

LCB File No. R021-02

PROPOSED REGULATION OF THE
STATE BOARD OF HEALTH

EXPLANATION – Matter in *italics* is new; matter in brackets ~~{omitted material}~~ is material to be omitted.

Section 1. Title of Chapters 445A.617 through 445A.652 of NAC is hereby amended as follows:

Certification of Operators of ~~{Privately Owned}~~ *Public Water* Systems

Sec. 2. Chapter 445A.627 of NAC is hereby amended as follows:

NAC 445A.627 Persons in responsible charge: General requirements. (NRS 445A.860)

1. A public water system which:

(a) Is classified as a community water system or a nontransient, noncommunity water system;

or

(b) Is designated by the health division as being supplied by:

(1) Surface water; or

(2) Ground water under the direct influence of surface water,

shall have a person in responsible charge at the site of the facility or on call at all times. Except as otherwise provided in NAC 445A.628, the person in responsible charge of the public water system must be the holder of a full certificate in the same classification or a higher classification than the classification of the public water system. If the person in responsible charge is on call, he must be able to be contacted immediately and be able to respond at the site within a reasonable period.

2. A supplier of water shall notify the health division within 72 hours or 2 working days, whichever is earlier, of any time that the public water system is not in compliance with the provisions of this section.

3. If a public water system serves more than 10,000 persons, the health division may require the public water system to have, in addition to the person in responsible charge of the public water system, additional persons in responsible charge at the same time, including a person in responsible charge for the treatment of water and a person in responsible charge for the distribution of water. If the health division requires additional persons in responsible charge, the additional persons in responsible charge:

~~{(a) May be certified at a classification lower than the classification of the public water facility;}~~

(a) (b) Must be certified if they make process control/system integrity decisions about water quality or quantity that affect public health.

~~{(c) Must be certified at least one classification lower than the operator in responsible charge if they are shift operators who work on a shift alone or are forepersons or supervisors of a public water system.}~~

4. As used in this section:

(a) “Community water system” has the meaning ascribed to it in NRS 445A.808.

(b) “Nontransient, noncommunity water system” means a nontransient water system as defined in NRS 445A.829.

Sec. 3. Chapter 445A.628 of NAC is hereby amended as follows:

NAC 445A.628 Persons in responsible charge: Approval of person holding certificate as operator-in-training; approval of other qualified person in emergency.

1. Upon the request of the owner of a public water system and the approval of the health division, a person holding a certificate as an operator-in-training may be the person in responsible charge of the public water system ~~[-]~~ *for not more than 6 months provided that the* ~~[The]~~ owner ~~[must]~~ demonstrate that the public water system is unable to employ a person who holds a full certificate. The health division shall not grant approval unless it makes a finding that the person holding the certificate as an operator-in-training has the basic knowledge necessary to operate the public water system and that the health and safety of the public will be protected.

2. The health division shall consider the following in making its decision of whether to grant approval *for a qualified person pursuant to paragraph 1:*

(a) The results of an inspection of the site of the public water system;

(b) A review of the plans and specifications of the public water system;

(c) A review of the personnel records, experience and training of the person holding the certificate as an operator-in-training; and

(d) A review of any other reasonably available and relevant information.

3. Upon the occurrence of circumstances of an emergency nature, the health division may approve any other qualified person as the person in responsible charge of a public water system for not more than 6 months.

4. The health division shall consider the following in making its decision of whether to grant approval of a qualified person pursuant to paragraph 3 in responsible charge of a public water system:

(a) The results of an inspection of the site of the public water system;

(b) A review of the plans and specifications of the public water system;

(c) A review of the personnel records, experience and training of the person being considered; and,

(d) A review of any other reasonably available, relevant information

Sec. 4. Chapter 445A.642 of NAC is hereby amended as follows:

NAC 445A.642 Continuing education: *Suspension* ~~[Waiver]~~ of requirements; deemed compliance.

1. The health division may ~~[waive compliance with]~~ *suspend* the requirements of continuing education for renewal of a certificate if the holder of the certificate is unable to attend approved courses of training because of undue hardship or other extenuating circumstances beyond his control, including limitations imposed as a result of his health, if documented *for each suspension period but not to exceed 4 years of suspension.*

2. In the discretion of the health division, the holder of a certificate may be deemed to have complied with the requirements of continuing education during any period that he:

(a) Serves honorably on active duty in the military services.

(b) Is a resident of another state that imposes a requirement of continuing education on operators of public water systems and he has met the requirement of continuing education imposed in that state.

(c) Is employed by a governmental agency as an operator of a public water system and is assigned to duty outside of the United States.

~~[(d) Is active as an operator of a public water system and is absent from the state for any other reason.]~~

3. Prior to reinstatement of certification, the operator must complete the required continuing education credits pursuant to NAC 445A.639

4. Any reinstatement of operator certification is subject to health division approval of continuing education credits pursuant to NAC 445A.639.

Sec. 5. Chapter 445A.66285 of NAC is hereby amended as follows:

NAC 445a.66285 “Public water system” defined. ~~[“Public water system” means any system, regardless of ownership, which provides the public with piped water for human consumption, if the system has 15 or more service connections used by residents throughout the year or regularly serves 25 or more persons for 60 or more days year. A public water system includes:~~

~~—1. Any facility for the collection, pumping, treatment, storage or distribution of water which is under the control of the operator of the system and used primarily in connection with the system; and~~

~~—2. Any facility for the collection of pretreatment storage of water which is not under the control of the operator of the system but used primarily in connection with the system.]~~ **“Public water system” has the meaning ascribed to it in NRS 445A.235.**

SMALL BUSINESS IMPACT STATEMENT
For Amendments to Public Water System Operator Certification Regulations

PROPOSED AMENDMENTS TO EXISTING REGULATIONS correct a reference to the definition of a public water system and clarify requirements for the public water system Operator Certification Program. This is the Small Business Impact Statement required under Nevada Revised Statutes (NRS) 233B.0608 and 233B.0609. A small business is defined in Nevada Revised Statutes (NRS) 233B.0382 as a "business conducted for profit which employs fewer than 150 full-time or part-time employees."

The proposed amendment to correct the definition of a public water system is simply a correction of a definition to conform the Nevada Administrative Code (NAC) to the Nevada Revised Statutes (NRS). The Bureau of Health Protection Services (BHPS), a bureau within the State Health Division, has determined that this amendment will have little or no direct or significant impact on small businesses.

The proposed amendments to the regulations of the Operator Certification Program clarify certain sections of the NAC to comply with existing requirements of the United States Environmental Protection Agency. BHPS has determined that adoption of these amendments to the regulations for the Operator Certification Program may impose a direct, but not a significant, economic burden upon some small businesses, which may be affected by these regulations. Some small businesses that operate or own a public water system may experience some increase in personnel costs since the amendments to regulations restrict the type of operator certification for particular classes of public water systems. The adoption of these amendments should not directly restrict the formation, operation or expansion of a small business in Nevada.

1. A description of the manner in which comment was solicited from affected small businesses, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary.

The amendment to the public water system definition has no effect since it merely corrects a definition in the NAC to conform to the Nevada Revised Statutes.

The amendments to the regulations of the Operator Certification Program may affect the operators of up to 80 community public water systems and of up to 65 nontransient, noncommunity public water systems. These amendments have been reviewed and discussed at two publicly noticed meetings of the Advisory Board for the Certification of Operators (meetings held August 10, 2001 in Elko and on December 7, 2001 in Las Vegas). Pursuant to NRS 233B.0608 (2)(a), a list of these public water systems and their operators was developed. Using this list, a notice with a solicitation for comment was mailed on or before December 27, 2001 to these public water systems and their operators explaining the economic effect associated with the changes to the operator certification regulation. Comments are due back to BHPS by January 15, 2002. As of February 12, 2002, three workshops had already been held in Las Vegas, Elko and Carson City to accept comments on these regulations. A final workshop will be held in early March 2002.

Interested persons may obtain a list of the recipients and a summary of written responses to the solicited comments by contacting Galen D. Denio, Manager, BHPS, 1179 Fairview Dr., Ste 101, Carson City, NV 89701 or by calling (775) 687-4750, extension 229, after January 15, 2002.

2. The estimated economic effect of the proposed regulation on the small business which it is to regulate including, without limitation, both adverse and beneficial effects and both direct and indirect effects.

Direct Adverse and Beneficial Effects

A possible direct adverse effect may be that some small public water systems have difficulty certifying and/or employing qualified operators for their systems, especially in rural areas.

A major beneficial effect is to ensure that public water systems employ qualified and certified operators. The intended result of these regulatory amendments is to demonstrate to the public through a certification process that:

- 1) The qualifications of public water system operators are appropriate for the public water system on which they work;
- 2) Flexibility is provided to the public water systems for emergency situations in which interim operators can be qualified;
- 3) Federal funds allocated to Nevada through the Drinking Water State Revolving Fund (DWSRF) program continue to be available to provide the kinds of technical assistance that small public water systems need.

The estimated direct and indirect beneficial economic effects of the proposed regulation on the small businesses cannot be quantified. The overall indirect effect of the proposed regulations is that the regulations will provide for better protection of the health and safety of the public by decreasing the possibility of contamination of the public water supply, thereby decreasing associated medical costs, pain and suffering, and a negative impact on local economies that could result.

Direct and Indirect Costs

The estimated direct adverse economic effect of the proposed regulations on the public water systems that qualify as small businesses, although unknown, is not expected to be large. These systems may incur some additional costs to employ properly qualified and certified personnel. Costs would be determined on a case-by-case basis.

3. A description of the methods that BHPS considered to reduce the impact of the proposed regulation on small businesses and statement regarding whether the agency actually used those methods.

In considering methods to reduce the impact of the proposed regulation on small businesses as required by NRS 233B.0608 2 (b) (1), the agency shall consider simplifying the proposed regulation.

BHPS notes that the regulations provide specifically for the approval of interim operators in temporary and emergency situations. It also provides for the reinstatement of a suspended certificate in the event an operator is called away for military or other service for a period of years, provided that continuing educational requirements are met.

In considering methods to reduce the impact of the proposed regulation on small businesses as required by NRS 233B.0608 2 (b) (2), the agency shall consider establishing different standards of compliance for a small business.

These regulations must be adopted to maintain compliance required by the Safe Drinking Water Act, as amended in 1996 (SDWA) and to keep from having 20% of its capitalization grant for the Drinking Water State Revolving Fund (DWSRF) program withheld. The State's flexibility in considering alternative standards is limited by federal law that requires state compliance.

In considering methods to reduce the impact of the proposed regulation on small businesses as required by NRS 233B.0608 (2)(b)(3), the agency shall consider modifying a fee or fine set forth in the regulation so that a small business is authorized to pay a lower fee or fine.

No fee or fine is set forth in the regulation.

4. The estimated cost to the agency for enforcement of the proposed regulation.

The estimated cost to the agency for enforcement of the proposed regulation is minimal and will be absorbed by existing staff and appropriations, fees and federal grants.

5. Total amount BHPS expects to collect from any fees and the manner in which the money will be used.

Under the existing fee structure, BHPS would collect a fee of about \$40.00 from each individual who must test for the required certification. No new fees are involved with this regulatory change. This fee defrays the cost of purchasing and administering the tests, which is done by the American Water Works Association under contract with the State Health Division. This regulation has no net monetary impact on the Health Division; some additional administrative work may be required to handle the documentation, correspondence and certification for previously non-certified operators.

6. An explanation of why any duplicative or more stringent provisions than federal, state or local standards regulating the same activity are necessary.

The proposed regulations do not overlap or duplicate any federal, state or local regulations. They bring state regulations into compliance with federal law.