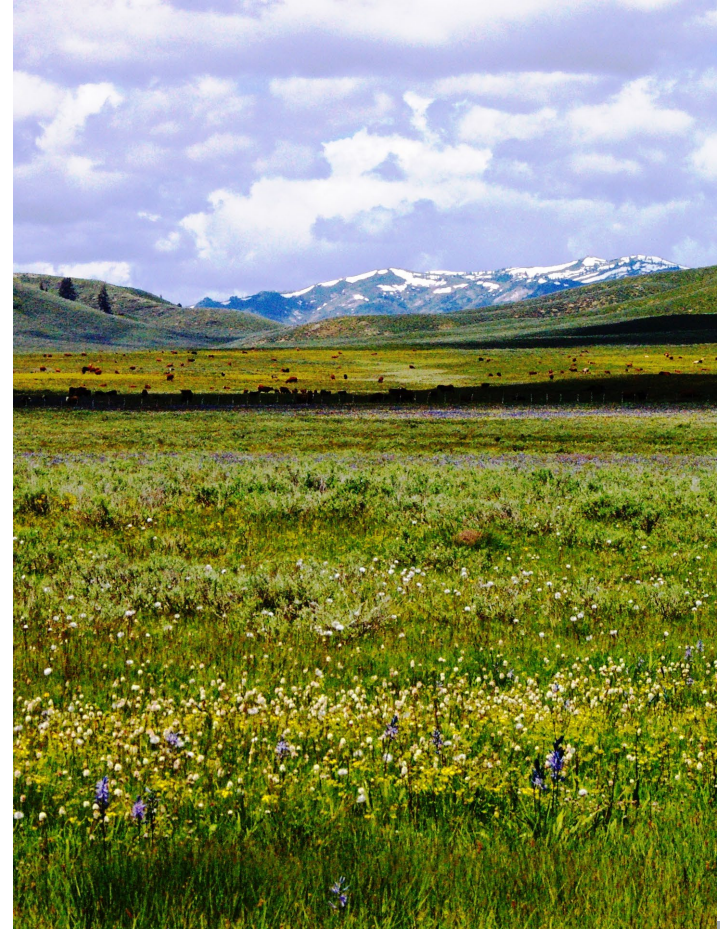
May 9, 2023



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

General Housekeeping

- Sign in sheet
- Cell phones off/muted
- Mute phone lines when not participating
- Speak into a microphone and introduce yourself when providing comments
- Be precise, concise and polite
- Participation encouraged!



Agenda

- Zero Based Rule Executive Order
- Review of comments received
- Review of Negotiated Rule Draft No. 2
- Discussion
- Next steps



Executive Order 2020-01

Zero Based Regulation (ZBR)

- Goals:
 - Simplify rules
 - Reduce regulatory burden
 - Provide clarity and ease of use
 - Remove obsolete, outdated, unnecessary language/regulation
- Review rules on a defined schedule

Common Changes

- Replace “shall” with will
- Reduce the use of “must”
- Remove redundancies
 - Statute
 - Incorporations
 - Other areas in rules



Public Comments

- Idaho Rural Water Association – 1/31/2023
 - IDAPA 58.01.08.553 - We do not see any reason to change the rules per se but would like to have some further discussion in coordination with DOPL and possibly some additional guidance available to the regional DEQ staff when a system classification changes from very small to class I. The challenge is when the population of a community increases thereby requiring a previously classified very small system to class I. The current rules do not allow for a smooth transition to upgrade the license thereby putting the system out of compliance or in the situation of needing to hire an expensive contract operator. We have received input from DEQ that the regional offices have some flexibility (i.e. grace period) to work with the community allowing them time to upgrade their licenses. But this is only an informal process. Is this something that could be included in guidance so there is consistency from region to region?

Public Comments

- Idaho Rural Water Association – 1/31/2023
 - Response: Thank you for your comment. IDAPA 58.01.08.554.04 was added to provide a grace period for drinking water distribution licensure requirements when the operator licensure level is increased solely on a population increase and the operator in responsible charge at the time of this increase remains in responsible charge throughout the grace period. This will allow the existing responsible charge operator time to meet the requirements for the next higher level of licensure.

Public Comments

- Idaho Rural Water Association – 1/31/2023
 - IDAPA 58.01.08.543.04 - There is a conflict in these sections when referring to the AWWA Pacific Northwest Section Cross Connection Manual and the uniform plumbing code manual in regards to double check valve backflow prevention assemblies. The AWWA Pacific Northwest Section Cross Connection Manual is a fantastic reference guide, so we highly recommend leaving the manual as a reference document in front of the rules. But in section 543.04 and 552.06.b., the reference to the manual should be removed since it directly conflicts with the uniform plumbing code which has been identified as the overriding rules for the double check valves. An alternative option would be to clarify that small distinction in the reference material but we couldn't figure out how to do that in a clean fashion in the rules.

Public Comments

- Idaho Rural Water Association – 1/31/2023
 - Response: Thank you for your comment. References to the AWWA Pacific Northwest Section Cross Connection Manual were struck from IDAPA 58.01.08.543.04 and 552.06.b in the draft rule reviewed during the negotiated rulemaking meeting held on April 11, 2023. Since the manual is not utilized in the rules, it was also removed from Section 002. Incorporation by Reference and Availability of Reference Materials.

Public Comments

- Idaho Rural Water Association – 1/31/2023
 - IDAPA 58.01.08.552.07 - Please consider eliminating section 552.07. We feel that a cross connection control program is beneficial for all systems similar to the requirement for community water systems. The full cross connection control program is preferable so that the PWS is familiar with and verifying all connections. The full program requires protection installation prior to providing water service. Without this verification it is possible that the PWS may not be aware of a new device. Elimination of this section also helps simplify the rules and eliminate word count.

Public Comments

- Idaho Rural Water Association – 1/31/2023
 - Response: Thank you for your comment. The Department concurs that cross-connection prevention is beneficial for all systems. However, adding a program requirement to non-community systems is considered an expansion of requirements and does not reduce regulatory burden, which is part of the Governor Little's Executive Order 2020-01, Zero Based Regulation. No changes were made to the rule draft.

Public Comments

- Idaho Rural Water Association – 1/31/2023
 - IDAPA 58.01.08.900.01 - Is there any possibility of increasing setbacks listed in Table 1 of section 900? With our work in the field and source water protection some of these setbacks are fairly thin. We weren't sure about the source of these figures but wanted to ask about the possibility of increasing some of them. We did note setbacks are also referenced in sections: 504.07.b.viii, 510.02, 542.07 and .08.

Public Comments

- Idaho Rural Water Association – 1/31/2023
 - Response: Thank you for your comment. The Department evaluated your request and does not have evidence that the current separation distances are not protective of public water system sources and public health. No additional changes were made to the rule draft.

Public Comments

- Con Paulos – 3/6/2023
 - Just a thought as being a small public water system operator. The number of tests annually could be lowered on systems that have a history of no positive tests. It would lighten the load on you and on us.
 - Response: Thank you for your comment. Sample types and sample frequencies are subject to minimum frequency standards by the National Primary Drinking Water Regulations, which are adopted in the Idaho Rules for Public Drinking Water Standards, and must be adhered to by all public water systems. DEQ does provide sampling frequency reductions where applicable and appropriate under the National Primary Drinking Water Regulations. No additional changes were made to the rule draft.

Public Comments

- Kenneth Phillips, Member, Private Nation Properties, LLC – 3/12/2023
 - See letter on Website
 - Response: Thank you for your comments. DEQ follows the Federal minimum requirements regarding public water system monitoring, evaluation, and protection of public health. These are the minimum requirements necessary for the State of Idaho to maintain primacy (primary enforcement authority) over the Safe Drinking Water Act as delegated to us by the Environmental Protection Agency. DEQ works to balance meeting the Federal minimum requirements with adequate protection of public health. When the monitoring and evaluation requirements identify issues or violations that have the potential to impact public health of the water system users, DEQ works with system owners to mitigate the issue(s).
 - DEQ understands and appreciates the concern for economic challenges faced by small systems such as yours. The Department strives to balance the goal of meeting the standards of safe and reliable drinking water with the costs to our communities. DEQ is also committed to ensuring all communities regardless of economic status are served safe and reliable drinking water. Adequate engineering at the beginning of an important project to provide safe drinking water mitigates costly revisions in the future such as a well placed too close to contaminant sources, such as surface water, which requires specific treatment to meet the federal surface water treatment rules.
 - To address the issue of submittals, DEQ does provide for concurrent submittals to reduce the number of review cycles. We encourage you to continue working with our regional staff to provide the best solution for your particular situation. DEQ's intent is to initiate a separate and focused effort to evaluate the engineering section of the rules specifically over this next year, but at this time, we have not identified changes for this rulemaking.
 - No additional changes were made to the rule draft.

Public Comments

- William Augsburger – 3/30/2023
 - I am on the board of trustees for a rural church. For years we have had to submit water samples because we have been categorized as a PWS. We have had good samples for many years and we always comply with the current rule.

I am not sure if this is the forum to make some suggestions but here goes

1: if a religious organization(non profit org) has been in compliance and has had no issues with water testing for years, there should be a way that we will need to submit a sample only once a year.

2: Reclassify what is considered a PWS under rules.

Public Comments

- William Augsburger – 3/30/2023
 - Response: Thank you for your comment. Sample types and sample frequencies are subject to minimum frequency standards by the National Primary Drinking Water Regulations, which are adopted in the Idaho Rules for Public Drinking Water Standards, and must be adhered to by all public water systems. DEQ does provide sampling frequency reductions where applicable and appropriate under the National Primary Drinking Water Regulations. No additional changes were made to the rule draft.
 - Additionally, the National Primary Drinking Water Regulations set the minimum standards the state must follow regarding what is classified as a public water system. Religious organizations and non-profit organizations are not exempt from these requirements. No additional changes were made to the rule draft.

Public Comments

- JoAnne Lindsey, Lazy River Mobile Retreat Residents –
4/11/2023
 - See letter on website
 - Response: Thank you for your comment. No specific suggestions for rule revisions were provided. No additional changes were made to the rule draft.

Public Comments

- Kenneth Phillips, Member, Private Nation Properties, LLC –
4/11/2023
 - Thank you for the informative presentation this afternoon and thank you for listening to our concerns.

One thought I did have about an addition that I might like to make to my submitted comments is an example of how the engineering requirements can be redundant.

I would need to compile the information regarding this from information I have back at the office and would be happy to do so if you think it would help you meet the Governor's goals of streamlining the regulatory process.

- Response: Thank you for your comment. No specific suggestions for rule revisions were provided. No additional changes were made to the rule draft.

Public Comments

- JoAnne Lindsey, Lazy River Mobile Retreat Residents – 4/17/2023
 - This was a repeat of the letter received on 4/11/2023, but signed by approximately 17 residents of Lazy River Mobile Retreat.
 - Response: Thank you for your comment. No specific suggestions for rule revisions were provided. No additional changes were made to the rule draft.

Public Comments

- Carol Clausen – 4/17/2023

- Here's my public comment submission to Docket No. 58-0108-2301:

I appreciate the opportunity to participate in the zero-based negotiated rule making process and to attend the meeting on April 11. As a board member and the Administrative contact of a very small water system it has been challenging for me to reach compliance with the rules in Section 450, USE OF NON-CENTRALIZED TREATMENT DEVICES. The main problem has been in the organization of the material and trying to distinguish the criteria necessary for a "program" and a "plan", "pursuant to and in accordance with", often finding that a POU maintenance plan's requirements are not organized in a way that is easy to follow. I am attaching an edited version of the rule draft 1.doc in which I simplified and reorganized the rules without omitting any of your original edits. I hope your team will view the changes as worthy of consideration. I understand there may be reasons for the original format that are beyond the scope of my legal understanding, and they need to stand as written.

Therefore, I am respectfully requesting that your team consider the idea of drafting a template of a POU maintenance plan that can be copied and utilized by any small PWS.

For example, the Idaho Rural Water Association's website has a page dedicated to developing a Cross Connection Control Program- an eight stage process with a downloadable template that covers all of the IDAPA code. It is a very useful tool in providing technical assistance to PWS's seeking to comply with Idaho code without having to navigate the code itself.

Thank you for taking the time to consider my suggestions.

Public Comments

- Carol Clausen – 4/17/2023
 - Response: Thank you for your comment. Changes were made throughout IDAPA 58.01.08.450 to address organization of the requirements and help distinguish the criteria necessary for point of use treatment devices. See the proposed draft rule for changes made.
 - Additionally, the Department does maintain a guidance document titled "Point of Use Guidance" located at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/guidance/>. This guidance document is meant to assist public water systems with point of use applications and requirements. The Department will review this guidance and determine updates that could improve its usefulness, including a point of use maintenance plan outline.

Public Comments

- Idaho Rural Water Association – 4/18/2023
 - We respectfully request DEQ consider eliminating section 552.07 of the rules as proposed that allows for an exception to non-community water systems for a cross connection control program. We believe a cross connection control program is beneficial for all public water systems similar to the requirements for community water systems. Without the full cross connection control program in place requiring inspection and verification prior to providing water service, we believe there is a high likelihood the non-community public water system may not be aware of the new device. Non-community public water systems often serve a significant population base that in many cases may exceed the population base of a community water system. We believe all citizens regardless of the type of public water system should be provided the same protections from potential contamination. In addition, in the spirit of simplifying Idaho's regulations, elimination of section 552.07 provides for consistent practice across all public water systems.

Public Comments

- Idaho Rural Water Association – 4/18/2023
 - Response: Thank you for your comment. This comment was responded to with the comments received on 1/31/2023. No additional changes were made to the rule draft.

Public Comments

- Idaho Rural Water Association – 4/18/2023
 - Additionally, we urge you to consider increasing the minimum setback proposed in 510.02 for the minimum distance from a public water system well especially in regards to “any potential source of contamination”. At minimum, we believe it is in the best interest of public water systems to increase the setback from 50 feet to 100 feet similar to the existing setback requirements for septics and pressure wastewater lines. Our organization works closely with communities, both large and small, educating them about the importance of protecting their water sources. All too often communities experience unintended contamination as a result of a contaminant’s proximity to the source of the water supply. We believe the additional distance is prudent in planning future developments and further protecting our public water systems.

Public Comments

- Idaho Rural Water Association – 4/18/2023
 - Response: Thank you for your comment. This comment was responded to with the comments received on 1/31/2023. No additional changes were made to the rule draft.

Public Comments

- William Augsburger – 4/20/2023
 - I am a church trustee and we are considered a PWS. We have a congregation of about 100 people, with a youth program once a week during the school year for four hours. Due to being classified as PWS, we are under the rules promulgated for them. We have been in compliance for years without issue. It would be nice to have someone review what a PWS really is. Just a thought.

Public Comments

- William Augsburger – 4/20/2023
 - Response: The National Primary Drinking Water Regulations set the minimum standards the state must follow regarding what is classified as a public water system. Religious organizations and non-profit organizations are not exempt from the requirements. No additional changes were made to the rule draft.



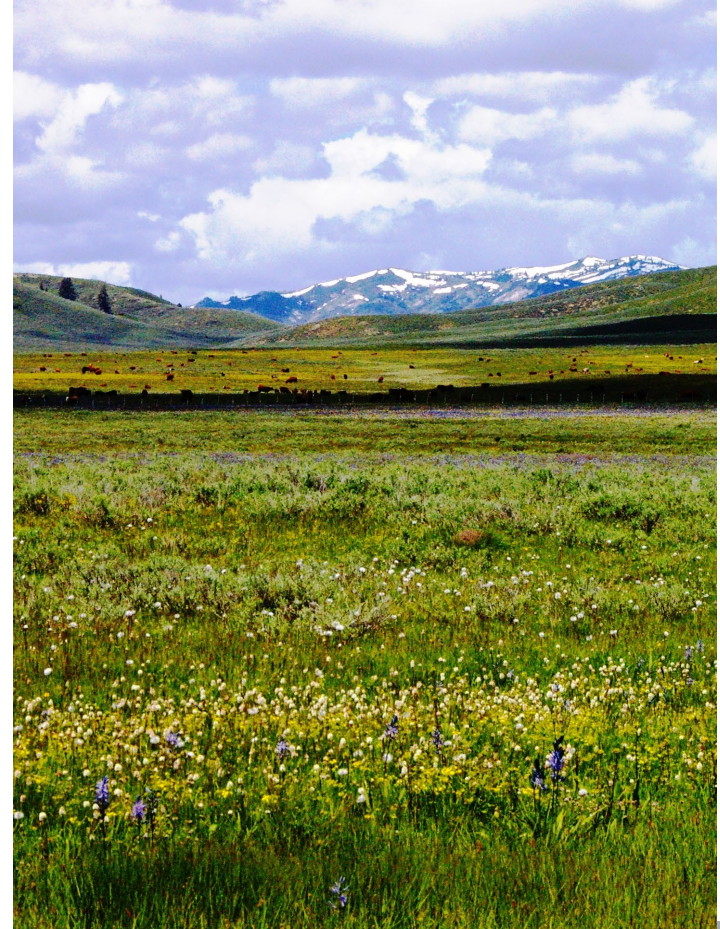
Preliminary Draft Rule Review



Discussion

Next Steps

- Comments due May 16, 2023
- Ongoing updates will be posted @ <https://www.deq.idaho.gov/drinking-water-docket-no-58-0108-2301/>
- Publication in Bulletin September 2023
- Review by DEQ Board November 2023
- Review by Legislature in 2024 session



Thank you.

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