

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

JAN CASTO
Deputy Secretary of State

Telephone: (304) 558-6000
Corporations: (304) 558-8000
FAX: (304) 558-0900
wvsos@secretary.state.wv.us
www.state.wv.us/sos/



STATE OF WEST VIRGINIA
SECRETARY OF STATE
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

CATHERINE FREROTTE
Executive Assistant

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

(Plus all the volunteer
help we can get)

July 28, 2000

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Division of Health

RULE: Series 4, Repeal and Replace, Public Water Systems Operator Regulations

DATE FILED AS AN EMERGENCY RULE: June 16, 2000

DECISION NO. 6-00

Following review under W. Va. Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.


KEN HECHLER
Secretary of State

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SECRETARY OF STATE
JUL 27 11 51 AM '00

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EMERGENCY RULE DECISION
(ERD 6-00)

AGENCY: Division of Health
RULE: Repeal and Replace, Series 4, Public Water Systems Operator Regulations

FILED AS AN EMERGENCY RULE: June 16, 2000

- par. 1 The Division of Health (Division) has filed the above repeal and replace to an existing rule as emergency rule.
- par. 2 W. Va. Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [§29A-3-15a].
- par. 4 (A) Procedural Compliance: W. Va. Code §29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Division filed this emergency rule with supporting documents with the Secretary of State June 16, 2000 and with the LRMRC June 16, 2000.

par. 7 It is the determination of the Secretary of State that the Division has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- W. Va. Code §16-1-9 reads:

No person, firm, company, corporation, institution or association, whether public or private, county or municipal, may install or establish any system or method of drainage, water supply, or sewage or excreta disposal without first obtaining a written permit to install or establish the system or method from the commissioner or his or her authorized representative. All systems or methods shall be installed or established in accordance with plans, specifications and instructions issued by the commissioner or which have been approved in writing by the commissioner or his or her authorized representative.

Whenever the commissioner or his or her authorized representative finds, upon investigation, that any system or method of drainage, water supply, or sewage or excreta disposal, whether publicly or privately owned, has not been installed in accordance with plans, specifications and instructions issued by the commissioner or approved in writing by the commissioner or his or her authorized representative, the commissioner or his or her authorized representative shall issue an order requiring the owner of the system or method to make alterations necessary to correct the improper condition. The alterations shall be made within a reasonable time, which shall not exceed 30 days, unless a time extension is authorized by the commissioner or his or her authorized representative.

The presence of sewage or excreta being disposed of in a manner not approved by the commissioner or his or her authorized representative constitutes prima facie evidence of the existence of a condition endangering public health.

The personnel of the bureau for public health shall be available to consult and advise with any person, firm, company, corporation, institution or association, whether publicly or privately owned, county or municipal, or public service authority, as to the most appropriate design, method of operation or alteration of any system or method.

Any person, firm, company, corporation, institution or association, whether public or private, county or municipal, violating any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$50.00 nor more than \$500.00. Any continuing failure or refusal of the convicted person, firm, company, corporation, institution or association, whether public or private, county or municipal, to make the alterations necessary to protect the public health required by the commissioner or his or her authorized representative is a separate, distinct and additional offense for each 24 hour period of failure or refusal and, upon conviction thereof, the violator shall be fined not less than \$50.00 nor more than \$500.00 for each conviction: Provided, That not of the provisions contained in this section apply to those commercial or industrial wastes that are subject to the regulatory control of the West Virginia division of environmental protection.

par. 9 It is the determination of the Secretary of State that the Division has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- W. Va. Code §29A-3-15(f) defines "emergency" as follows:

(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.


par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Division are as follows:

The federal Safe Drinking Water Act mandates that states adopt continuing education requirements for water treatment plant operators and have the requirements in place and effective by February 5, 2001. In addition, in Section 5 of EPA's Final Guidelines for the Certification and Recertification of Operators, a state's program must establish training requirements for renewal based on the level of certification held by the operator. Failure to meet these requirements subjects the state to a 20% withholding (approximately \$1.5 million) for future EPA capitalization grants of the Drinking Water Treatment Revolving Fund. (See attachment A)

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . "federal time limitation"

par. 14 This decision shall be cited as Emergency Rule Decision 6-00 or ERD 6-00 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Division of Health, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
Secretary of State

Entered _____

OFFICE OF THE SECRETARY OF STATE
JUL 28 11 51 AM '00
FILED

ATTACHMENT A

ENVIRONMENTAL PROTECTION AGENCY

[FRL-]

Proposed Additions to the Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems; Proposed Allocation Methodology for Funding to States for the Operator Certification Expense Reimbursement Grants Program

AGENCY: Environmental Protection Agency

ACTION: Solicitation of comments

SUMMARY: In this Notice, the Environmental Protection Agency (EPA) is seeking comment on proposed additions to the *Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems*, which were published in the *Federal Register* on February 5, 1999 (64 *FR* 5916). Specifically, EPA is seeking comment on the approach and schedule for review of State operator certification programs for the purpose of making Drinking Water State Revolving Fund (DWSRF) withholding determinations, and the intent of the term "validated exam". EPA is also seeking comment on the proposed allocation methodology and program for funding that will be used to award grants to States for the Operator Certification Expense Reimbursement Grants Program.

DATES: Submit written comments on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Send written comments on this *Federal Register* notice to the Operator Certification Comment Clerk, Water Docket MC-4101 (Docket #W-98-07), United States Environmental Protection Agency, 1200 Pennsylvania Avenue NW, 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 be hand-delivered to EPA's Water Docket, Room EB57, 401 M Street SW, Washington, DC 20460. Comments may also be submitted electronically to ow-docket@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 8 file. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

The record for these proposals 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, Room EB57, 401 M Street SW, Washington DC 20460. For access to the Docket materials, call (202) 260-3027 between 9:00 a.m. and 3:30 p.m. Eastern Time for an appointment and reference Docket #W-98-07.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact Jenny

Jacobs, Office of Ground Water and Drinking Water (4606), U.S. EPA, 1200 Pennsylvania Avenue NW, Washington, DC, 20460. The telephone number is (202) 260-2939 and the e-mail address is jacobs.jenny@epa.gov. For copies of this document, contact the Safe Drinking Water Hotline, toll free at (800) 426-4791. Copies can also be obtained from EPA's website at <http://www.epa.gov/ogwdw/opcert/opcert.htm>. Copies of EPA's *Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems* may be obtained by contacting the Safe Drinking Water Hotline or EPA's website at <http://www.epa.gov/ogwdw/opcert/opguide.html>.

SUPPLEMENTARY INFORMATION:

- I. PROPOSED ADDITIONS TO THE FINAL GUIDELINES FOR THE CERTIFICATION AND RECERTIFICATION OF THE OPERATORS OF COMMUNITY AND NONTRANSIENT NONCOMMUNITY PUBLIC WATER SYSTEMS
 - A. Background
 - B. General Review and Withholding Process Information
 - C. Review Process and DWSRF Withholding Determinations for Substantially Equivalent State Operator Certification Programs
 - D. Review Process and DWSRF Withholding Determinations for Revised State Operator Certification Programs
 - E. Validated Exam Issue

- II. PROPOSED ALLOCATION METHODOLOGY FOR THE OPERATOR CERTIFICATION EXPENSE REIMBURSEMENT GRANTS PROGRAM

- A. Background
- B. Administration of the Grants Program
- C. Program Funding
- D. Allocation Methodology

**I. PROPOSED ADDITIONS TO THE FINAL GUIDELINES FOR THE
CERTIFICATION AND RECERTIFICATION OF THE OPERATORS OF
COMMUNITY AND NONTRANSIENT NONCOMMUNITY PUBLIC
WATER SYSTEMS**

A. Background

The operator certification guidelines were developed to meet the requirements of section 1419(a) of the Safe Drinking Water Act (SDWA), as amended in 1996. Section 1419(a) directs the United States Environmental Protection Agency (EPA) to develop guidelines specifying minimum standards for certification and recertification of operators of community and nontransient noncommunity public water systems and to publish final guidelines by February 6, 1999. The final guidelines were published in the *Federal Register* on February 5, 1999 (64 *FR* 5916) - see Docket #W-98-07, Operator Cert., II-A.1. Pursuant to section 1419(b) of the SDWA, beginning two years after the date on which EPA publishes guidelines for the certification (and recertification) of operators of community and nontransient noncommunity public water systems (or February 5, 2001),

EPA shall withhold 20 percent of the funds a State is otherwise entitled to receive under SDWA section 1452 unless a State has adopted and is implementing a program that meets the requirements of EPA's operator certification guidelines. Section 1452 establishes a Drinking Water State Revolving Fund (DWSRF) program to assist public water systems to finance the costs of infrastructure needed to achieve or maintain compliance with SDWA requirements and to further the public health objectives of the Act. Section 1452 authorizes EPA to award capitalization grants to States, which in turn provide low cost loans to eligible systems and other types of assistance. Under section 1452, States can also set aside a portion of their capitalization grant to use for State program management purposes relating to implementation of the public water system supervision, source water protection, operator certification and capacity development programs. States must meet the requirements contained in EPA's operator certification guidelines to avoid DWSRF capitalization grant withholding. There are no other sanctions for States with operator certification programs that do not meet the requirements of the guidelines. All funds withheld by EPA shall be reallocated based on the formula originally used to allot those funds. These withheld funds will be reallocated to States who are implementing a program that meets EPA's guidelines. A State that has not met the requirements of the guidelines is not eligible to receive reallocation of withheld funds.

Under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), EPA must obtain approval from the Office of Management and Budget (OMB) to collect information from the States required under the Operator Certification Guidelines as well as the Operator

Certification Expense Reimbursement Grants Program. EPA is expecting to obtain approval of an Information Collection Request (ICR) for this information later this year. Advance notice of the ICR will be published in the *Federal Register* for public comment before it is submitted to OMB. EPA may not conduct, or sponsor, and a person is not required to submit to a collection of information unless the Agency has OMB approval for collection of the information.

B. General Review and Withholding Process Information

This proposal covers the deadlines for States to submit their operator certification programs to EPA, time frames for EPA to review States programs, time frames for States to address any identified deficiencies, and time frames for EPA to make withholding decisions. DWSRF withholding decisions will be made on an annual basis once a State has received EPA approval that its program meets EPA's guidelines. Annual decisions will be based upon a State's ongoing implementation of its operator certification program.

In developing an approach for reviewing State operator certification programs and making withholding decisions, EPA sought to: (a) establish a consistent date for all States to meet the requirements of the guidelines; (b) provide States with sufficient time to make changes in their programs in response to EPA review before EPA permanently withholds funds; and (c) allow future operator certification program decisions to be made at the beginning of the fiscal year so that States can plan for their use of DWSRF program

funds.

States have two options for submitting their programs to EPA for review. Section 1419(c) recognizes that some States may have existing operator certification programs that meet the public health objectives of the guidelines and allows those States to submit their existing programs as “substantially equivalent” to the guidelines instead of requiring those States to make revisions to their programs. Alternatively, States that must make changes to their existing programs may submit revised programs to meet the requirements of EPA’s guidelines.

Section C explains EPA’s proposed schedule for States that intend to submit their existing operator certification programs as “substantially equivalent” programs. Section D explains EPA’s proposed schedule for States planning to revise their operator certification programs.

EPA is specifically seeking comment on the process for reviewing and making withholding determinations for operator certification program submittals. The two approaches will be finalized and published in the *Federal Register* after receiving public comment. These approaches will then be included as part of the final operator certification guidelines in Section III (Program Submittal Process), Subsection A (Submittal Schedule and Withholding Process), which is currently reserved.

C. Review Process and DWSRF Withholding Determinations for Substantially Equivalent State Operator Certification Programs

As required by Section 1419(c) of the SDWA, any State which submits its existing program to EPA as “substantially equivalent” to the EPA guidelines must do so by August 5, 2000. If EPA does not act on a program submitted as “substantially equivalent” within nine months of submittal, the program is deemed to meet the requirements of the guidelines. However, EPA will strive to complete its reviews of State programs within six months. States are encouraged to submit their final operator certification programs to EPA for review before the August 5, 2000 deadline (Diagram 1 at the end of this section has been included as a visual aid for understanding the following schedule).

The proposed approach for review of a State’s initial operator certification program is:

- A State must submit its program to EPA for review by August 5, 2000. Any State program that is submitted after August 5, 2000 will be considered a revised program and will follow the schedule in Section D.
- Within six months of a State submittal, and no later than February 5, 2001, EPA will complete its review of a State program. At that time, EPA will either make a determination that the program is substantially equivalent or will issue a Notice of Disapproval and will provide a list of deficiencies to the State.
- A State has six months after receipt of a Notice of Disapproval to correct deficiencies and submit the changes to EPA. EPA will approve or disapprove the State’s program by September 30, 2001.

The proposed approach for withholding decisions based on a State's initial operator certification program submittal is:

- If a State program is submitted but EPA has not yet determined that it meets the guidelines on February 5, 2001, 20% of unawarded FY 2001 funds will be held back (but not permanently withheld).
- If a State program is approved by September 30, 2001, held back FY 2001 funds will be released to the State.
- On October 1, 2001, a State with a disapproved program will permanently lose any held back funds from FY 2001, plus 20% of FY 2002 funds.

The proposed approach for withholding decisions based on a State's annual operator certification program submittal is:

- Any State whose program is approved on or before September 30, 2000 is required to undergo its first annual review of its operator certification program on or before September 30, 2001.
- If EPA finds that the State's annual submittal does not meet the guidelines, the State will permanently lose 20% of FY 2002 funds on October 1, 2001.
- On or before September 30, 2002, and annually thereafter, EPA will review a State's operator certification program and make any

necessary determinations to withhold funds from the upcoming
fiscal year's allotment.

[Note to Printer: Insert Diagram #1 here]

D. Review Process and DWSRF Withholding Determinations for Revised State Operator Certification Programs

If a State makes revisions to its existing program in order to meet the requirements of the guidelines, the State will submit its program as a revised program. States are required to submit their revised programs by February 5, 2001, however all States are encouraged to submit their operator certification programs to EPA for review before this deadline (Diagram 2 at the end of this section has been included as a visual aid for understanding the following schedule).

The proposed approach for review of a State's initial operator certification program and for making withholding decisions is:

- A State must submit its initial operator certification program to EPA for review by February 5, 2001. If a State does not submit its program to EPA by February 5, 2001, the State will immediately lose 20% of unawarded FY 2001 funds. The guidelines require States to submit an Attorney General's certification, a full description and explanation of how the State's operator certification program complies with the requirements of the guidelines and a copy of the State's operator certification regulations. There may be situations where a State's legislative schedule would not allow a State to have final regulations certified by the Attorney General by February 5, 2001. In these situations, States must submit regulations that have been adopted by the

implementing agency or agencies but are awaiting legislative approval, a schedule for final adoption by the State legislature and a full description of how the State's program complies with the requirements of the guidelines. The State must submit its Attorney General's certification immediately once its regulations have been approved by the legislature, but no later than September 30, 2002.

- Between February 5, 2001, and September 30, 2002, EPA will hold back 20% of unawarded FY 2001 and FY 2002 funds from any State that submits its program to EPA by the February 5, 2001 deadline but that has not yet received EPA approval of its program.
- Within six months of a State's submittal date, EPA will complete its review of State programs that were submitted by the February 5, 2001 deadline. At that time, EPA will determine that either the State's program meets EPA's guidelines or will provide a list of deficiencies to the State.
- States have until September 30, 2002 to correct deficiencies and to receive EPA approval of its operator certification program in order to receive any FY 2001 and FY 2002 funds that were held back from the State.
- On September 30, 2002 a State that does not have an EPA approved program will lose any held back FY 2001 and FY 2002 funds.
- On October 1, 2002, a State that does not have an EPA approved

program will lose 20% of its FY 2003 funds.

The proposed approach for withholding decisions based on a State's annual operator certification program submittal is:

- Any State that has received EPA approval of its initial operator certification program before September 30, 2000 is required to undergo its first annual review of its operator certification program on or before September 30, 2001. If EPA finds that the State's annual submittal does not meet the guidelines, the State will permanently lose 20% of its FY 2002 funds on October 1, 2001.
- Any State that receives EPA approval of its initial operator certification program between October 1, 2000 and September 30, 2001 is required to undergo its first annual review of its operator certification program between October 1, 2001 and September 30, 2002. If EPA finds that the State's annual submittal does not meet the guidelines, the State will permanently lose 20% of its FY 2003 funds on October 1, 2002.
- On or before September 30, 2003, and annually thereafter, EPA will review a State's operator certification program and make any necessary determinations to withhold funds from the upcoming fiscal year's allotment.

[Note to Printer: Insert Diagram #2 here]

E. Validated Exam Issue

The *Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems* contains nine baseline standards that States are required to adopt and implement in their operator certification programs. States are required to classify all of their community and nontransient noncommunity water systems (including all treatment facilities and/or distribution systems). States are also required to develop specific operator certification and renewal requirements for each level of classification. The baseline standard for *Operator Qualifications* specifies that State programs must require that for an operator to become certified, the operator must “take and pass an exam that demonstrates that the operator has the necessary skills, knowledge, ability and judgement as appropriate for the classification”. Furthermore, this baseline standard specifies that “all exam questions must be validated”. At the end of the guidelines, EPA includes a definition of “validated exam”. EPA defines a validated exam to be “an exam that is independently reviewed by subject matter experts to ensure that the exam is based on a job analysis and related to the classification of the system or facility”. EPA is requiring States to validate exams for operators because it will ensure that exams cover the fundamental skills, knowledge, ability and judgement required to safely operate water systems as well as determine the competency of operators.

The requirement that “all exam questions must be validated” is not entirely consistent with the reference to “validated exam”. EPA believes that an exam that is made up of validated questions may not include the full spectrum of information that an

operator needs to know in order to properly operate a water system. EPA is therefore requesting comment on an amendment to the guidelines that would clarify EPA's intent that all exams, not just exam questions, be validated.

II. PROPOSED ALLOCATION METHODOLOGY FOR THE OPERATOR CERTIFICATION EXPENSE REIMBURSEMENT GRANTS PROGRAM

A. Background

Section 1419(d) of the SDWA requires EPA to reimburse the costs of training, including an appropriate per diem for unsalaried operators, and certification for persons operating community and nontransient noncommunity public water systems serving 3,300 persons or fewer that are required to undergo training pursuant to EPA's operator certification guidelines. The reimbursement is to be provided through grants to States. Each State is to receive an amount sufficient to cover the reasonable costs for training all such operators in the State. The amount each State will receive to cover the reasonable costs for training will be determined by the Administrator of EPA. Section 1419(d) also authorizes an appropriation of \$30 million in funding for this reimbursement each year from FY 1997 through FY 2003 and stipulates that, if this appropriation is not sufficient, EPA shall reserve these funds from the national DWSRF program appropriation. It is EPA's intention to set aside funds for expense reimbursement from the national DWSRF program appropriation.

The grants are first to be used to provide reimbursement for training and

certification costs of persons operating community and nontransient noncommunity water systems serving 3,300 persons or fewer. If a State has reimbursed all such costs, the State may, after notice to the Administrator, use any remaining funds from the grant for any of the other purposes authorized for capitalization grants under section 1452 of the SDWA.

B. Administration of the Grants Program

States may apply for and receive the expense reimbursement grant funds in accordance with the requirements of 40 CFR Part 31 (Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments) once their operator certification program has received approval by EPA. A State has two years from the date of initial program approval to apply for and receive its expense reimbursement grant. Funds not obligated within this two year period will be reallocated to States for use in the DWSRF program based on the formula used to allot the DWSRF funds. If sufficient funds are not available to fully fund the expense reimbursement grant, the two year period shall begin on the date the funds become available. EPA will notify States of the availability of funds.

In order to receive funding, a State must submit an application for an expense reimbursement grant. EPA will require States to submit a work plan and annual progress report on how these funds are to be used in meeting the requirements of section 1419(d). After a State has reimbursed all such costs pursuant to section 1419(d)(1), the State may, after notice to the Administrator of EPA, use any remaining funds from the grant for any of the other purposes authorized for capitalization grants under section 1452 of the

SDWA. The notification for using the remaining expense reimbursement grant funds for any of the other purposes authorized for capitalization grants under section 1452 must include supporting documentation that the State has met the requirement for training and certifying its operators. The State will also be required to explain in a work plan how the remaining funds will be used. States will be given broad discretion on how to implement the expense reimbursement grants program to best meet the needs of the systems in the State and to minimize the administrative expenses in carrying out this program.

EPA's intention to set aside funds for the expense reimbursement grants program from the national DWSRF program appropriation has triggered questions concerning whether EPA should require a 20% State match pursuant to section 1452(e). Even though the funds have been appropriated under section 1452, EPA believes that since the expense reimbursement grants program is authorized under section 1419(d), there should be no 20% match requirement for this grant because there are no match requirements for funds awarded pursuant to that section. EPA, however, believes that any remaining funds from this grant program that States may use for any of the other purposes authorized for capitalization grants under section 1452 should require a 20% match, and is specifically seeking comment on this issue.

C. Program Funding

EPA estimates that between \$97 million to \$131 million will be needed for the expense reimbursement grants program between FY 1999, when the final operator certification guidelines were published, and FY 2003, the last year for which these grants

are authorized. This estimate represents the range of the total amount of funding that EPA believes is necessary to initially train and certify operators of community and nontransient noncommunity water systems serving 3,300 persons or fewer to meet the requirements of the guidelines. EPA has developed this estimate based on the assumptions listed below:

Funding Assumptions	
1.	Total number of community and nontransient noncommunity water systems serving 3,300 or fewer persons = 65,255 (from Safe Drinking Water Information System (SDWIS) database)
2.	Number of operators per system (see options listed below)
3.	½ of the operators would be unsalaried and therefore would be eligible for per diem
4.	Per diem = \$100/day (Per diem is a daily allowance that would cover the costs of lodging and meals; for unsalaried operators only)
5.	Four days of per diem assumed for class attendance (two days per training class)
6.	The cost of all training classes estimated at \$300/class
7.	Two training classes per operator for initial certification or certification renewal
8.	\$75 fee for initial certification/certification renewal
9.	For mileage purposes, assume two round trips (one round trip for each training class)
10.	Number of miles per round trip = 200
11.	Mileage reimbursement estimated at \$.31/mile (for all operators)

The range of the total amount of funding necessary for reimbursement is primarily

driven by the number of operators per system who would require reimbursement. EPA is proposing three options for this assumption:

- 2 operators per system
- 1.5 operators per system
- 2 operators per community water system (CWS) and 1 operator per nontransient noncommunity water system (NTNCWS)

EPA will determine the allotment for each State by substituting the number of community and nontransient noncommunity water systems serving 3,300 persons or fewer for a particular State under Assumption #1.

For example, if a State has 1,000 eligible water systems, the allocation would be calculated as follows using the option of 2 operators per system:

Funding Assumptions	
1.	Total number of community and nontransient noncommunity water systems serving 3,300 or fewer persons = 1,000
2.	Number of operators per system = 2 x 1,000 = 2,000
3.	½ of the operators would be unsalaried and therefore would be eligible for per diem = 2,000 x ½ = 1,000
4.	Per diem = \$100/day (Per diem is a daily allowance that would cover the costs of lodging and meals; for unsalaried operators only) = 1,000 x \$100 = \$100,000
5.	Four days of per diem assumed for class attendance (two days per training class) = 4 x \$100,000 = \$400,000

6.	The cost of all training classes estimated at \$300/class
7.	Two training classes per operator for initial certification or certification renewal = $2 \times \$300 \times 2,000 = \$1,200,000$
8.	\$75 fee for initial certification/certification renewal = $\$75 \times 2,000 = \$150,000$
9.	For mileage purposes, assume two round trips (one round trip for each training class)
10.	Number of miles per round trip = $200 \times 2 = 400$
11.	Mileage reimbursement estimated at \$.31/mile (for all operators) = $400 \times \$0.31 \times 2,000 \text{ operators} = \$248,000$

By adding the dollar amounts listed under assumptions 5, 7, 8 and 11, the proposed amount of money for the grant would be \$1,998,000.

EPA is seeking comment on the method for estimating costs, and specifically, on the following issues:

1. Which one of the three options for the number of operators per system is the most reasonable for purposes of calculating the total amount of funding?
2. Are the additional assumptions (1, 3-11) proposed for calculating the total amount of funding reasonable assumptions?
3. Are there other assumptions that should be used?

D. Allocation Methodology

EPA evaluated several options for allocating the funds among States. Four options that were evaluated for allocating the funds to States were: 1) an allocation methodology based on the 1999 Drinking Water Infrastructure Needs Survey; 2) an allocation methodology based on the Public Water System Supervision grants formula; 3) an allocation methodology based on the number of community and nontransient noncommunity water systems serving 3,300 or fewer in each State; and 4) an allocation methodology based solely on systems which must have a certified operator for the first time as a result of the newly published guidelines.

EPA recommends allocating the funds based on the number of community and nontransient noncommunity water systems serving 3,300 or fewer in each State (option three). EPA believes that this allocation methodology is the most easily understood and it appears to be the most equitable option of those which were evaluated. The number of systems serving 3,300 persons or fewer is readily available from EPA's national SDWIS database.

EPA's recommended approach of allocating the funds based on the number of community and nontransient noncommunity water systems serving 3,300 or fewer in each State is supported by the National Drinking Water Advisory Council, which is a group of stakeholders consisting of members of the general public, State and local agencies, water systems and private groups concerned with safe drinking water.

EPA believes that an allocation methodology based on the number of systems which must have a certified operator for the first time would penalize those States which already require small systems to have certified operators or would penalize those States

that moved ahead to improve their operator certification programs before the guidelines were published. Currently, EPA cannot accurately predict the number of new operators that must be certified and/or identify systems with operators whose certification must be upgraded to meet the guidelines.

EPA will finalize the allocation methodology and publish it in the *Federal Register* after receiving public comment.

Date

J. Charles Fox
Assistant Administrator,
Office of Water.



EPA PROPOSAL FOR THE OPERATOR CERTIFICATION PROGRAM

The U.S. Environmental Protection Agency (EPA) is seeking comment on a notice that addresses the following provisions: (1) the process for reviewing State operator certification programs and making Drinking Water State Revolving Fund (DWSRF) withholding determinations pursuant to section 1419 of the Safe Drinking Water Amendments (SDWA) of 1996; (2) a clarification in the Operator Certification Guidelines with respect to the validation of certification exams; and (3) the proposed allocation methodology to award grants to States under the Expense Reimbursement Grants program. EPA will seek comment for a 45 day public comment period and then finalize this notice and publish it in the *Federal Register*.

BACKGROUND

EPA developed guidelines specifying minimum standards for certification and recertification of operators of community and nontransient noncommunity water systems and published them as final in the *Federal Register* on February 5, 1999. Section 1419(b) of the SDWA requires that, beginning two years after the date on which EPA publishes Operator Certification Guidelines (or February 5, 2001), EPA shall withhold 20 percent of the funds a State is otherwise entitled to receive under the DWSRF program unless a State has adopted and is implementing a program that meets the requirements of the Guidelines. There are no other sanctions for States with operator certification programs that do not meet the requirements of the Guidelines.

Section 1419(d) of the SDWA authorizes an Expense Reimbursement Grants program to reimburse the costs of training, including an appropriate per diem for unsalaried operators, and certification for persons operating community and nontransient noncommunity water systems serving 3,300 persons or fewer that are required to undergo training pursuant to the Operator Certification Guidelines. The reimbursement is to be provided through grants to States. Each State is to receive an amount sufficient to cover the reasonable costs for training all such operators in the State. The amount each State will receive will be determined by the Administrator of EPA.

WHAT IS THE PURPOSE OF THIS NOTICE?

This notice is seeking public comment on the following provisions:

- ☞ the proposed approach for the review of State operator certification programs and for making DWSRF withholding determinations;
- ☞ the intent to clarify that all operator certification exams, not just exam questions, be validated; and
- ☞ the proposed allocation methodology for grants to States under the Expense Reimbursement Grants program.

WHO IS AFFECTED BY THIS NOTICE?

EPA's Operator Certification Guidelines apply to State programs for the certification of operators of community and nontransient noncommunity water systems. States may submit, for approval by EPA, existing operator certification programs that are substantially equivalent to the Guidelines or programs that have been revised to meet the requirements of the Guidelines.

WHAT IS THE PROPOSED DWSRF WITHHOLDING PROCESS?

This notice presents the deadlines for States to submit their operator certification programs to EPA and the proposed time frames for: EPA to review States programs; States to address any identified deficiencies, and EPA to make withholding determinations. In developing the withholding process, EPA sought to: (a) establish a consistent date for all States to meet the requirements of the Guidelines; (b) provide States with sufficient time to make changes to their programs before EPA permanently withholds funds; and (c) allow future operator certification program

decisions to be made at the beginning of the fiscal year so that States can plan for their use of DWSRF program funds. The table below presents a simplified explanation of the proposed time frames for making withholding determinations for a State's initial operator certification program (both revised and substantially equivalent programs). Once a State has received EPA approval that its operator certification program meets the Guidelines, withholding decisions will be made annually based on a State's ongoing implementation of its program. When finalized, the withholding process will be included as part of the Operator Certification Guidelines in Section III (Program Submittal Process), Subsection A (Submittal Schedule and Withholding Process), which is currently reserved.

Action	Type of Program	
	Substantially Equivalent	Revised
States must submit initial programs	on or before August 5, 2000	on or before February 5, 2001
EPA must withhold 20% of funds for unsubmitted programs	on February 5, 2001 <i>DWSRF funds affected FY2001</i>	
EPA will hold back 20% of funds for submitted and unapproved programs	for the period February 5, 2001 through September 30, 2001 <i>DWSRF funds affected FY 2001</i>	for the period February 5, 2001 through September 30, 2002 <i>DWSRF funds affected FY 2001, 2002</i>
EPA must withhold funds that were "held back" and/or withhold 20% of funds for unapproved programs	on October 1, 2001 <i>DWSRF funds affected FY 2001, 2002</i>	on October 1, 2002 <i>DWSRF funds affected FY 2001, 2002, 2003</i>

WHAT IS THE PROPOSED CLARIFICATION FOR CERTIFICATION EXAMS?

EPA's Operator Certification Guidelines specify that State programs must require operator certification applicants to take and pass an exam before that person can become a certified operator. The Guidelines further require that "all exam questions must be validated". EPA believes that an exam that is made up of validated questions may not include the full spectrum of information that an operator needs to know in order to properly operate a water system. EPA is therefore requesting comment on an amendment to the Guidelines that would clarify EPA's intent that all *exams*, not just exam questions, be validated.

WHAT IS THE PROPOSED ALLOCATION METHODOLOGY FOR EXPENSE REIMBURSEMENT GRANTS?

EPA is proposing to allot the funds based on the number of community and nontransient noncommunity water systems serving 3,300 or fewer in each State. EPA estimates that between \$97 to \$131 million will be needed for the grants program. EPA is specifically requesting comment on 11 assumptions used to determine the amount of funds needed to train and certify small system operators, including the number of operators per system which would be eligible for reimbursement, the cost of training, and the cost for an operator to initially obtain/renew a certification.

HOW CAN I COMMENT ON THIS NOTICE AND OBTAIN ADDITIONAL INFORMATION?

A copy of the *Federal Register* notice is available on EPA's website at www.epa.gov/safewater/opcert/opcert.htm. It can also be obtained by contacting the Safe Drinking Water Hotline at (800) 426-4791. EPA must receive comments, in writing or by e-mail, by 45 days after the publication of this notice in the *Federal Register*. For specific instructions, see the *Federal Register* notice's "Addresses" section.

For general information about EPA's Operator Certification Guidelines, contact the Safe Drinking Water Hotline at (800) 426-4791, or visit EPA's website at www.epa.gov/safewater/. For technical inquiries, contact Jenny Jacobs, Office of Ground Water and Drinking Water (4606), U.S. EPA, 1200 Pennsylvania Avenue NW, Washington, DC, 20460. The telephone number is (202) 260-2939 and the e-mail address is jacobs.jenny@epa.gov.