



Operator Certification Guidelines

Implementation Guidance

EPA Operator Certification Guidelines Implementation Guidance

This guidance does not pose additional requirements for States in revising their operator certification programs to meet the EPA's guidelines. The Questions and Answers section of this guidance are not additional requirements for State operator certification programs, but rather address EPA's views on questions raised. Please note that the use of words such as "must" and "required" in answers are reflective of the requirements of EPA's Guidelines; the use of words such as "may" and "should" in answers constitutes a suggestion or alternative for States to consider. States should continue to focus on the requirements of EPA's Guidelines when revising their programs.

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I.

Example Format of the State Attorney General's Certification

Example Format for the Attorney General's Certification that is required under Baseline Standard No. 1 of the Operator Certification Guidelines

I hereby certify, pursuant to my authority as _____(1)_____, that the State/Commonwealth of _____(2)_____ has duly adopted operator certification statute(s) and regulations and that these statute(s) and regulations are enforceable under State law.

Seal of Office

Signature

Name (Type or Print)

Title

Date

1. Attorney General or delegated legal counsel
(If delegated legal counsel, include a copy of delegation)
2. Name of State or Commonwealth

II.
**Checklist and Crosswalk for the Review of
State Operator Certification Programs**

CHECKLIST & CROSSWALK FOR THE REVIEW OF STATE OPERATOR CERTIFICATION PROGRAMS

State: _____

Submission Date: _____

Revised Program or Equivalent Program (circle one)

Prepared by:

Name: _____

Title: _____

Program Status: Draft or Final (circle one)

**CHECKLIST & CROSSWALK FOR REVIEW OF
STATE OPERATOR CERTIFICATION PROGRAMS**

STATE: _____

Baseline Standard No.	EPA Guideline	Circle one		State Citation document title; page #; § and ¶	Remarks [Explain here if different than federal requirement; use separate sheet, if necessary]
I.	Authorization				
	Does the State have the legal authority to implement an operator certification program for its:				
	1. Community Water Systems (CWSs)?	Y	N		
	2. Nontransient Noncommunity Water Systems (NTNCWSs)?	Y	N		
	Does the State have the legal authority to require that systems comply with the requirements of the operator certification program?				
	Did the State submit its Attorney General Certification?				
	Has the Authorization been delegated?				
	If delegated, to whom? _____				
	Did the State submit documentation of legal delegation?				
	<i>Does the State's program meet the baseline standard for Authorization?</i>				
II.	Classification of Systems, Facilities, and Operators				
	Has the State classified all CWSs based on indicators of potential public health risk, which for example may include: (a) complexity, size, source water for treatment facilities, and (b) complexity, size for distribution systems? Explain in remarks.				

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Baseline Standard No.	EPA Guideline	Circle one		State Citation document title; page #; § and ¶	Remarks [Explain here if different than federal requirement; use separate sheet, if necessary]
		Y	N		
	Has the State classified all NTNCWSs based on indicators of potential public health risk, which for example may include: (a) complexity, size, source water for treatment facilities, and (b) complexity, size for distribution systems? Explain in remarks.	Y	N		
III.	Has the State developed specific operator certification and renewal requirements for each classification level?	Y	N		
	Does the State require owners of all CWSs and NTNCWSs to place the direct supervision of their water system (treatment and/or distribution) under the responsible charge of an operator holding a valid certification equal to or greater than the classification of the treatment facility or distribution system?	Y	N		
	Are operator(s) in responsible charge required to hold a valid certification equal to or greater than the classification of the treatment facility and/or distribution system?	Y	N		
	Are all operating personnel making process control/system integrity decisions about water quality or quantity that affect public health required to be certified?	Y	N		
	Does the State require that a designated certified operator be available for each operating shift?	Y	N		
	Did the State backslide with respect to any of the requirements under Baseline Standard No. II? If yes, explain in remarks.	Y	N		
	<i>Does the State's program meet the baseline standard for Classification of Systems, Facilities and Operators?</i>	Y	N		
III. Operator Qualifications					
	Does the State require applicants to pass an exam?	Y	N		

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Baseline Standard No.	EPA Guideline	Circle one		State Citation document title; page #; § and ¶	Remarks [Explain here if different than federal requirement; use separate sheet, if necessary]
		Y	N		
	Do exams demonstrate that the applicant has the necessary knowledge, skills, ability, and judgement as appropriate for the classification?	Y	N		
	Are all exams validated or in the process of being validated? Please give date that the State expects to have all exams validated. Date _____	Y	N		
	By whom? _____				
	Explain validation process in Remarks Section				
	To become certified, does the State require operators to have a high school diploma or GED or experience or relevant training that may be substituted?	Y	N		
	To become certified, does the State require operators to have on-the-job experience or have education that may be substituted for experience for each appropriate level of certification?	Y	N		
	Is grandparenting allowed by the State? If yes, answer the following:	Y	N		
	1. Does the State restrict grandparenting 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?	Y	N		
	2. Is the system owner required to apply for grandparenting within two years of the effective date of the State's regulation?	Y	N		
	3. What is the effective date of the State's regulation? _____				

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Baseline Standard No.	EPA Guideline	Circle one		State Citation document title; page #; § and ¶	Remarks [Explain here if different than federal requirement; use separate sheet, if necessary]
	4. Is grandparenting site-specific to systems and non-transferable to other operators?	Y	N		
	5. Are grandparented operators required to meet all the requirements to meet certification renewal within some time period specified by the State? (Three years or less)	Y	N		
	6. Does a grandparented certification become invalid if the classification of the plant or distribution facility for which the operator was grandparented changes to a higher classification?	Y	N		
	7. If a grandparented operator chooses to work for a different water system, then is he/she required to meet the initial certification requirements for that system?	Y	N		
	8. On what does the State base its grandparenting decisions (e.g., system compliance history, operator experience and knowledge, system complexity, lack of treatment). Explain in remarks.				
	Did the State backslide with respect to any of the requirements under Baseline Standard No. III? If yes, explain in remarks.	Y	N		
	<i>Does the State's program meet the baseline standard for Operator Qualifications?</i>	Y	N		
IV.	Enforcement				
	Does the State primacy agency have regulations requiring CWSs and NTNCWSs to comply with State Operator Certification requirements? Name of primacy agency: _____	Y	N		

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		Y	N		
	In non-primacy States, has the Governor determined which State agency shall enforce operator certification requirements? Name of agency: _____	Y	N		
	What specific enforcement capabilities does the State have:				
	1. Administrative Orders?	Y	N		
	2. Bilateral Compliance Agreements?	Y	N		
	3. Civil Administrative Penalties?	Y	N		
	4. Criminal Administrative Penalties?	Y	N		
	5. Stipulated Penalties?	Y	N		
	6. Other? _____				
	Does the State have appropriate enforcement capability?	Y	N		
	Does the State have the authority to revoke an operator's certification?	Y	N		
	Does the State have the authority to suspend an operator's certification or take other appropriate enforcement action for operator misconduct? Explain in remarks.	Y	N		
	Did the State backslide with respect to any of the requirements under Baseline Standard No. IV? If yes, explain in remarks.	Y	N		
<i>Does the State's program meet the baseline standard for Enforcement?</i>	Y	N			
V.	Certification Renewal				

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Baseline Standard No.	EPA Guideline	Circle one		State Citation document title; page #; § and ¶	Remarks [Explain here if different than federal requirement; use separate sheet, if necessary]	
		Y	N			
	Has the State established training requirements for renewal based on the level of certification held by operator?	Y	N			
	Does the State require all operators including grandparented operators to acquire necessary amounts and types of State approved training?	Y	N			
	Does the State have a fixed cycle of renewal not exceeding 3 years? How long? _____	Y	N			
	Does the State require individuals to recertify if the individual fails to renew or qualify for renewal within two years of the date that the certificate expired?	Y	N			
	Does the State identify specific renewal requirements for grandparented operators to ensure that they possess the knowledge, skills, ability and judgement to properly operate the system?	Y	N			
	Identify which one or more of the following approaches the State uses:					
	1. The State specifies renewal requirements for grandparented operators on a case-by-case basis, taking into consideration system compliance history and operator experience and knowledge.	Y	N			
	2. The State requires specific training requirements for certification renewal at the first renewal cycle for grandparented operators including all of the information covered by the initial certification exam for the system classification level for which the operator was grandparented.	Y	N			

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Baseline Standard No.	EPA Guideline	Circle one		State Citation document title; page #; § and ¶	Remarks [Explain here if different than federal requirement; use separate sheet, if necessary]
		Y	N		
	3. The State requires operators with grandparented certificates to meet all of the initial certification requirements for the classification level for which the operator was grandparented, and thereby obtain certification within a reasonable time period specified by the state. List the time period _____	Y	N		
	4. Does the State use another approach to ensure grandparented operators possess the knowledge, skills, ability and judgement to properly operate the system? If yes, describe.	Y	N		
	Did the State backslide with respect to any of the requirements under Baseline Standard No. V? If yes, explain in remarks.	Y	N		
	<i>Does the State's program meet the baseline standard for Certification Renewal?</i>	Y	N		
VI.	Resources Needed to Implement the Program				
	Does the State provide sufficient resources to adequately fund and sustain its operator certification program that must include the following components: staff, data management, testing, enforcement, administration, and training approval?	Y	N		
	Does the State have a dedicated fund that is self-sufficient?	Y	N		
	Did the State backslide with respect to any of the requirements under Baseline Standard No. VI? If yes, explain in remarks.	Y	N		
	<i>Does the State's program meet the baseline standard for Resources Needed to Implement the Program?</i>	Y	N		
VII.	Recertification				

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Baseline Standard No.	EPA Guideline	Circle one		State Citation document title; page #; § and ¶	Remarks [Explain here if different than federal requirement; use separate sheet, if necessary]
		Y	N		
	Does the State's program have a process for the recertification of operators whose certification has expired for a period exceeding two years?	Y	N		
	Does the recertification process include:				
	1. Review of the individual's experience and training?	Y	N		
	2. Re-examination?	Y	N		
	Does the State have more stringent requirements for recertification of individuals whose certificates have expired, been revoked, or been suspended? If yes, explain in remarks.	Y	N		
	Did the State backslide with respect to any of the requirements under Baseline Standard No. VII? If yes, explain in remarks.	Y	N		
	<i>Does the State's program meet the baseline standard for Recertification?</i>	Y	N		
VIII.	Stakeholder Involvement				
	Does the State include ongoing stakeholder involvement in the revision and operations of its operator certification program?	Y	N		
	Describe the State's stakeholder involvement process:				
	Does the State have a stakeholder board or advisory committee ?	Y	N		
	Did the State backslide with respect to any of the requirements under Baseline Standard No. VIII? If yes, explain in remarks.	Y	N		

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	<i>Does the State's program meet the baseline standard for Stakeholder Involvement?</i>	Y	N		
IX.	Program Review				
	Does the State have a process for reviewing its own program? Explain in remarks.	Y	N		
	Does the State's process include periodic internal reviews? Identify time frame for review and plan for review in Remarks section	Y	N		
	Does the State's process include occasional external/peer reviews? Identify time frame for review and plan for review in Remarks section	Y	N		
	Does the State's program review process include review of:				
	1. Regulations?	Y	N		
	2. Exam items for relevancy and validity?	Y	N		
	3. Compliance?	Y	N		
	4. Enforcement?	Y	N		
	5. Budget and staffing?	Y	N		

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		Y	N		
	6. Training relevancy?	Y	N		
	7. Training needs through exam performance?	Y	N		
	8. Data management system?	Y	N		
	Did the State backslide with respect to any of the requirements under Baseline Standard No. IX? If yes, explain in remarks.	Y	N		
	<i>Does the State's program meet the baseline standard for Program Review?</i>	Y	N		
	Initial Submittal Contents				
	Has the State submitted the following:				
	1. Attorney General's certification?	Y	N		
	2. Documentation of the delegation of authority, if AG statement is signed by delegated counsel?	Y	N		
	3. A full description and explanation of how its operator certification program complies with or is substantially equivalent to the requirements of these guidelines?	Y	N		
	4. Copy of its operator certification statutes and regulations?	Y	N		
	5. Description of the basis for classification of treatment and /or distribution facilities?	Y	N		
	6. Description of certification requirements for each classification level?	Y	N		
	7. Description of the renewal requirements for each classification level?	Y	N		

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Baseline Standard No.	EPA Guideline	Circle one		State Citation document title; page #; § and ¶	Remarks [Explain here if different than federal requirement; use separate sheet, if necessary]
		Y	N		
	8. Description of special renewal requirements for grandparented operators?	Y	N		
	9. Documentation of exam validation for all classification levels?	Y	N.		
	10. Plan for tracking compliance and enforcement?	Y	N		
	11. Plan for enforcing its operator certification program?	Y	N		
	12. Description of program resources?	Y	N		
	13. Description of internal program review procedures?	Y	N		
	14. Description of external program review procedures?	Y	N		
	15. Plan for stakeholder involvement?	Y	N		
	16. Implementation schedule?	Y	N		

III.
State Operator Certification Program
Initial Submittal Contents

State Operator Certification Program Initial Submittal Contents

1. Attorney General's Certification. If signed by delegated counsel, include documentation of delegation of authority;
2. Copies of statutes and regulations;
3. Completed checklist/crosswalk;
4. Description of the basis for classification of treatment facilities and/or distribution systems;
5. Description of the renewal requirements for each classification level;
6. Description of special renewal requirements for grandparented operators, if applicable;
7. Documentation of exam validation;
8. Description of how state plans to track compliance
 - a. Total number of Community Water Systems
 - b. Total number of CWSs without a certified operator
 - c. Total number of Nontransient Noncommunity Water Systems
 - d. Total number of NTNCWSs without a certified operator
 - e. Total number of certified operators
 - f. Total number of grandparented operators
9. Description of how state plans to enforce its operator certification program;
10. Description of program resources including:
 - a. Staff
 - b. Data management
 - c. Testing
 - d. Enforcement
 - e. Administration
 - f. Training approval
 - g. Fee System
11. Description of program review procedures;
 - a. Internal reviews (recommended review frequency at least every three years)
 - b. External reviews (recommended review frequency at least every five years)
 - c. External reviews should include stakeholder involvement
12. Plan for stakeholder involvement;
13. Implementation schedule, including:
 - a. Effective date of state's regulations;
 - b. Deadline for system owner's to apply for grandparenting, if applicable;
 - c. Date by which all systems will have a certified or grandparented operator
 - d. Stakeholder involvement activities

IV.
Questions and Answers on the Implementation of the
Operator Certification Guidelines

Questions and Answers on the Implementation of the Operator Certification Guidelines

I. Public Health Objectives

There were no implementation questions asked about the Public Health Objectives.

II. Antibacksliding

Q: If a State currently requires that its transient, noncommunity water systems have a certified operator, and the State wants to exempt these systems since the EPA guidelines do not require that these systems have a certified operator, would that exemption be considered “backsliding”?

A: If a State’s regulations that were in effect on February 5, 1998 required that transient, noncommunity water systems have certified operators, and the State decided to exempt transient noncommunity systems from the requirement, EPA would consider that “backsliding”. While the Guidelines allow States to backslide under limited circumstances, EPA is unlikely to approve of this kind of change since it represents a clear lowering of State standards. EPA believes that Congress did not intend for a State to lessen its program requirements.

Q: If a State wanted to change its enforcement authority from criminal to civil, will EPA consider that to be “backsliding”?

A: No. EPA would probably approve of this change since civil enforcement would likely be more appropriate than criminal enforcement.

Q. Are statutory prohibitions an acceptable justification for backsliding?

A: No. A statutory prohibition is not an acceptable justification for backsliding.

Q: If a State “contracts out” a significant portion of its program to a third party and as a result the State’s program budget decreases, would EPA view this budget decrease as “backsliding”?

A: No, however, all States must provide sufficient resources (which includes “contracting out”) to fund and sustain their operator certification program.

III. Baseline Standards

1. Authorization

There were no implementation questions asked about Authorization.

2. Classification of Systems, Facilities, and Operators

Q: Could States have certification classifications that cover both treatment and distribution facilities?

A: Yes. There is no requirement in the guidelines that specifies that a State must have separate classifications for its treatment and distribution facilities. States may choose to classify their systems separately, or they can modify their classification systems to include both treatment and distribution, provided that the training and exam address the necessary skills, knowledge, ability and judgement for treatment and distribution.

Q: What about someone collecting samples - does he/she have to be certified?

A: EPA's guidelines do not specifically require any person who collects samples to be certified, although the State may require it. EPA strongly recommends that persons collecting samples be knowledgeable in sampling procedures. This activity may also be covered by a State's Quality Assurance Program Plan which is a part of the Public Water System Supervision program.

Q: Certain States have special logistical considerations - it does not seem practical to require that a certified operator be "available" for each operating shift. Must systems have more than one certified operator to cover situations such as sickness or vacation?

A: EPA's guidelines specify that a State's program must require that a designated certified operator be available for each operator shift. The guidelines do not require systems to have a specific number of certified operators; this decision is left up to the State. In situations such as sickness or vacation, it is the system owner's responsibility to ensure that there is adequate coverage and that this coverage is consistent with State requirements. There are several options that systems may choose from to ensure coverage during a system's operating hours. These options include, but are not limited to: having more than one operator certified for each system; using circuit riders that are certified; or sharing certified operators with other systems. If States allow systems to use Standard Operating Procedures (SOPs), the State must require that process control/system integrity decisions are made by a certified operator (that is trained in the use of SOPs), and that the operator in responsible charge or another operator that is certified at the level of the system should be available to be contacted if necessary.

Q: What is meant by “responsible charge”?

A: The intent of the guidelines is to establish a framework where a system designates an operator(s) for the distribution and treatment systems that has the authority to make decisions that affect water quality or water quantity. The number of “operator(s) in responsible charge” designated per system is at the discretion of the system owner, and may be subject to State approval. The guidelines require that systems designate this operator(s) as the person(s) responsible for making these decisions or as a contact if questions arise.

Q: Is each system required to have one or more certified operators for each shift?

A: Yes. The guidelines require that a designated certified operator be available for each operating shift. EPA includes definitions for “available” and “operating shift” in the guidelines.

Q. Will EPA develop a list of process control/system integrity decisions?

A: No. EPA believes decisions concerning what is or what is not a “process control/system integrity decision” should be left up to the State. During development of the guidelines, State representatives on both stakeholder workgroups agreed that it would be impractical to list every possible situation of what would be considered a “process control/system integrity decision” in national guidelines.

Q. How would consecutive systems be classified under the Guidelines?

A. The guidelines do not classify systems. Each State is required to develop its own classification system which should address consecutive systems if those systems meet the federal definition of a community or nontransient noncommunity water system. Many consecutive systems contain a distribution system, and the distribution system is required to have a certified operator.

Q. Is a company that trucks or hauls water required to have a certified operator under the Guidelines?

A: If this practice meets the definition of a community water system or nontransient noncommunity water system, then a certified operator would be required.

Q. Must shift operators be certified at the classification level of the system?

A: No. EPA's guidelines specify that States must require that owners of all community and nontransient noncommunity water systems 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. The guidelines leave the decision regarding certification of "shift operators" to the discretion of the State. However, any operator who is making process control/system integrity decisions has to be certified and the operator in responsible charge or another operator that is certified at the level of the system should be available to be contacted if necessary.

Q: Some States raised the issue of purchased water systems, i.e., apartment buildings, some mobile home parks, and new housing developments, as it applies under the Guidelines. They explained that in these situations, there may be a separate master meter, but there is no real water "system" because the water is purchased from the city or town and is not being treated or resold. Would these systems require a certified operator?

A: If the entity meets the federal definition of a community or a nontransient noncommunity water system a certified operator would be required. See attached guidance on this issue (Attachment 1).

3. Operator Qualifications

Q: If an exam is made up of validated questions, is the exam itself considered to be validated?

A: No. The phrase "all exam questions must be validated" was intended to mean that "all exams must be validated". EPA believes that an exam that is made up of "validated" questions does not necessarily mean that the exam itself is "validated" because the questions included on the exam may not demonstrate all of the necessary skills, knowledge, ability and judgement that an operator should have for that level of classification.

Q: How frequently do exams need to be validated?

A: EPA recommends that job analyses for each level of classification be reviewed at least once every five years to ensure that the analyses reflect the essential job tasks and the capabilities required to competently perform those tasks. This can be done at the time of an internal or external review of a State's program. If a job analysis needs updating,

the State should review the exam for that level and decide if the exam needs re-validating.

Q. Can PWSS grants be used to pay for exam validation?

A: Yes. States can also use the Drinking Water State Revolving Fund set-aside for their Operator Certification Programs pursuant to SDWA 1452(g)(2).

Q. Will EPA issue guidance on exam validation procedures?

A: EPA included a definition of “validated exam” in the final guidelines, which is defined as “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 plans to work with the Association of Boards of Certification to develop a guidebook on exam validation procedures to assist States in validating exams.

Q. What groups could be contacted to help develop validated exams?

A: The Association of Boards of Certification can assist States with validating exams and with general validation procedures. Some States may have other State agencies that can assist with the validation process. Local universities may also employ psychometricians that can assist States in developing validated exams.

Q. Can a State legally reject a candidate from taking an exam because the candidate does not have a high school diploma?

A: Although EPA’s guidelines specify that a State’s program must require each operator certification applicant to have a high school diploma or a general equivalency diploma (GED), States may allow experience and/or relevant training to be substituted for a high school diploma or GED. If a State does not allow for the substitution of experience or education, the State should make sure that the State law supports this approach.

Grandparenting

Q: Can operators apply for grandparenting with the owner’s consent, rather than requiring the owner to apply for the grandparented certificate?

A: A State’s program must require the system owner to apply for grandparenting for the operator(s) in responsible charge within two years of the effective date of the State’s regulation. The intent of this requirement is that the State is assured that the system

owner can: verify that the existing operator(s) has been designated to be the “operator(s) in responsible charge”, and that the owner agrees to allow the operator to continue to operate the system although the operator may not meet the initial certification requirements for that system’s level of classification.

4. Enforcement

Q. Is a State’s ability to only take criminal enforcement against a system owner considered “appropriate” enforcement?

A: No. States should have some intermediate levels of enforcement to enable them to take timely and effective action. EPA does not consider the above situation to provide the State with authority for “appropriate enforcement” under the Guidelines.

Q: Do States need to have the ability to revoke AND suspend?

A: EPA’s guidelines require that States must have the ability to revoke operator certifications. The guidelines further require that the State must have the ability to suspend operator certifications OR take other appropriate action for operator misconduct. EPA encourages States to have the ability to both revoke and suspend operator certifications. If a State does not have the ability to suspend operator certifications, the State must explain in its initial program submittal any other action(s) the State can take against an operator for misconduct.

Q. How will EPA view enforcement authority that is split between entities/agencies?

A: Enforcement responsibility can be split (enforcement against systems vs. enforcement against operators) if the State explains the role of each Agency in its initial program submittal.

Q. Can a State delegate its enforcement authority:

- a.) To a local government agency?**
- b.) To a third party contractor?**

A: A State may delegate some of its enforcement authority to a local government agency or third party contractor as long as an effective enforcement program is maintained and State law allows such delegations. However, the State will be ultimately responsible for ensuring that effective enforcement occurs.

5. Certification Renewal

Q. Would EPA allow renewal by exam for the very small system classification?

A: EPA would allow “renewal by exam” for the very small system classification; however, this would not eliminate the requirement of ongoing training to ensure that the operators remain current with technology and regulations.

Q. Must States have varying levels of Continuing Education Units (CEU’s) for different system classifications or can renewal requirements be the same for all system operators?

A: Some States may choose to have the same number of CEU’s for each level of system classification, although the types of approved training must be appropriate for the different levels of system classification.

6. Resources Needed to Implement the Program

Q. What constitutes “sufficient” resources?

A: A State should determine the amount of resources needed to implement its operator certification program and document the sources of funding it intends to use to meet this resource requirement. EPA will review this determination each year.

Q. How can a State prove to EPA that it has a dedicated fund for its operator certification program?

A: EPA’s guidelines recommend that States have a dedicated fund to support their operator certification programs. Any State that has a dedicated fund can describe it in the initial program submittal to EPA.

Q. Can a State increase its fees for initial certification and certification renewal to support its operator certification program?

A: Yes, if allowed by State law.

7. Recertification

There were no implementation questions asked about Recertification.

8. Stakeholder Involvement

Q: Does the existence of an operator certification board, by itself, satisfy this baseline standard?

A: No. The State should describe how the board or committee is used in the revision and operations of State operator certification programs. The State must also ensure that the board is represented by all of the interested stakeholders.

Q: Are open board meetings considered adequate stakeholder involvement?

A: The State would need to demonstrate to EPA how an open board meeting is used in program development and operations. The State would also have to discuss what type of stakeholders are on the board or committee.

Q. What is adequate stakeholder involvement?

A: Adequate stakeholder involvement should include the appropriate type and number of stakeholders necessary for a review of the State's program development and operations. EPA emphasizes that public comment received on rule revisions is not adequate stakeholder involvement. EPA believes that certification boards should have representatives from all interested stakeholder groups. The guidelines provide examples of stakeholders which may include the following: operators, environmental/public health groups, the general public, consumer groups, technical assistance providers, utility managers, trainers, etc. It is recommended that States discuss their use of stakeholder involvement with their EPA Regional Office.

9. Program Review

Q: Would a State's sunset provision (all laws expire approximately every 10 years) provide a sufficient time period for program review?

A: No. EPA recommends that States conduct internal program reviews at least once every three years and external reviews at least once every five years. External program reviews provide an excellent opportunity for ongoing stakeholder involvement.

Q: What does EPA mean by "external/peer review"?

A: This is a review of a State's program that is conducted outside of the State agency or agencies that are responsible for implementing its operator certification program.

IV. Submittal Schedule and EPA Review of State Programs

EPA is developing a submittal schedule and withholding process for State programs and will solicit public comments on the approach in an upcoming *Federal Register* notice.

V. Submittal Contents

1. Initial Submittal

There were no implementation questions asked about the Initial Submittal Contents.

2. Subsequent Years

Q. Will annual submittals be required every year even if no changes were made to a State's program?

A: Yes. If a State hasn't made changes to its operator certification program, the annual submittal should focus on ongoing program implementation.

Q. Will a new State Attorney General's certification be required if non-statutory /non-regulatory changes are made to a State's program?

A: EPA requires that a State submit an Attorney General's certification (or certification from delegated counsel) as part of its initial program submittal to EPA. In a State's annual program submittal to EPA, a new Attorney General's certification (or certification from delegated counsel) is required only if changes are made to the regulations or statutes.

Q. What are the reporting requirements for operator certification programs (i.e., what specific data elements will EPA look for)?

A: At this time, EPA has not developed the specific reporting requirements that a State must include in its annual submittal to EPA. EPA will be discussing this issue in upcoming months with States.

VI. Definitions

Q. Can EPA clarify what is meant by "direct supervision"?

A: Direct supervision refers to the person(s) in responsible charge of the system and the one responsible for making water quality or quantity decisions.

VII. Other Issues

Q. How will money that is withheld be re-allotted to States with approved programs?

A: All Drinking Water State Revolving Fund monies withheld by EPA because a State does not adopt and implement an operator certification program that meets EPA's guidelines shall be reallocated based on the formula originally used to allot those funds. A State that has not met the requirements of the guidelines is not eligible to receive reallocated funds.



Attachment 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

March 13, 1998

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Submetering Water Systems

FROM: Cynthia Dougherty, Director /s/
Office of Ground Water and Drinking Water

TO: Water Division Directors
Regions I - X

Drinking Water/Ground Water Representatives
Regions I - X

There have been numerous requests for guidance on whether an apartment complex or other similar residential communities (e.g. subdivisions and mobile home parks) which receives water from a public water system (PWS) through a master meter and then resells it to the residents qualifies as a PWS. It has long been and remains the Environmental Protection Agency's (EPA) position that apartment complexes and similar residential communities that sell water to their tenants constitute PWSs and are subject to the Safe Drinking Water Act (SDWA) regulations. However, EPA also recognizes that these PWSs may not require as stringent monitoring as PWSs which do not receive their water from another PWS, and thus States have the flexibility to modify the monitoring requirements for these apartment complexes or similar residential communities.

On March 31, 1997, in response to the above concerns, EPA held a meeting with several stakeholders to discuss the regulatory provisions and the guidance that had already been issued on these subjects. After this meeting, we received a few requests for more clarification to which we responded by individual letters. To make sure that everyone understands the Agency's position and to alleviate any confusion, we have incorporated the substance of our responses into this memorandum. Please share this information with your respective States.

Statutory Requirements

Under Section 1411 of the SDWA, a PWS is subject to regulation unless it is a system which meets all of the following four criteria:

- (1) consists only of distribution and storage facilities (and does not have any collection and treatment facilities);
- (2) obtains all of its water from, but is not owned or operated by, a public water system to which the regulations apply;
- (3) does not sell water to any person; and
- (4) is not a carrier which conveys passengers in interstate commerce.

Assuming that apartment complexes and other similar residential communities meet the criteria enumerated in (1), (2), and (4), the issue is whether or not submetering of water to tenants constitutes selling water within the context of the SDWA.

Interpretation of to “Sell”

We believe that to “sell” should be given broad meaning under the SDWA. Construing the statute this way is consistent with the purpose of the SDWA which is to assure that the water supply systems that serve the public meet minimum national standards for protection of public health to the maximum extent feasible. (House Report No. 93-1185). The House Report further says, in explaining this provision, that Congress intends the primary drinking water regulations to apply to housing developments, motels, restaurants, trailer parks, and other business serving the public if the business in question maintains its own well or water supply and sells water.

A distributor of water for human consumption “sells” water within the meaning of the Act if it charges consumers for the water as a separate item or bills separately for the water it provides. (House Report No. 93-1185). Conversely, if the entity includes the charges for water in the rental fee, then it is not selling water within the context of the Act. It is irrelevant whether water is sold for a profit or not, or whether the distributor is a public or private entity. Thus, it is appropriate to interpret to “sell” to include submetering.

If an apartment building or similar residential community that submeters wants to avoid PWS classification, it would either need to remove the complex’s master meter and allow the local water utility to bill the residents directly, or include water usage as part of the monthly rent or fees.

Monitoring Flexibility of “Consecutive” Water Systems

While an apartment complex that submeters is considered a PWS and thus subject to the requirements under the SDWA, it nonetheless may be afforded certain monitoring modifications if it is considered a “consecutive” water system. “Consecutive” water systems are water systems that purchase water from another public water system. Under federal regulations at 40 CFR 141.29, States have the flexibility to modify the monitoring requirements to the extent that the interconnection of the

systems justifies treating them as a single system. This flexibility allows States considerable discretion to avoid unnecessary compliance activities for “consecutive” water systems consistent with the public health objectives of the Act. Because we support the practice of submetering to encourage water conservation and to provide an equitable method of

distributing costs, we believe that it is appropriate for States to use this flexibility consistent with their assessment of the need for these “consecutive” systems to conduct additional monitoring to protect the public health of their customers.

If you have any question concerning this guidance, please call Jennifer Melch at (202) 260-7035.