

October 6, 2023

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Re: Docket No. 58-0108-2301 Written Comment

Dear Mr. Fortunati,

Thank you for accepting written comments to IDAPA Proposed Rule 58.01.08, Docket No. 58-0108-2301. We understand that the criteria of Zero-Based Regulation is “to perform a critical and comprehensive review of the entire chapter in an attempt to reduce overall regulatory burden, streamline various provisions, increase clarity and ease of use, and maintain state program approval.”

We have worked with many water communities in our region and offer the following comments for your consideration of the Zero-Based Regulation criteria:

**58-0108-2301-003.30 Material Modification.** The deleted sentence of “Maintenance and repair performed on the system and the replacement of valves, pumps, or other similar items with new items of the same size and type are not considered a material modification” provides a clearer distinction between what is considered a material modification than the proposed sentence of “Maintenance as outlined in the approved operation and maintenance manual is not a material modification”. Additionally, many smaller systems either do not have a currently approved O&M manual or the prescribed replacement (especially in an emergency) may not be clearly defined in the O&M. This appears to add a regulatory burden to smaller entities. We request the Department consider revising this language accordingly or consider keeping the original language and adding “or as outlined by the system’s approved O&M”.

**58-0108-2301-003.51 Preliminary Engineering Report.** “Modifications” described herein requiring a PER appear to introduce another definition of modification (compared to material modification or substantial modification). We request this modification be clearly defined or tied to a current definition of modification, such as material modification.

**58-0108-2301-003.58 Qualified Licensed Professional Engineer (QLPE).** This definition refers to a “regulated public entity”; however, the definition for the regulated public entity has been stricken. What does a regulated public entity cover? Also, we request the Department consider allowing all public water systems (since they are all “regulated” by the Department) to utilize QLPE services to increase efficiency and allow all PWS access to this benefit.

**58-0108-2301-003.73 Substantially Modified.** We offer the following comments on this revised definition.

1. Including “source capacity” in the increase definition: does this include redundancy (maximum pumping/source capacity) or is it intended to be total capacity?
2. The proposed sentence “Material modifications completed after July 1, 2007, are the only modifications counted towards the twenty-five (25%) increase” introduces another layer of complexity and tracking with respect to cutoff timeframes listed in Section 513 and 552, creating a burden for water systems.

**58-0108-2301-302.03-c. and g. Significant Deficiencies, Distribution Pressure and Depressurization.** The addition of these items to “significant deficiency” is ambiguous as it does not clearly define the basis for establishing the deficiency exists such as recordation/documentation with frequency or duration of the event(s). Thus, this potentially leads to enforcement without allowing the PWS adequate time to identify, diagnose, and implement a plan to correct the issue, given the required timeline outlined in Section 302.04.

**58-0108-2301-501.07.b. Reliability and Emergency Operation.** It appears the Department will now require compliance with this rule (on-site standby power or standby storage) with any material modification to the system, rather than those substantially modified after April 15, 2007. We request the Department consider the replacement of “material modification” with “substantial modification” to prevent this revision from becoming a regulatory and financial burden for many systems.

**58-0108-2301-502. Facility Plan.** There is not currently a review time included in the rules. This presents a significant planning challenge for many entities who must complete or update an existing Facility Plan prior to submitting a PER and/or Plans and Specifications for critical projects. Open-ended review times inhibit entities from completing improvements required to protect public health and safety in a reasonable timeframe. We request the Department consider adding a timeframe or potentially introducing a review fee. Review fees, similar to the IPDES fees, provide for faster review time by Department staff (funding additional Department staff to complete reviews) and encourage high-quality documents to be submitted to the Department (reduction on repeat reviews). This has been successfully implemented in Washington (Dept. of Health).

**58-0108-2301-503. Preliminary Engineering Reports.** Refer to comment above on Facility Plans.

**58-0108-2301-513.02. Number of Groundwater Sources.** The existing rule language introduces another definition of “modification” to evaluate. It appears similar to the definition of “substantial modification” but is not clearly defined. We request the Department add this to the definitions or consider substituting “substantial modification” to this rule language.

**58-0108-2301-542.12. Meter Vault Required.** This appears to require existing systems undergoing material modifications to install a meter vault (not necessarily a meter) at each service connection. This would potentially mean that a system completing work at a booster station would be required to install meter vaults in their distribution system. This could create a significant regulatory and financial burden for many systems, especially small systems. We request the Department consider re-wording this section to eliminate the reference to material modification or elaborate on when this would be feasibly required (when completing distribution or transmission projects).

Please contact us if you have any questions or concerns related to these comments. We can be reached at 208-664-9382 or [wc@welchcomer.com](mailto:wc@welchcomer.com).

Sincerely,



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Necia Maiani, P.E.  
Principal/Vice President



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AMW/ba

cc: Katy Baker-Casile, PE, Idaho Department of Environmental Quality  
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