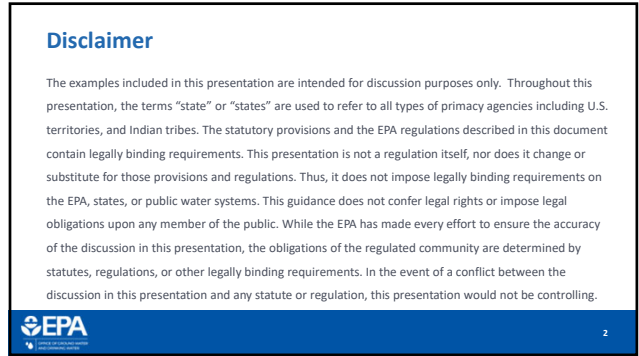
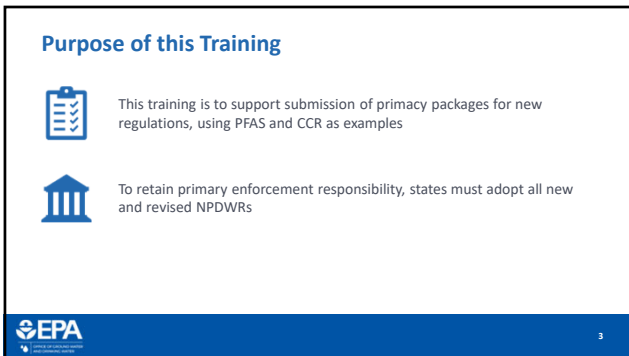




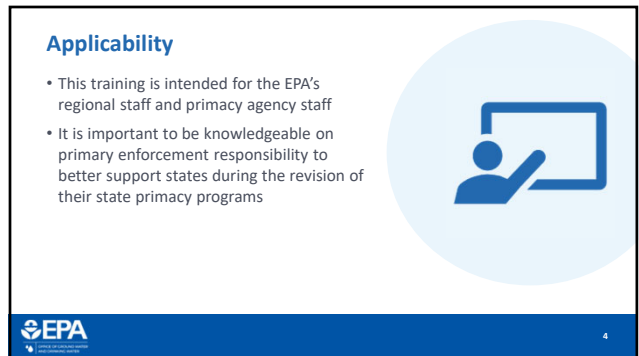
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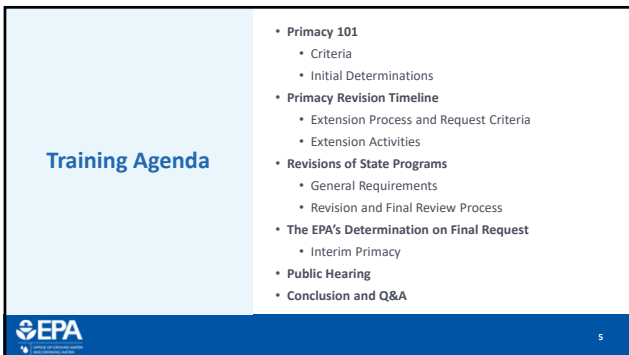
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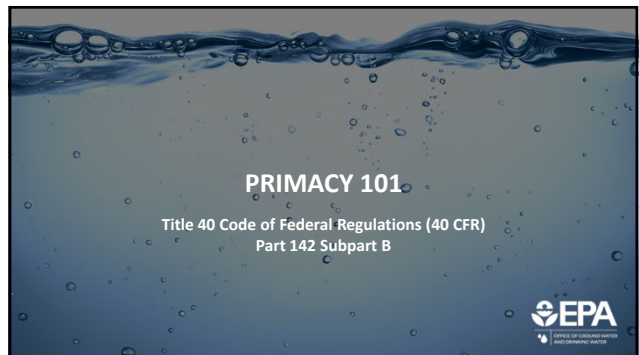
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### Criteria for Primacy: Enforcement Procedures

- 1 The state has drinking water regulations no less stringent than the NPDWRs
- 2 The state has adequate procedures for enforcing state drinking water regulations:
  - PWS inventory
  - Sanitary Surveys
  - Laboratory certification
  - State laboratory availability
  - Design and construction of new or "substantially modified" PWS facilities
  - Adequate statutory or regulatory authority

Tribes are not required to have criminal enforcement jurisdiction.


 40 CFR 142.10(d) & (b) & (f) 7

7

### Criteria for Primacy: Enforcement Procedures

Adequate statutory or regulatory authority


- Authority to apply state primary drinking water regulations to all PWSs
- Authority to sue in courts of competent jurisdiction
- Right of entry and inspection of PWSs
- Authority to require PWSs to keep appropriate records and make appropriate reports to the state
- Authority to require PWSs to give public notice that is no less stringent than the EPA requirements
- Authority to assess civil or criminal penalties for violation
- Authority to require community water systems to provide consumer confidence reports

 40 CFR 142.10(b) 8

8

### Criteria for Primacy: Recordkeeping Requirements


- 3 The state has established and will maintain record keeping and reporting in compliance with [Sections 142.14](#) and [142.15](#)

 40 CFR 142.10(c) 9

9

### Criteria for Primacy: Variances and Exemptions


- 4 For those states that permit variances and exemptions, it must be in a manner no less stringent than federal procedures and requirements for:
  - Small system variances
  - Variances (other than small system variances) and/or exemptions

 40 CFR 142.10(d) 10

10

### Criteria for Primacy: Emergency response, administrative penalties, electronic reporting

- 5 The state has adopted and can implement an adequate plan for safe drinking water under emergency circumstances
- 6 The state has authority for assessing administrative penalties
- 7 The state has adopted regulations consistent with federal electronic reporting requirements (if applicable)

 40 CFR 142.10(e) - (g) 11

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## PRIMACY REVISION TIMELINE

 OFFICE OF ENVIRONMENTAL AND DRINKING WATER

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### Primacy Revision Timeline for PFAS NPDWR

- The deadline for submission to adopt new or revised regulations is no later than two years after promulgation (i.e. publication in FR)
- State may request an extension before the end of this 2-year period
- The EPA can approve an extension to the deadline for up to 2 additional years

The EPA/State Action	Timeframe
PFAS promulgation date.	April 26, 2024
State submits program revision application or extension request.	April 27, 2026*
States with approved extensions submit PFAS program revision package.	April 26, 2028

\* First business day after the two-year timeframe

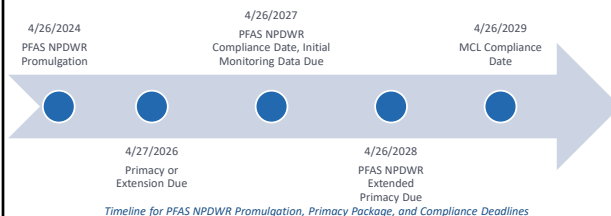


40 CFR 142.12(b)(2)

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### Timeline for PFAS NPDWR



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### Primacy Revision Timeline for Revised CCR Rule

The EPA/State Action	Timeframe
Revised Consumer Confidence Report Rule (CCR) promulgation date.	May 24, 2024
State submits program revision application or extension request.	May 25, 2026*
States with approved extensions submit Revised CCR Rule primacy package.	May 24, 2028

\* First business day after the two-year timeframe

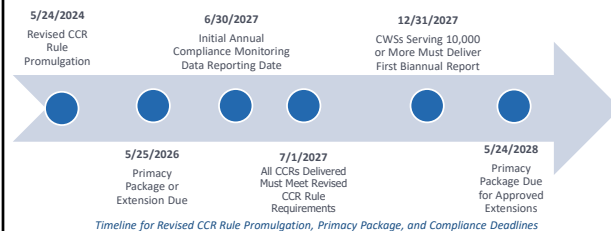


40 CFR 142.12(b)(2)

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### Timeline for CCR Rule Revision



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16

### Extension Applications

- Application must include a schedule for the submission of final request and provide sufficient information to demonstrate that the state:
  - Currently lacks the legislative/regulatory authority to enforce requirements; or
  - Currently lacks the adequate program capability to implement requirements; or
- Is requesting the extension to group two or more program revisions in a single regulatory action; **and**
- Is implementing the EPA requirements to be adopted by the state in its program revision according to 40 CFR 142.12(b)(3)
- Note that an extension agreement relates only to primacy and does not impact the applicability of the regulation for PWS and EPA has primary enforcement responsibility

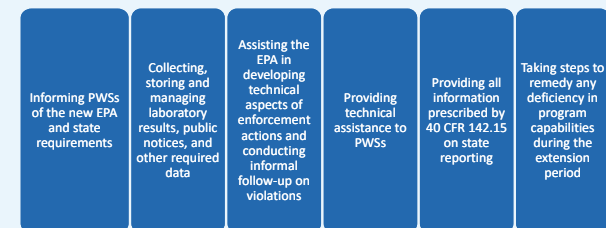


40 CFR 142.12(b)(2)

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### Extension Agreement Workshare Activities



40 CFR 142.12(b)(3)

18

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## State Primacy Revision Extension Checklist

- States can use this as guidance for what the EPA will expect from a state extension agreement
- Checklist covers elements from 40 CFR 142.12(b)(1)-(b)(3)(vi)
- Example is from RTRC Implementation Guidance, EPA 816-R-20-003, June 2020, page 92

CFR Reference	Elements	EPA Findings/ Comments
40 CFR 142.12(b)(1)	State provides a final extension request before the deadline (two years after publication).	
40 CFR 142.12(b)(2)	State demonstrates good faith effort to meet original deadline.	
40 CFR 142.12(b)(2)	State requests an extension due to reasons beyond its control.	
40 CFR 142.12(b)(2)	State's application for extension includes a schedule with a timeframe for the submission of a final request for state program revision. <sup>1</sup>	
40 CFR 142.12(b)(2)	State's application for extension includes sufficient information to demonstrate at least one of the following:	
40 CFR 142.12(b)(2)(i)(A)	State lacks legislative/regulatory authority to enforce the rule. <sup>2</sup>	

Section of State Primacy Revision Extension Checklist

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## Example Extension Agreement Letter

[Date]  
 [Regional Administrator]  
 U.S. EPA Region [Region]  
 [Street Address]  
 [City, State, Zip]  
 RE: Request approved for an Extension Agreement

Dear [Regional Administrator]:

The State of [State], is requesting an extension to the date that final primary revisions are due to EPA for the [insert rule name], until no later than [insert date four years after publication], as allowed by 40 CFR 142.12, and would appreciate your approval. Staff of the [State Department/Agency] have conferred with your staff and have agreed to the requirements listed below for this extension. This extension is being requested because the State of [State]:

- Is planning to group two or more program revisions into a single legislative or regulatory action.
- Currently lacks the legislative or regulatory authority to enforce the new or revised requirements.
- Currently lacks adequate program capability to implement the new or revised requirements.

[State Department/Agency] will be working with EPA to implement the RTRC within the scope of its

Introductory Section of Example Extension Agreement Letter

- Letter to discuss:
- Implementation
- Database and enforcement activities
- Negotiate entities' responsibilities
- Workload distribution
- Example is from RTRC Implementation Guidance, EPA 816-R-20-003, June 2020, page 93

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## REVISIONS OF STATE PROGRAMS

21

## General Requirements for Revision of State Programs

- The EPA or the state may initiate actions that require revision of primacy program
- To retain primary enforcement responsibility, states must adopt all new and revised NPDWRs
  - States must submit a request to the Administrator for approval of the program revision
  - Final state requests for approval of program revisions for new or revised EPA regulations must be submitted within 2 years following rule promulgation (unless a 2-year extension was granted)

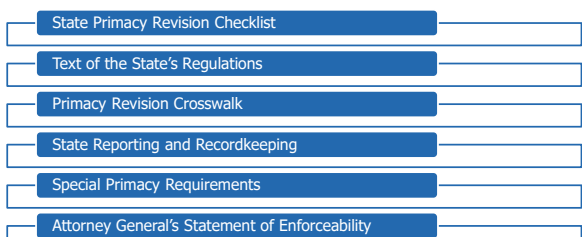
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## Revision Process and Final Review Process

- Contents of State Primacy Package
  - Necessary documentation to update the approved state primacy program, and identification elements of primacy program that have not changed
  - Statement by the state Attorney General (AG) certifying that the regulations adopted were duly adopted and are enforceable
  - Any additional materials
- Draft Primacy Revision Package
  - Note: draft primacy revision package does not have to include the AG statement
- Final Primacy Revision Application Package

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## State Final Primacy Package



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## State Primacy Revision Checklist

- General primacy requirements
- State must identify revised program elements
- Checklist covers elements from 40 CFR 142.10
- Example is from RTCR Implementation Guidance, EPA 816-R-20-003, June 2020, page 96

CFR Citation	Required Program Elements	Revision to State Program under the RTCR YES/NO	EPA Findings/ Comments
40 CFR 142.10	Primary Enforcement Definitions of Public Water Systems'		
40 CFR 142.10(a)	Regulations No Less Stringent		
40 CFR 142.10(b)(1)	Maintain Inventory		
40 CFR 142.10(b)(2)	Suitability Surveys Program		
40 CFR 142.10(b)(3)	Laboratory Certification Program		
40 CFR 142.10(b)(4)	Laboratory Capability		
40 CFR 142.10(b)(5)	Plan Review Program		
40 CFR 142.10(b)(6)(i)	Authority To Apply Regulations		
40 CFR 142.10(b)(6)(ii)	Authority To Sue In Courts Of Competent Jurisdiction		

Section of State Primacy Revision Checklist



40 CFR 142.10

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## Primacy Revision Crosswalk

- Part 141 – National Primary Drinking Water Regulations:
  - States draft regulations and fill out corresponding information on the crosswalk table
  - States may prepare their own regulatory text or adopt by reference
    - Difference must be no less stringent than federal language
  - **States should submit draft regulations with the crosswalk as soon as possible**
    - EPA reviews each of the requirements to ensure all are covered by state's proposed regulations
    - Key part of the primacy application review



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## Primacy Revision Crosswalk

SUMMARY OF FEDERAL REGULATIONS	FEDERAL CITATION	STATE CITATION (DOCUMENT TITLE, PAGE NUMBER SECTION/PARAGRAPH)	DIFFERENT FROM FEDERAL REQUIREMENT? (EXPLAIN ON SEPARATE SHEET)
<b>Part 141 National Primary Drinking Water Regulations</b>			
<b>Subpart A—General</b>			
<b>40 CFR 142.2 Definitions.</b>			
Hazard Index (HI) is the sum of component hazard quotients (HQ), which are calculated by dividing the measured regulated PFAS component contaminant concentration in water (e.g., expressed as parts per trillion (ppt) or nanograms per liter (ng/L)) by the associated Health-Based Water Concentration (HBWC) expressed in the same units as the measured concentration (e.g., ppt or ng/L). For PFAS, a	40 CFR 141.2		
<b>SUMMARY OF FEDERAL REQUIREMENT</b>			
<b>Part 142—National Primary Drinking Water Regulations Implementation</b>			
<b>Subpart B—Primary Enforcement Responsibility</b>			
<b>40 CFR 142.16 Special primacy requirements.</b>			
Requirements for States to adopt 40 CFR part 141, subpart Z, PFAS, in addition to the general primacy requirements elsewhere in this part, including the requirements that State regulations be at least as stringent as Federal requirements, an application for approval of a State program revision that adopts 40 CFR part 141, subpart Z, must contain the following, in lieu of meeting the requirements of paragraph (c) of this section:	40 CFR 142.16(i)		

Sections of the PFAS Primacy Revision Crosswalk



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## State Program Modifications

- State Reporting and Recordkeeping
  - Modification to 40 CFR 142.14 and/or 142.15
- Special Primacy Requirements
  - Modification to 40 CFR 142.16



40 CFR 142.14-142.16

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## Special Primacy Requirements

- |   |   |
|---|---|
| (a) Public Notification Rule                                      | (k) Initial monitoring requirements for new systems and sources |
| (b) Surface Water Treatment Rule                                  | (l) Radionuclides Rule  |
| (c) Total Coliform Rule (no longer applicable)                    | (m) IDSEs and Stage 2 DBPR                                      |
| (d) Lead & Copper Rule  | (n) Long-Term 2 Enhanced SWTR (Treatment for Cryptosporidium)   |
| (e) Regulated contaminants (IOCs, SOCs, VOCs)                     | (o) Ground Water Rule   |
| <b>(f) Consumer Confidence Report Rule</b>                        | (p) Long-Term 1 Enhanced SWTR for Systems < 10,000              |
| (g) Interim Enhanced SWTR for Systems ≥ 10,000                    | (q) Revised Total Coliform Rule                                 |
| (h) Stage 1 Disinfectants and Disinfection Byproducts Rule (DBPR) | <b>(r) PFAS Rule</b>  |
| (i) Filter Backwash Recycling Rule                                |   |
| (j) Regulated contaminants (IOCs, SOCs, VOCs)                     |   |



40 CFR 142.16

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## Special Primacy Requirements – PFAS

SUMMARY OF FEDERAL REQUIREMENT	FEDERAL CITATION	EXPLANATION OF STATE POLICIES AND PROCEDURES
<b>Part 142—National Primary Drinking Water Regulations Implementation</b>		
<b>Subpart B—Primary Enforcement Responsibility</b>		
<b>40 CFR 142.16 Special primacy requirements.</b>		
Requirements for States to adopt 40 CFR part 141, subpart Z, PFAS, in addition to the general primacy requirements elsewhere in this part, including the requirements that State regulations be at least as stringent as Federal requirements, an application for approval of a State program revision that adopts 40 CFR part 141, subpart Z, must contain the following, in lieu of meeting the requirements of paragraph (c) of this section:	40 CFR 142.16(i)	
The State's procedures for reviewing the water system's use of pre-existing data to meet the initial monitoring requirements specified in §415.902, including the criteria that will be used to determine if the data are acceptable. This paragraph (i)(1) is no longer applicable after the initial monitoring period ends on April 26, 2027.	40 CFR 142.16(i)(1)	
The State's procedures for ensuring all systems complete the initial monitoring period requirements that will result in a high degree of monitoring compliance by the regulatory deadlines. This paragraph (i)(2) is no longer applicable after the initial monitoring period ends on April 26, 2027.	40 CFR 142.16(i)(2)	
After the initial monitoring period, States establish the initial monitoring	40 CFR 142.16(i)(3)	



40 CFR 142.16(i)(1)-(3) & 40 CFR 142.62(j)

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## Special Primacy Requirements – CCR

SUMMARY OF FEDERAL REQUIREMENT	FEDERAL CITATION	EXPLANATION OF STATE POLICIES AND PROCEDURES
<b>Part 142 – National Primary Drinking Water Regulations Implementation</b>		
<b>Subpart B – Primary Enforcement Responsibility</b>		
<b>40 CFR 142.16(f) Consumer Confidence Report requirements.</b>		
Each State that has primary enforcement responsibility must adopt the revised requirements of 40 CFR part 141, subpart D no later than May 25, 2026. States must submit revised programs to EPA for approval using the procedures in § 142.12(b) through (d).	40 CFR 142.16(f)(1)	
Each State that has primary enforcement responsibility must make reports submitted to the States in compliance with 40 CFR 141.155(c) available to the public upon request.	40 CFR 142.16(f)(2)	
Each State must, as a condition of primacy, provide water systems with technical assistance in meeting the requirements in 40 CFR 141.153(b)(3) to provide translation assistance to consumers with limited English proficiency. Examples of technical assistance include providing water systems with contact information for inclusion in the system's report where consumers can contact the state for translation assistance upon request, or providing resources for water systems to translate their reports, including EPA provided translations of required content for CCRs (e.g., health effects language, definitions) and translated templates of reports through a website.	40 CFR 142.16(f)(3)	



40 CFR 142.16(f)(1)-(3) & 40 CFR 142.62(a)

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## Special Primacy Requirements – CCR

SUMMARY OF FEDERAL REQUIREMENT	FEDERAL CITATION	EXPLANATION OF STATE POLICIES AND PROCEDURES
<b>Part 142 – National Primary Drinking Water Regulations Implementation</b>		
<b>Subpart B – Primary Enforcement Responsibility</b>		
<b>40 CFR 142.16(f) Consumer Confidence Report requirements.</b>		
Each State that has primary enforcement responsibility must report violations of this subpart in accordance with the requirements of 40 CFR 142.16(f)(4).	40 CFR 142.16(f)(4)	
Each application for approval of a revised program must include: (i) A description of how the State intends to provide water systems with technical assistance in meeting the requirements in 40 CFR 141.153(b)(3) to provide translation assistance in communities with a large proportion of consumers with limited English proficiency; and (ii) A description of the state's procedures for waiving the mailing requirement for small systems consistent with 40 CFR 141.155(g).	40 CFR 142.16(f)(5)	



40 CFR 142.16(f)(1)-(5) & 40 CFR 142.62(a)

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## Attorney General's Statement

**Model Language**

I hereby certify, pursuant to my authority as (1) and in accordance with the Safe Drinking Water Act as amended, and (2), that in my opinion the laws of the [State/Commonwealth of (3)] (or final ordinance of (4)) to carry out the program set forth in the "Program Description" submitted by the (5) have been duly adopted and are enforceable. The specific authorities provided are contained in statutes or regulations that are lawfully adopted at the time this Statement is approved and signed and will be fully effective by the time the program is approved.

I. For States with No Audit Privilege and/or Immunity Laws

Furthermore, I certify that [State/Commonwealth of (3)] has not enacted any environmental audit privilege and/or immunity laws.

II. For States with Audit Privilege and/or Immunity Laws that do Not Apply to the State Agency Administering the Safe Drinking Water Act

Furthermore, I certify that the environmental [audit privilege and/or immunity laws] of the [State/Commonwealth of (3)] do not affect the ability of (2) to meet enforcement and information gathering requirements under the Safe Drinking Water Act because the [audit privilege and/or immunity laws] do not apply to the program set forth in the "Program Description." The Safe Drinking Water Act program set forth in the "Program Description" is administered by (6) [the [audit privilege and/or immunity laws] do not affect programs implemented by (6), thus the program set

forth in the "Program Description" is unaffected by the provisions of [State/Commonwealth of (3)] [audit privilege and/or immunity laws].

III. For States with Audit Privilege and/or Immunity Laws that Worked with EPA to Satisfy Requirements for Federally Authorized, Delegated or Approved Environmental Programs

Furthermore, I certify that the environmental [audit privilege and/or immunity laws] of the [State/Commonwealth of (3)] do not affect the ability of (2) to meet enforcement and information gathering requirements under the Safe Drinking Water Act because [State/Commonwealth of (3)] has enacted statutory measures and/or issued a Clarifying Attorney General's Statement to satisfy requirements for federally authorized, delegated or approved environmental programs.

State of Office

Signature \_\_\_\_\_

Name and Title \_\_\_\_\_

Date \_\_\_\_\_

(1) State Attorney General or attorney for the primacy agency if it has independent legal counsel.  
 (2) 40 CFR 142.11 (regulatory) for initial primacy applications or 40 CFR 142.12(b) (3) for primacy program revision applications.  
 (3) Name of state or commonwealth.  
 (4) Name of tribe.  
 (5) Name of primacy agency.

### Sections of Example Attorney General's Statement

Example is from RTCR Implementation Guidance, EPA 816-R-20-003, June 2020, page 99



40 CFR 142.12(c)(2)

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THE EPA'S DETERMINATION ON FINAL REQUEST



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## Review of Final Request for Primacy

- The Administrator has delegated review of primacy applications to the relevant Regional Assistant Administrator (RAA)
  - See Delegation of Authority 9-4: Determination of State Primary Enforcement Responsibility: Public Water Systems
- RAA is required to obtain concurrence from the following Assistance Administrators, or their designee:
  - Office of Water
  - Office of Enforcement and Compliance Assurance
  - Office of General Counsel
- These offices may waive the concurrence limitation on a case-by-case basis.
  - The Regional Administrators will be responsible for maintaining a record of any waiver of this limitation



40 CFR 142.12(d)(2-3)

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## Purpose of EPA's Review

- The Regional EPA office should ensure the application is complete and includes all of the required elements
  - When determined complete this begins the review period
- Purpose of EPA's review is to:
  - Ensure that the primacy agency has the necessary authority to implement the regulation; and
  - Ensure that the primacy application is no less stringent than the federal regulation
    - Rule crosswalks are critical for this determination – see 40 CFR 142.12(c)(1)(i)







40 CFR 142.12(d)(2)

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### The EPA's Determination on Final Request

-  Administrator has **90 days** after determining the state request is complete and final to notify the state of the EPA's decision.
-  If the request is **NOT** approved, the Administrator will notify the state in writing, including a statement of the reasons for disapproval.
-  A final determination by the Administrator on a state's request for approval of a program revision shall take effect in accordance with the public notice requirements and related procedures under 40 CFR 142.13.

 40 CFR 142.12(d)(3) 37


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### Interim Primary Enforcement Authority

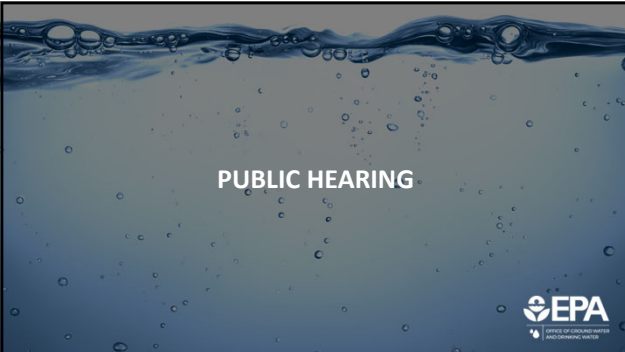
States who have primacy for all existing NPDWRs are eligible for interim primary enforcement authority when whichever action is later:

- The new or revised state regulation becomes effective; or
- The complete primacy revision application is submitted to the Administrator


Interim primary enforcement authority ends when Administrator approves or disapproves.

 40 CFR 142.12(e) 38

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## PUBLIC HEARING



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### Public Notice of Determinations


The EPA publishes notice of any determination in the *Federal Register* and newspaper(s) in the state **within 15 days**.



The notice contains:

- A statement of reasons for the determination
- Information on how to request a public hearing
- Location(s) where information for initial primacy request is available

A public hearing may be requested by anyone other than a Federal agency.

 40 CFR 142.13(b) 40

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### Opportunity for Public Hearings

- Before final determination that:
  - The state meets or does not meet the requirements for **initial primary enforcement responsibility**
  - Approves or disapproves a state request for a **program revision**
  - The **withdrawal of approved primacy programs**

 - EPA must provide an opportunity for a public hearing  
 - Requests for hearing are submitted **within 30 days** after the *Federal Register* Notice of hearing opportunities.


 40 CFR 142.13(a) & (c) 41

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### Public Notice of Hearings


The EPA gives notice of any hearings in the *Federal Register* and in a newspaper(s) **at least 15 days prior** to the time of the hearing.

- Also sent to the person requesting a hearing and to the state involved



The notice contains:

- A statement of the purpose of the hearing
- The time and location(s) for the hearing
- The address and telephone number for further information

 40 CFR 142.13(d) 42

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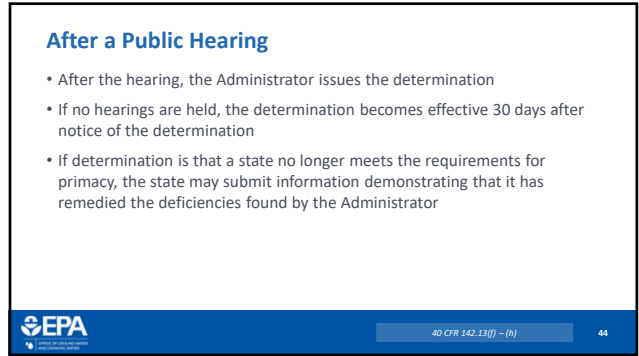


**Public Hearing**

- Conducted by a hearing officer designated by the Administrator
- Following the hearing, the hearing officer forwards the record of the hearing to the Administrator

EPA  
40 CFR 142.13(e) 43

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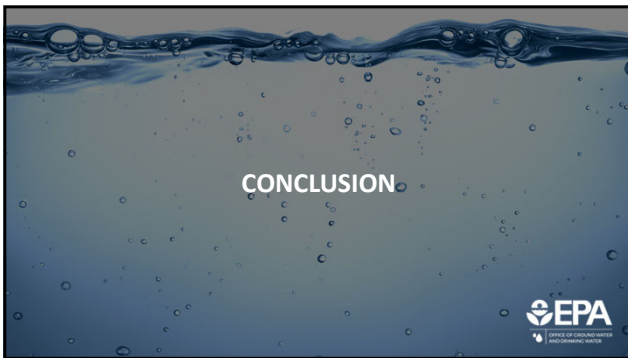


**After a Public Hearing**

- After the hearing, the Administrator issues the determination
- If no hearings are held, the determination becomes effective 30 days after notice of the determination
- If determination is that a state no longer meets the requirements for primacy, the state may submit information demonstrating that it has remedied the deficiencies found by the Administrator

EPA  
40 CFR 142.13(f) – (h) 44

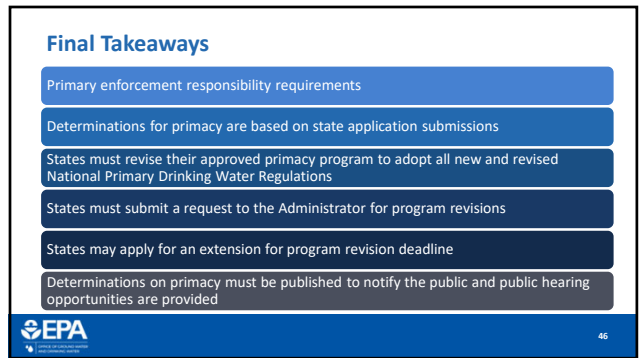
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**CONCLUSION**

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**Final Takeaways**

- Primary enforcement responsibility requirements
- Determinations for primacy are based on state application submissions
- States must revise their approved primacy program to adopt all new and revised National Primary Drinking Water Regulations
- States must submit a request to the Administrator for program revisions
- States may apply for an extension for program revision deadline
- Determinations on primacy must be published to notify the public and public hearing opportunities are provided

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**Any Questions?**

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