

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5988-3]

Public Review Draft Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems**AGENCY:** Environmental Protection Agency.**ACTION:** Solicitation of comments on public review draft.

SUMMARY: In this Public Notice, the Environmental Protection Agency (EPA) is seeking comments on the public review draft "Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems." The public review draft guidelines are published in the Supplementary Information section of this notice.

DATES: Submit written comments on or before June 25, 1998.

ADDRESSES: Send written comments on these draft guidelines to the Operator Certification Comment Clerk: Water Docket MC-4101 (docket #W-98-07), Environmental Protection Agency: 401 M Street, S.W., Washington DC 20460. Please submit an original and three copies of your comments and enclosures (including references).

Those who comment and want EPA to acknowledge receipt of their comments must enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to ow-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and forms of encryption. Electronic comments must be identified by Docket #W-98-07. Comments and data will also be accepted on disks as a WordPerfect 5.1 or 6.1 file. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

The record for these guidelines has been established under Docket #W-98-07, and includes supporting documentation as well as printed paper versions of electronic comments. The record is available for review at EPA's Water Docket: 401 M Street, S.W., Washington DC 20460. For access to the Docket materials, call 202-260-3027 between 9:00 a.m. and 3:30 p.m. for an appointment and reference Docket #W-98-07.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, toll free

(800) 426-4791, for general information about and copies of this document. For technical inquiries, contact Richard Naylor, Implementation and Assistance Division, Office of Ground Water and Drinking Water (4606), U.S. EPA, 401 M Street, SW, Washington, DC, 20460. The telephone number is (202) 260-5135 and the e-mail address is naylor.richard@epamail.epa.gov.

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V. Definitions**VI. Acronyms****I. Introduction***Statutory Requirements*

The Safe Drinking Water Act (SDWA) Amendments of 1996 (Pub. L. 104-182) direct the Administrator of the United States Environmental Protection Agency (EPA), in cooperation with the States, to publish guidelines in the **Federal Register** specifying minimum standards for certification and recertification of operators of community and nontransient noncommunity public water systems. The final guidelines are required to be published by February 1999. States then have two years to adopt and implement an operator certification program that meets the requirements of these guidelines. After that date, if a State has not adopted and implemented an approved program, the Administrator must withhold 20 percent of the funds a State is otherwise entitled

to receive in its Drinking Water State Revolving Fund (DWSRF) capitalization grants under section 1452 of SDWA.

All of the requirements contained in these guidelines are requirements to avoid DWSRF capitalization grant withholding. There are no other sanctions for States with operator certification programs that do not meet the requirements of these guidelines.

B. Process for Developing Guidelines

The draft guidelines consist of nine baseline standards. In the development of the nine baseline standards, EPA utilized the combined knowledge and expertise of two working groups that it appointed on operator certification. One work group, the State-EPA Work Group, was appointed to fulfill EPA's responsibility under section 1419(a) to publish guidelines on operator certification "in cooperation with States." This work group was composed of seven State and ten EPA representatives. The other work group, the Operator Certification Working Group of the National Drinking Water Advisory Council (NDWAC), also referred to as the Partnership, was formed to provide EPA with views in addition to those of States. This group was composed of 23 members representing public water systems, environmental and public interest advocacy groups, State drinking water program representatives, EPA, U.S. Department of Agriculture, U.S. Public Health Service, Indian Health Service, and other interest groups.

Procedurally, the two groups worked closely together. The Partnership identified potential categories for which minimum standards would be developed. The State-EPA Work Group then developed draft issue papers for these categories. The Partnership and the State-EPA Work Group exchanged reviews of the proposed language on what both groups referred to as "baseline standards," and worked toward achieving consensus on these standards. The baseline standards were then forwarded by the Partnership to the NDWAC. In October 1997, the NDWAC formally transmitted its recommended baseline standards to the EPA. The baseline standards contained in these guidelines are based on the formal recommendations of the NDWAC.

II. Key Certification Issues

During the development of the baseline standards upon which these guidelines are based, the work groups debated a number of certification issues. Included here, as background for the reader, is a discussion of the key issues along with a brief explanation of how

the groups chose to address each issue. EPA would like to draw the public's attention to these issues to encourage review and comment.

A. Baseline Standards

Should training, coverage and reciprocity be separate baseline standards? The Partnership, in identifying the baseline standards for operator certification, initially debated whether to make training, coverage and reciprocity separate baseline standards. After considerable discussion, the group decided that training and coverage should be appropriately included as elements within other baseline standards. It was decided that reciprocity should not be a requirement, but States should be encouraged to develop reciprocity procedures between certifying authorities.

B. Grandparenting of Operators

Should the guidelines provide for the grandparenting of operators? The terminology "grandparenting of operators," as used in the context of these draft guidelines, means exempting existing operators from the initial certification requirements such as having to have a high school education or equivalent and passing an exam. The consensus of the work groups was that grandparenting may be necessary to allow the many competent operators who have been successfully operating treatment facilities and/or distribution systems but who may not meet the initial requirements of certification to become certified. It does not make sense to put people out of work. Also, some members felt that a grandparenting provision was important because of their concern that it may not be legal in some States to impose requirements that could cause someone to lose their present job if they did not meet the initial certification requirements. Furthermore, it was felt that grandparenting may be necessary to provide a transition period for some States to accomplish the certification of operators (identify, notify, test, etc.) for which certification had not previously been required. The intent of the work groups was to make grandparenting a short-lived option available only to facilitate the transition to the new guidelines. The decision to allow grandparenting would be left to the State's discretion. Some States may not offer grandparenting; however, if a State chooses to allow grandparenting the guidelines impose certain restrictions.

C. Operator Testing

Should written exams be mandatory? Some members argued that a written

exam was essential to ensure that an operator could read directions, warning labels, regulations, etc. Others felt that certain individuals did not perform well on written exams, especially those with a disability such as dyslexia and therefore, should have available an alternative to a written exam. Some members felt that a performance exam was superior. The consensus was to allow the States to decide what type of exam would be the most appropriate—written, oral, performance-based, or a combination, as long as the exam demonstrates that the applicant has the necessary skills, knowledge, ability and judgement that is appropriate for the classification.

D. Operator Training

Should the guidelines specify training requirements? Under the guidelines, training is required in order for an operator to renew his/her certification. Some members felt that the guidelines should be more specific about the continuing education requirements that are necessary for certification renewal. The consensus was to allow the States to decide what type and amount of training is appropriate.

E. Renewal Period

Should the guidelines specify a maximum time for renewal or should States decide what is appropriate? The consensus was that the guidelines should require States to have a fixed cycle of renewal; however, it was not a clear consensus as to whether the guidelines should specify a period of time or leave it up to the States. The majority of members voted for a fixed cycle of renewal not to exceed three years. Most States already have a renewal cycle of three years or less.

F. Size Categories for Systems

The work groups discussed establishing size categories for systems and tailoring certification requirements to the size of the system. All States currently have a method for categorizing systems within the State. Establishing nationally uniform size categories would be very disruptive with little benefit. The consensus was that defining the size of systems should be left up to the States.

G. Exemptions

Should small or certain types of systems be exempt from the requirement to have a certified operator? Some members of the work groups felt that there should be exemptions from the requirement to have a certified operator for some systems such as small ground water systems with no treatment.

However, small water systems historically violate drinking water requirements significantly more often than those serving larger communities. Competent operating personnel are vitally important to the long term, safe operation of small water systems. The Partnership felt it was Congress' intent that small systems should be covered by the operator certification guidelines. Hence, the reimbursement provision for the training and certification costs for operators of systems serving 3,300 or less. Accordingly, the guidelines do not provide any categorical exemptions to the certification requirements. Instead, the guidelines do provide the States with the flexibility to decide what is the appropriate level of training and type of examination for certification. For example, in the case of a small ground water system with no treatment and only on-site plumbing, it may be only necessary for the operator to be trained and tested on proper sampling procedures to become certified.

H. Indian Tribes

The Partnership, through the NDWAC, made the following recommendation to EPA concerning operator certification for Indian Tribes:

The Council recognizes that the SDWA, with regard to operator certification, is silent as to whether these guidelines apply to Indian Tribes. The Council believes that all users of public water supplies are entitled to safe water and that a program for operator certification is one means of helping to ensure this basic need. As a result, the Council recommends that EPA, seek clarification and resolve this omission, and consult to the greatest extent practicable, and to the extent permitted by law, with the Tribal governments prior to taking action on operator certification issues that impact Tribes or Tribal systems. We recommend using the operator certification baseline standards to initiate discussions with Tribes.

EPA is currently pursuing this recommendation.

I. Expense Reimbursement

The SDWA authorizes the Administrator to provide reimbursement for the costs of training, including an appropriate per diem for unsalaried operators, and certification for persons operating systems serving 3,300 persons or fewer that are required to undergo training pursuant to these guidelines. The reimbursement will be provided through grants to States. EPA is in the process of developing an estimate of the reimbursable expenses of training and certification of small system operators and will work with stakeholders to develop an appropriate grant allocation methodology.

III. Operator Certification Guidelines

A. Public Health Objectives

The public health objectives of the guidelines are to ensure that:

- Customers of any public water system be provided with an adequate supply of safe, potable drinking water.
- Consumers are confident that their water is safe to drink.
- Public water system operators are trained and certified and that they have knowledge and understanding of the public health reasons for drinking water standards.

Ongoing training is necessary to the public health objectives of this program.

B. Antibacksliding

Because these guidelines represent only minimum standards, it is expected that States whose current operator certification program requirements go beyond or exceed these minimum standards not lower their operator certification program requirements. EPA will not approve the operator certification program of any State that reduces its standards below the level that existed 12 months prior to the effective date of these guidelines unless the reduction can be justified by the State and is approved by EPA.

C. Baseline Standards

Each State operator certification program must include as a minimum the essential elements of the nine baseline standards described below. Essential elements to avoid DWSRF withholding are introduced by words such as "the States must." For each essential element, the State must describe how its operator certification program complies with the requirement. Additionally, several of the baseline standards include highly recommended elements that are intended to complement, improve, and expand the parameters of essential elements of an operator certification program. These highly recommended elements are introduced by words such as "the States should."

1. Authorization

As evidenced by an Attorney General's certification, the State must have the legal authority to implement the program requiring the certification of operators of all community and nontransient noncommunity water systems and to require that the systems comply with the appropriate requirements of the program.

2. Classification of Systems, Facilities, and Operators

To avoid DWSRF withholding, a State's program must meet the following requirements:

- It must classify and rank all community and nontransient noncommunity water systems based on indicators of potential health risk such as but not limited to: a) complexity, size and source water for treatment facilities, and b) complexity and size for distribution systems.
- It must require owners of all community and nontransient noncommunity water systems to place the direct supervision of their water system, including each treatment facility and/or distribution system, under the responsible charge of an operator(s) holding a valid certification equal to or greater than the classification of the treatment facility and/or distribution system.
- It must require, at a minimum, that the operator(s) in responsible charge or equivalent must hold a valid certification equal to or greater than the classification of their water system, including each treatment facility and distribution system, as determined by the State.
- It must require that all operating personnel making process control/system integrity decisions about water quality or quantity that affect public health be certified.
- It must require that a designated certified operator must be available for each operating shift.

3. Operator Qualifications

To avoid DWSRF withholding, States must require operator applicants to:

- Take and pass an exam that demonstrates that the applicant has the necessary skills, knowledge, ability and judgement as appropriate for the classification. All exam questions must be State validated to ensure no illegal bias, and they must be based on a job analysis and related to the classification of the system or facility.
- Have a high school diploma or a general equivalency diploma (GED). Have the defined minimum amount of on-the-job experience for each appropriate level of certification. The amount of experience required increases with each classification level. Experience that is used to meet the experience requirement for any class of certification may not be substituted for education. Education that is used to meet the education requirement for any class of certification may not be substituted for experience.

States may allow experience and/or relevant training to be substituted for a

high school diploma or GED. Post high school education may be substituted for experience. Credit may be given for experience in a related field (e.g., wastewater). Experience and education may not be used more than once as a substitution.

Grandparenting

EPA recognizes that there are many competent small system operators that may not meet the initial requirements to become certified. EPA believes that some States may need a transition period to allow these operators to become certified and that this can be accomplished through "grandparenting" the requirements in some circumstances. It is recommended that grandparenting determinations be based on factors such as system compliance history, operator experience and knowledge, system complexity, and lack of treatment.

If States choose to include a grandparenting provision in their programs, it must include the following requirements:

- During this initial transition period, grandparenting is permitted only to existing Operator(s) in Responsible Charge of existing systems which, because of State law changes to meet these guidelines, must for the first time have a certified operator.
- There are two options offered for consideration and comment concerning the time period within which a system must apply to the State for grandparenting. Because a clear consensus was not achieved during the deliberations of the work groups both options are presented here.

(1) The system must apply for grandparenting within two years of the effective date of the State's regulation; or

(2) The system must apply for grandparenting within one year of the effective date of the State's regulation.

- Grandparenting shall be site specific and non-transferable.

- After an operator is grandparented, he or she must, within some time period specified by the State, meet all requirements to obtain certification including the payment of any necessary fees, acquiring necessary training to meet the renewal requirements, and demonstrating the skills, knowledge, ability and judgement for that classification.

- If the classification of the plant or distribution system changes to a higher level, then the grandparented certification will no longer be valid.

4. Enforcement

To avoid DWSRF withholding, the State agency with primary enforcement responsibility for the Public Water System Supervision (PWSS) Program must have regulations requiring community water systems and nontransient noncommunity water systems to comply with State operator certification requirements. In nonprimacy States, the Governor shall determine which State Agency shall have this responsibility. States must have appropriate enforcement capabilities such as, but not limited to: administrative orders, bilateral compliance agreements, criminal or civil administrative penalties, and stipulated penalties.

States must have the ability to revoke operator certifications.

States must also have the ability to suspend operator certifications or take other appropriate action for operator misconduct such as, but not limited to: fraud, falsification of application, falsification of operating records, gross negligence in operation, incompetence, or failure to use reasonable care or judgement in the performance of duties.

5. Certification Renewal

To avoid DWSRF withholding, the State must establish training requirements for renewal based on the level of certification held by the operator.

States must require operators to acquire necessary amounts and types of approved training. States may determine other requirements as deemed necessary.

States must have a fixed cycle of renewal not to exceed three years.

The State must consider a certificate to have lapsed and the individual must recertify, if the individual fails to renew or qualify for renewal and is beyond a grace period (not to exceed two years).

6. Resources Needed To Implement the Program

To avoid DWSRF withholding, the States must provide sufficient resources to adequately fund and sustain the operator certification program (including components such as, but not limited to: staff, data management, testing, enforcement, administration, and training approval). EPA recommends that States establish a dedicated fund that is self-sufficient.

7. Recertification

To avoid DWSRF withholding, the States must have a process for recertification of individuals whose certification has lapsed. This process must include: review of the individual's

experience and training, and reexamination. The State must consider the certificate to have lapsed and the individual must recertify, if the individual fails to renew or qualify for renewal and is beyond a grace period (not to exceed 2 years). The State may develop more stringent requirements for recertification for individuals whose certificates have been revoked or suspended.

8. Stakeholder Involvement

Stakeholder involvement is important to the public health objectives of the program. It helps to ensure the relevancy and validity of the program, and the confidence of all interested parties.

To avoid DWSRF withholding, States must include ongoing stakeholder involvement in the revision and operations of State operator certification programs. A stakeholder board or advisory committee is strongly recommended.

9. Program Review

To avoid DWSRF withholding, States must perform reviews of their operator certification programs. EPA recommends that States perform periodic internal reviews and occasional external/peer reviews. Examples of reviews include, but are not limited to: regulations, exams and exam scores for bias, exam items for relevancy and validity, compliance, enforcement, budget and staffing, training relevancy, training needs through examination performance, and data management system.

IV. Program Submittal Process

A. Requirements

1. Submittal Schedule

Not later than two years after the guidelines are published, to avoid DWSRF withholding, States must have adopted and implemented a program for the certification of operators of community and nontransient noncommunity public water systems that meets the requirements of or is substantially equivalent to these guidelines. States are encouraged to submit their operator certification programs to the appropriate EPA Regional Administrator for review as early as possible. Any State that expects to receive its FY 2000 or FY 2001 capitalization grant after February 6, 2001, should submit its operator certification program to EPA by August 2000. Also, any State that intends to enforce its existing operator certification program in lieu of these guidelines must submit its program to EPA by August

2000. EPA must determine whether an existing State operator certification program is substantially equivalent to these guidelines.

Future annual submittals of state operator certification programs to EPA must be submitted either before or with the annual capitalization grant application.

2. Submittal Contents

The submittal of operator certification programs to EPA by States must include the following:

(1) The State Attorney General's certification that the State has the legal authority to implement the program requiring the certification of operators of all community and nontransient noncommunity water systems and to require that the systems comply with the appropriate requirements of the program;

(2) A full description and explanation of how the State's operator certification program complies with or is substantially equivalent to the requirements of these guidelines;

(3) A copy of the State operator certification regulations; and

(4) All annual program submittals subsequent to the initial submittal must include documentation and evaluation of ongoing program implementation.

B. Approval Process

EPA must approve or disapprove a State program within nine months after submittal. If there is no EPA action within the nine month period, a State program will be deemed approved and/or substantially equivalent to the guidelines.

C. Disapproval Process

If the Regional Administrator determines that a program (or portion thereof) is to be disapproved, EPA will send a written statement of the reasons for such disapproval to the State.

Within six months of EPA's written statement to the State, the State must submit a modified program to EPA to avoid DWSRF withholding. The State's modifications to the program must be based upon the recommendations of EPA. If EPA disapproves the program (or portion thereof), EPA will advise the State of any deficiencies in an expeditious manner to ensure that the State has an opportunity to develop an approvable program.

EPA must then make a decision on whether to approve or disapprove a State's re-submittal.

D. Withholding of Funds

The Administrator shall withhold 20% of a State's funds that it is entitled

to receive under the DWSRF program (section 1452) unless the State has adopted and is implementing a program for the certification of operators of community and nontransient noncommunity public water systems that meets the requirements of these guidelines. This withholding provision will begin two years after the effective date of these guidelines.

E. Reallotment of Funds

All funds withheld by the Administrator because the State does not develop and implement an operator certification program that meets the requirements of these guidelines shall be reallotted using the allotment formula that was used to distribute funds for that year, except that the Administrator may reserve and allocate 10 percent of the amount for financial assistance to Indian Tribes. None of these funds reallotted by the Administrator shall be allotted to a State unless the State has met the requirements of these guidelines.

V. Definitions

Administrator—means the Administrator of the United States Environmental Protection Agency.

Available—Based on system size, complexity, and source water quality, a certified operator must be on site or able to be contacted as needed to initiate the appropriate action in a timely manner.

Community Water System (CWS)—a public water system providing water to at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

Distribution Complexity—Such as, but not limited to, pressure zones, booster stations, storage tanks, fire protection, chlorination, non-residential

consumers, cross connection potential, and demand variations.

Distribution Size—Such as, but not limited to, population served, number of service connections, size of pipes, total distance of pipe, and quantity.

Distribution System—Any combination of pipes, tanks, pumps, etc. which delivers water from the source(s) and/or treatment facility(ies) to the consumer.

Grandparenting—The exemption for the existing operator(s) in responsible charge, as of the effective date of the State's regulation, from meeting the initial education and/or examination requirements for the class of certification the system has been assigned.

Nontransient Noncommunity (NTNC) Water Systems—is a public water system that is not a community water system and that regularly serves at least 25 of the same persons over six months per year. Common types of NTNC water systems are those serving schools, day care centers, factories, restaurants, nursing homes, and hospitals.

Operating Shift—That period of time during which operator decisions that affect public health are necessary for proper operation of the system.

Primacy—Primary enforcement responsibility for administration and enforcement of the primary drinking water regulations and related requirements applicable to public water systems within a State.

Responsible Charge—The Operator(s) in Responsible Charge or his/her equivalent is defined as the person(s) designated by the owner to be the certified operator(s) who makes decisions regarding the daily operational activities of a public water system, water treatment facility and/or

distribution system, that will directly impact the quality and/or quantity of drinking water.

Source Water—Such as but not limited to: type (surface water, groundwater, groundwater under the influence of surface water, purchase), quality (variability), protection (e.g., wellhead protection)

Treatment Size—Such as but not limited to, population served, number of service connections, and plant flow.

Treatment Facility—Any place(s) where a community water system or nontransient non-community water system alters the physical or chemical characteristics of the drinking water. Chlorination may be considered as a function of a distribution system.

Treatment Complexity—Such as, but not limited to, difficulty in controlling water quality, potential effect to the consumer and safety of the operator.

VI. Acronyms

CWS—Community Water System

DWSRF—Drinking Water State

Revolving Fund

EPA—United States Environmental Protection Agency

GED—General Equivalency Diploma

NDWAC—National Drinking Water Advisory Council

NTNCWS or NTNC—Nontransient Noncommunity Water System

PWSS Program—Public Water System Supervision Program

SDWA—Safe Drinking Water Act

Dated: March 23, 1998.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water, Environmental Protection Agency.

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