



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

WSG# 215
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OFFICE OF WATER

MEMORANDUM

SUBJECT: Implementation of the Safe Drinking Water Act (SDWA) Public Water System Supervision (PWSS) Program

FROM: Jennifer L. McLain, Director
Office of Ground Water and Drinking Water

TO: Water Division Directors
Regions 1-10

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The purpose of this memorandum is to describe the national drinking water program's implementation of the Public Water System Supervision (PWSS) program under the Safe Drinking Water Act (SDWA), including complementary roles and responsibilities between the Office of Water (OW) and regional Water Divisions. The PWSS program serves as a core of EPA's implementation of SDWA, and successful implementation of this program helps to achieve EPA's long-term performance goal to reduce the number of community water systems out of compliance with health-based standards. Our work directly supports the Administration's national priorities relating to: environmental justice and equity by ensuring that *all* Americans receive water that is affordable and safe to drink; building back our nation's economy, whose communities and businesses depend on safe, reliable drinking water supplies; and, mitigating the effects of climate change by ensuring that public water systems have the technical, managerial, and financial capacity to provide safe drinking water well into the future.

As described in the OW National Program Guidance,¹ EPA's national drinking water program actively collaborates with states, territories and tribes by providing oversight and support to primacy agencies and to the nation's public water systems to strengthen public health protection nationwide. There have been many recent changes that affect the responsibilities and resources of OW and regional Water Divisions, including regional organization changes and competing workload demands from new requirements in the Water Infrastructure Improvements for the Nation Act and the America's Water Infrastructure Act. Thus, it is critical to describe the requirements for implementing the PWSS program and clarify roles for important program collaboration opportunities such as the Drinking Water National Compliance Initiative (NCI). A clear understanding of program needs, and core program requirements can ensure the success of the PWSS program and serve as a foundation for considering resource needs and priorities in OW and regional Water Divisions.

¹ <https://www.epa.gov/planandbudget/national-program-guidances>

Through collaboration, OW and regional Water Divisions will work to consistently support and improve implementation of the PWSS program. There are many activities that are central to the PWSS program. This memorandum provides an overview of these but does not catalogue individual activities. Specific topics included in the attachment to this memorandum are as follows:

- 1) Direct implementation programs
- 2) Approval of state primacy
- 3) Technical assistance and training for states and systems
- 4) Operator certification and capacity development
- 5) Oversight responsibilities of approved drinking water programs

All aspects of the PWSS program's work require collaboration and coordination with other water programs. The Drinking Water State Revolving Fund (DWSRF), source water protection, water security, laboratory services, and water enforcement programs all play critical roles in protecting public health and supporting primacy agencies and systems in delivering safe drinking water to the American public. Source water protection and water security include preventative programs that increase system sustainability and drinking water protection. The DWSRF and water enforcement programs bring valuable tools that can help systems achieve and maintain compliance with national primary drinking water regulations.

The collaborative approaches outlined in this memorandum are intended to provide certainty for OW and regional Water Divisions on PWSS activities and program implementation. It is important to note that while the general roles and responsibilities outlined in the memorandum make up the fundamental activities of the national PWSS program, there are many related activities that also support public health protection and safe drinking water. Within this program there are opportunities for continual improvement to meet the needs of the regulated community and the public. OW will continue to work with regional Water Divisions, the Office of Enforcement and Compliance Assurance, regional Enforcement and Compliance Assurance Divisions, states, territories, tribes, systems and the water sector to implement the PWSS program and to support and improve the program.

Please share this memorandum with your drinking water staff. Questions may be directed to Anita Thompkins at (202) 564-5673.

Attachment

ATTACHMENT: PWSS IMPLEMENTATION ACTIVITIES

SDWA allows states, territories and tribes² to apply for primary implementation and enforcement authority for drinking water laws and regulations³. Core to the implementation effort is the PWSS program which plays a critical role in protecting public health by ensuring that safe drinking water is provided to the public. To meet EPA's 2018-2022 Strategic Plan⁴ objective 1.2 to provide clean and safe water, OW and regional Water Divisions are working to reduce the number of community water systems (CWS) out of compliance with health-based standards, with a focus on reducing the number of CWS that have been in non-compliance since 2017. As the primary implementors of SDWA, states are an important partner in helping to achieve these goals, and EPA must work closely with them through the activities outlined in this memorandum. The combined efforts of EPA and states in implementing the PWSS program and achieving the related output measures as documented below will be viewed through this key outcome measure.

OW and regional Water Divisions have developed health-based action plans to facilitate appropriate PWSS actions intended to lower the number of health-based violations. These plans are shared on the Drinking Water Protection Division (DWPD) intranet site,⁵ and the expectations are that these plans be reviewed annually and updated as appropriate. To facilitate reporting and evaluation of health-based violations, the DWPD Infrastructure Branch, as well as some regional Water Divisions, have developed a set of data reporting and mapping tools to evaluate compliance for specific states or rules.⁶ These data, and the on-the-ground knowledge of regional Water Divisions and states, inform where to focus resources and tools, such as DWSRF funding and enforcement activities.

In order to accomplish the goals of the PWSS program, reduce the number of health-based violations and ensure safe drinking water for the American public, the PWSS program encourages collaboration and fosters coordination with other drinking water programs, and support and engagement at the staff and management levels is critical to the success of such collaboration. The PWSS program must understand how and where DWSRF projects are being funded and help to ensure CWSs with critical compliance challenges, such as continuing health-based violations that require infrastructure improvements, are referred to the DWSRF program to inform funding decisions.

In some cases, enforcement and compliance assurance tools such as inspections can be valuable in identifying health-based violations and moving systems to compliance. A key supporting effort is the recently established National Compliance Initiative (NCI) focused on Reducing Noncompliance with Drinking Water Standards at Community Water Systems.⁷ This is a joint effort of the Office of Enforcement and Compliance Assurance (OECA) and OW with involvement from regional Water Divisions and Enforcement and Compliance Assurance Divisions (ECADs). Goal 1 of the NCI is to ensure clean and safe water by improving compliance at CWS regulated under SDWA, and Measure 1.1

² Here after referred to as state; this also includes direct implementation by EPA.

³ Here after referred to as primacy.

⁴ <https://www.epa.gov/sites/production/files/2018-08/documents/fy-2018-2022-epa-strategic-plan-print.pdf>

⁵ <https://usepa.sharepoint.com/sites/OW/OGWDW/dwprd/SitePages/Home.aspx>

⁶ <https://obiproduction.epa.gov/analytics/saw.dll?Dashboard>

⁷ <https://www.epa.gov/enforcement/national-compliance-initiative-reducing-noncompliance-drinking-water-standards-community>

is EPA's strategic measure to reduce the number of CWSs out of compliance with health-based standards. These efforts are complementary, and the regional Water Division health-based action plans and the regional ECAD NCI regional action plans are coordinated at the national and regional level. The NCI also includes additional goals and measures that, when taken together, will help improve SDWA compliance and ensure public health protection.

DIRECT IMPLEMENTATION PROGRAMS

Regional Water Divisions are responsible for maintaining a well-trained staff with sufficient capacity to completely implement all National Primary Drinking Water Regulations (NPDWRs) in jurisdictions without primacy. The role of the regional Water Division Direct Implementation (DI) PWS programs is to implement the program in a manner consistent with what EPA expects from approved programs (see the section below, Oversight Responsibilities of Approved Drinking Water Programs, for additional information). In addition to the PWSs located in tribes, territories and states that have not been granted PWS primacy, the PWSs overseen by the regional DI programs include those regulated under the Aircraft Drinking Water Rule (ADWR).

Regional DI programs coordinate with PWSs on NPDWR requirements, perform sanitary surveys, implement capacity development and operator certification programs, ensure comprehensive implementation of NPDWRs, issue appropriate violations, and provide technical assistance to return systems to compliance. A critical component to the regional DI programs is supporting OW's measure for reducing the number of CWSs with health-based violations. Fundamental to implementation is coordination with regional ECADs to ensure appropriate enforcement actions are taken. Continued engagement with PWSs is critical to support compliance, including those systems with a formal enforcement action. Regional DI programs must maintain official records for violations, assessments and surveys, and communications with PWSs. This record supports enforcement actions and represents official communications that are subject to EPA record retention requirements. Regional Water Divisions must also maintain accurate data systems and submit timely quarterly updates to the Safe Drinking Water Information System Federal Version (SDWIS/Fed) for PWSs other than those regulated under ADWR.

OW provides funds to support regional tribal DI programs. Ensuring safe drinking water for tribes is a collaborative effort supported by tribal organizations, federal agencies, and technical assistance providers. Regional DI programs are responsible for coordinating with these stakeholders to ensure tribes receive appropriate support and to ensure effective use of limited resources. OW also provides funds to support tribal PWS infrastructure through the Drinking Water Infrastructure Grant – Tribal Set-Aside. Regional DI programs coordinate with other EPA regional programs and federal agencies to identify infrastructure needs and process grants to achieve and maintain compliance with NPDWRs.

In addition to DI of the PWS program, regional offices also have responsibility for laboratory certification. Regional offices have been delegated the authority to certify laboratories conducting analytical measurement of drinking water contaminants and to certify the state official responsible for the state's certification program in accordance with SDWA §§1401(1)(D) and 1413. Regionally this may be further delegated to the Water Divisions or the Laboratory Services and Applied Science Divisions who annually evaluate the state's laboratories.

APPROVAL OF STATE PRIMACY

Pursuant to SDWA §1413(a)(1), State Primary Enforcement Responsibility, and 40 CFR §142.12, Revision of State Programs, complete and final requests for approval to adopt new or revised NPDWRs must be submitted to the Administrator no later than two years after promulgation. The Administrator may grant additional time, up to two years, to submit a primacy revision application package (primacy package). The state must submit adequate documentation to determine that the extension request is necessary and justified. Interim primary enforcement authority (interim primacy) for the new or revised regulation may be granted to a state who already has primacy under all existing regulations once they submit a complete new or final revised rule package of their adopted regulation [SDWA §1413(c) and 40 CFR §142.13(e)]. Once EPA approves the new or revised regulation [SDWA §1413(b)(2)], the state is considered to have primacy over the new or revised regulation. Until such time that the application is received and the state is granted interim primacy, or the state regulation is approved, EPA has responsibility for implementation.

When the state submits a complete and final primacy package to EPA for review and approval [40 CFR §142.12(a)-(e)] it must contain the information listed below in complete and final form, in accordance with any tentative determination EPA may have issued. Statutory requirements for a state to obtain primacy for each drinking water rule are defined in SDWA §1413. EPA must determine that the primacy agency has adopted drinking water regulations no less stringent than the federal regulation; has adequate procedures for enforcement of the drinking water rule; will meet EPA reporting and recordkeeping requirements; will grant any variances and exemptions from drinking water rules consistent with SDWA; has adopted and can implement plans for provision of safe drinking water under emergency circumstances; and has adequate authority to issue administrative penalties for noncompliance. The 2018 America's Water Infrastructure Act (AWIA) added the requirement that the primacy agency has adopted and is implementing procedures for mandating water system restructuring assessments, which will become effective upon the effective date of regulations issued under SDWA §1414(h)(6). The Administrator, delegated to the Director of Office of Ground Water and Drinking Water (OGWDW), shall act on a state's request for approval of a program revision within 90 days after determining that the state request is complete and final and shall promptly notify the state of his/her determination. Following review of a complete new or revised final primacy package, submitted by each region, the OGWDW Director may delegate review of future state primacy packages to the regional Water Division.

The above elements of primacy that are described in more detail below constitute a complete submission for a primacy revision application package.

- The State Primacy Revision Checklist (40 CFR §142.10).
- Text of the State's Regulation.
- Primacy Revision Crosswalk.
- State Reporting and Recordkeeping (40 CFR §142.14 and §142.15).
- Special Primacy Requirements (40 CFR §142.16).
- Attorney General's Statement of Enforceability (40 CFR §142.11).

The first section of the application is the State Primacy Revision Checklist. This is a checklist of documentation and authorities necessary for primacy. The Checklist identifies which elements have not changed as a result of the program revision. If an element has been revised, the state should indicate a "Yes" answer in the second column next to the list of program elements and should submit appropriate

documentation. During the application review process, EPA will insert findings and comments in the third column.

Each application will include a section that provides text of the state's regulations to be referenced by EPA during the application review process. The state must be able to demonstrate their regulations are at least as stringent as Federal Regulations. To ensure stringency, the state's application package must include a side-by-side comparison of state and Federal requirements. The primacy revision crosswalk is a tool used to identify state provisions that correspond to each Federal requirement. If the state's provisions differ from Federal requirements, the state should explain how its requirements are "no less stringent." In addition to the side-by-side comparison of the regulatory requirements, the crosswalk has two additional sections. The state can use the reporting and recordkeeping section of the crosswalk to explain how state reporting and recordkeeping requirements are consistent with Federal requirements. If state requirements are inconsistent with Federal requirements, the state must explain how its requirements are "no less stringent" as per 40 CFR §142.10. The crosswalk must also detail the special primacy requirements outlined in 40 CFR §142.16 for each new or revised regulation.

The final section of the primacy revision application must include an Attorney General statement certifying that the state regulations have been duly adopted and are enforceable. The Attorney General statement should also certify that the state does not have any audit privilege or immunity laws, or if it has such laws, that these laws do not prevent the state from meeting SDWA requirements. If a state has submitted this certification with a previous revision package, then the state should indicate the date of submission and the Attorney General need only certify that the status of the audit laws has not changed.

TECHNICAL ASSISTANCE AND TRAINING FOR STATES AND SYSTEMS

Training and technical assistance (TA) for states and systems is an important program area for both regional Water Divisions and OW. To support this effort OW posts national webinar training events⁸ and emails webinar announcements to a national distribution list. OW has also developed a drinking water training system to provides basic training on the federal requirements of the NPDWRs.⁹ OW works with regional Water Divisions to conduct in-person, rule-specific trainings each year. In addition, through the Small Systems Training and Technical Assistance grants, OW funds TA providers, e.g., National Rural Water Association (NRWA) and Rural Community Assistance Partnership (RCAP), to work with states to identify and assist PWSs in need of training and TA.

Regional Water Division staff provide input to the TA providers, including the Indian Health Service, on workplans for tribal systems and assist with state engagement with the grantees. Regional Water Divisions provide TA and training to states and water systems through webinars, meetings, site visits, and direct one-on-one interactions. Both training and TA are critical for helping systems maintain compliance. For this reason, OW and regional Water Divisions track training provided to strengthen technical, managerial and financial capacity of drinking water systems (submeasure metric id 501.2). Further, these efforts are also important countermeasures for reducing number of systems with health-based violations.

⁸ <https://www.epa.gov/dwreginfo/drinking-water-training>

⁹ https://cfpub.epa.gov/epa_dwts/dsp_welcome.cfm

The Area Wide Optimization Program (AWOP) is an example of an important training tool that EPA provides. The AWOP is currently used in six EPA regions and 29 states.¹⁰ The AWOP program is led by OW with regional Water Division staff support. States that participate use the AWOP tools and approaches to help drinking water systems meet water quality optimization goals and provide an increased level of public health protection to their customers. The AWOP tools can also be utilized to provide compliance assistance through optimization, particularly for small- and medium-sized systems, as such this effort can be funded through the capacity development program (see next section). The AWOP program teaches problem-solving skills designed to improve operations at drinking water systems without costly capital improvements. The optimization goals go beyond regulatory requirements and state participation in AWOP is voluntary.

Another notable area of training and TA provided by regional Water Divisions to states is data management. Regional Water Divisions work closely with their states on data management issues to ensure that drinking water data is loaded quarterly to SDWIS/Fed. Ensuring the proper flow of state drinking water data is critical for oversight (see section below) and allows for national data analysis to ensure that the training and TA provided target those areas of greatest concern.

OPERATOR CERTIFICATION AND CAPACITY DEVELOPMENT PROGRAMS

The operator certification and capacity development programs were established in §1419 and §1420 of SDWA as part of the 1996 Amendments. These programs are critical for preventing compliance issues and maintaining robust public health protections. EPA has oversight responsibilities to ensure that states are running effective operator certification programs and implementing their capacity development strategies. SDWA mandates that EPA withhold 20 percent of the state's DWSRF capitalization grant unless the Agency determines that the state is sufficiently implementing these programs.¹¹ OW is responsible for leading efforts to coordinate nationally between the operator certification, the capacity development and the DWSRF programs. Success in national oversight requires close coordination and cooperation among OW, regional Water Divisions and states.

Effective state operator certification programs work to ensure that water system operators within their states are properly trained and qualified to operate their system. To do this, states are required to follow the *Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems*¹² and must meet the Nine Baseline Standards in the guidelines. To ensure consistent national oversight, an OW and regional workgroup developed the Desk Guide for Reviewing State Operator Certification Annual Reports.¹³ This tool is designed to support the regional operator certification coordinators' reviews of the annual operator certification reports in a nationally consistent manner. This review helps provide Regional Administrators and Division Directors the information needed to make decisions regarding the mandatory withholding of state DWSRF capitalization grants. In addition, regional operator certification coordinators also serve as a resource to the state operator certification coordinators within their region, provide support to the states, and disseminate EPA resources, tools, and trainings to their state coordinators.

¹⁰ <https://www.epa.gov/dwstandardsregulations/optimization-program-drinking-water-systems>

¹¹ Each program has a mandatory 20 percent withholding, so if a state was not implementing either program, EPA would be required under SDWA to withhold a total of 40 percent of the DWSRF capitalization grant.

¹² 64 FR 5916

¹³ <https://www.epa.gov/dwcapacity/desk-guide-reviewing-state-operator-certification-annual-reports>

Regional capacity development coordinators review the states' annual reports and triennial Reports to the Governor to assess the effectiveness and implementation of the program. The *Reporting Criteria for Annual State Capacity Development Program Implementation Reports* memorandum¹⁴ provides criteria to guide and assist states in development of these reports. The criteria also help regional capacity development coordinators maintain uniformity when assessing states' capacity development program implementation. In addition, at least once per year, the regional coordinators report the implementation status of the state capacity development program to the Regional Administrator or, if the authority has been redelegated, Regional Water Division Director. The Regional Administrator or Division Director must make the determination whether or not to withhold DWSRF capitalization grant funding. Regional capacity development coordinators also serve as a resource to the state capacity development coordinators within their region, provide support to the states, and disseminate EPA resources, tools and trainings to their state coordinators.

Capacity development is the process through which water systems acquire and maintain the TMF capabilities necessary to continuously provide safe, reliable drinking water. SDWA's capacity development provisions provide a framework for states and water systems to work together to build capacity and meet SDWA public health protection objectives. States should be in a continuous cycle of development, implementation, observation and revision of their capacity development strategies. Regional coordinators serve as a resource for states during this process and review and approve any changes to the strategy after OW has reviewed at least one state strategy revision, similar to the primacy package approval process described above.

AWIA §2012 requires state drinking water programs to consider and include, as appropriate, asset management into their state capacity development strategies. Consistent with this statutory change, state drinking water programs are expected to revise their capacity development strategies to include a description of how asset management will be promoted through addressing the five-core-question framework of asset management explained in the *Implementation of Capacity Development Program – Related Safe Drinking Water Act Amendments in the America's Water Infrastructure Act* memorandum.¹⁵ EPA will apply the statutorily required 20 percent withholding to the fiscal year 2023 capitalization grant of any state that does not have their revised capacity development strategy approved by their EPA regional Water Division.

In response to the Office of Inspector General's September 2003 "Impact of EPA and State Drinking Water Capacity Development Efforts Uncertain" report,¹⁶ OW developed the Capacity Development Performance Enhancement Tool (CD Tracker) to help assess the performance of the capacity development program on a national level. CD Tracker is a tool that contains data from states' Annual Capacity Development Reports. OW provides an "Annual Regional Capacity Development Program Evaluation" template to each regional coordinator for updating by March 31st of that year. OW will upload this information into the CD Tracker database that is available on the Capacity Development and

¹⁴ <https://www.epa.gov/sites/production/files/2015-04/documents/reportcriteriacapacitydevelopment.pdf>

¹⁵ https://www.epa.gov/sites/production/files/2019-12/documents/awia_sec_2012_reflections_memo_508.pdf

¹⁶ <https://www.epa.gov/office-inspector-general/report-impact-epa-and-state-drinking-water-capacity-development-efforts>

Operator Certification Regional Coordinators SharePoint site.¹⁷ OW, regional Water Divisions and states will continue to work together to share best practices and trends identified in annual and triennial Capacity Development reports.

OVERSIGHT RESPONSIBILITIES OF APPROVED DRINKING WATER PROGRAMS

EPA has the authority and responsibility to conduct oversight of the drinking water primacy agencies. This oversight responsibility is most clearly stated in 40 CFR §142.17, review of state programs and procedures for withdrawal of approved primacy programs. Oversight should evaluate the capacity of the state program, areas where the program is successfully implemented, and areas where additional support or new approaches are needed.

Beyond this regulatory requirement, EPA and states must collaborate to implement SDWA and ensure safe drinking water for the American public. OW and regional Water Divisions have worked together with the states to develop tools and guidance to ensure that states are implementing strong programs and that national and regional oversight is conducted in a consistent manner. The goals for collaborative oversight of drinking water programs are to:

Increase Effectiveness of SDWA Implementation: Generate a deeper understanding of the state and EPA roles under SDWA through a common set of shared goals and vision for providing safe drinking water.

Support Successful Implementation of SDWA: EPA collaborates with states to understand the programs and approaches states use to meet the objectives of SDWA to protect public health, to recognize successes and to recommend areas for improvement.

Document Programmatic Integration: Describe how states are integrating aspects of SDWA framework to help ensure that public water systems provide safe water.

Identify Lessons Learned: Recognize best practices and provide a platform to share information, develop training and provide technical assistance to address challenges.

To achieve these goals, collaborative oversight of drinking water programs utilizes four elements, described in more detail below, that provide complementary approaches:

- *Annual Drinking Water Program Reviews* to provide an evaluation of the management of state programs.
- *Annual Grant Workplan Reviews* to ensure that PWSS grant funds will be expended in a manner consistent with SDWA and with EPA regulations and guidance.
- *File Reviews* to provide a data audit of the state's compliance determinations as it pertains to NPDWRs.
- *In-Depth Analyses* to evaluate the national implementation of specific aspects of SDWA and to share best practices based on the evaluation.

¹⁷ <https://usepa.sharepoint.com/sites/OW/DWPB/SST/capacitydevelopment/Shared%20Documents/Forms/AllItems.aspx?viewpath=%2Fsites%2FOW%2FDWPB%2FSST%2Fcapacitydevelopment%2FShared%20Documents%2FForms%2FAllItems.aspx>

These four elements of collaborative oversight are consistent with EPA's first comprehensive policy on oversight of programs implemented by states¹⁸ and recent EPA principles and best practices for oversight of federal program.¹⁹ In addition, the approaches presented help to address EPA Office of Inspector General's (OIG) continued call for EPA to improve oversight of states, territories and tribes authorized to accomplish environmental goals.²⁰

Because of the importance of both implementation and enforcement in the success of the PWSS program, many oversight efforts can benefit from close coordination with OECA and regional ECADs. Efforts such as the NCI, as discussed previously, and drinking water enforcement reviews are two closely aligned areas. The drinking water enforcement review is an assessment of the enforcement component of a drinking water program led by regional ECADs. Such a review examines whether the state is taking appropriate and timely actions to address violations, properly escalating enforcement and ensuring a facility's return to compliance. The review is a periodic, retrospective review using common measures to evaluate questions associated with state enforcement. Enforcement reviews are a developing tool, and efforts are underway to institutionalize this review through a multi-year pilot process in order to provide a nationally consistent framework.

Program and enforcement staff should coordinate as these different, but closely aligned and related, activities are undertaken. Such coordination can reduce burden, avoid duplication and improve the oversight of state PWSS Programs. For example, insights from File Reviews can help regional ECADs focus on the enforcement response associated with particular PWSs, and annual program reviews and/or file reviews should include follow up on findings derived from enforcement reviews and/or inspections. Whether undertaken jointly or sequentially, these tools can improve the Agency's oversight and ultimately the performance of drinking water programs.

Annual Drinking Water Program Reviews

The goal of the annual drinking water program review is to provide an assessment of the core program elements of SDWA implementation for a given state. EPA regional Water Divisions are responsible for developing this report with the objective of providing a narrative on how each state is achieving its programmatic targets and goals.

EPA uses existing reports and metrics to generate this management level summary of the state program. This review will document how the state integrates the SDWA framework (DWSRF, Capacity Development, Operator Certification, and PWSS) and progress towards any areas identified for improvement in previous program reviews or file reviews, along with discussing the state's approach to drinking water enforcement and data management. This review complements existing oversight processes regional Water Divisions currently implement and documents oversight necessary for addressing the regulatory requirements of 40 CFR §142.17 on an annual basis, as well as identifying areas for improvement for both the state and EPA.

¹⁸ Memorandum from William D. Ruckelshaus, Administrator, EPA Policy on Oversight of State Delegated Environmental Programs. April 4, 1984.

¹⁹ Memorandum from Andrew R. Wheeler, Administrator, Principles and Best Practices for Oversight of Federal Environmental Programs Implemented by States and Tribes. October 30, 2018.

²⁰ U.S. Environmental Protection Agency, EPA's Fiscal Year 2019 Management Challenges. July 15, 2019. EPA Document 19-N-0235.

Implementation Process:

Annual Program Reviews are expected to be completed for each state on an annual basis. The timing of the review can vary but could be coordinated with the end of the grant reporting year, to ensure the most recent information is available, and to facilitate discussion with the state (see below for discussion of PWSS grant oversight). Reports should be developed using the existing information (e.g., PWSS, Capacity Development and Operator Certification reports, current enforcement targeting tool (ETT) data and performance measures) and shall follow, although is not limited to, the annual program review elements guidance information.²¹ The requirements for the annual program review were developed by the EPA Drinking Water Oversight Workgroup consisting of staff from each regional Water Division and OW.

Completion of the annual program reviews is tracked to ensure that EPA addresses recommendation #1 from the OIG Flint report²² and recommendation #4 from the OIG Public Notice (PN) report.²³ Specifically, OW tracks the Rule Implementation element to ensure that “This review could include a discussion of Lead and Copper Rule (LCR) implementation to ensure that states are monitoring compliance with all LCR requirements, including documenting systems out of compliance with the LCR (OW sub-measure 1.1).” Likewise, for PN, during FY21 and FY22, the annual review shall include a summary of the state’s “steps for review of Tier 3 notices and for citing primacy agencies that do not retain complete public notice (PN) documentation.” Because the annual program reviews are critical to oversight of the national PWSS program, annual completion of these reviews is a national measure. All completed annual reviews must be posted to the collaborative oversight SharePoint site.²⁴

Annual PWSS Grant Workplan

SDWA §1443 establishes grants for states to implement the PWSS program. The PWSS grant regulations under 40 CFR §35.170 clarify that the purpose of the PWSS grants is to carry out PWSS programs, including implementation and enforcement of the drinking water rules. To receive PWSS grant funds, a state not only must obtain primacy, but also must *maintain* primacy,²⁵ a determination that each region must make based on the required primacy review and annual program review (each discussed in sections above). Collectively, EPA and Office of Management and Budget (OMB) grant regulations²⁶ establish requirements for grant workplans and for evaluation of primacy agency performance under grant workplans and comprise the framework for this oversight element.

Implementation Process:

The annual grant workplan and the annual program reviews are complementary elements of regional Water Divisions’ oversight of state PWSS programs. The primary goal of the workplan review/approval is to ensure that states expend their PWSS grant funds for activities that are consistent with the purposes of the grants as defined in 40 CFR §35.170. To achieve this goal, each regional Water Division, as part of its oversight of states, has established and is implementing an annual process for each state in its

²¹ <https://usepa.sharepoint.com/sites/OW/DWPB/ERI/Oversight/Shared%20Documents/Forms/AllItems.aspx>

²² https://www.epa.gov/sites/production/files/2018-07/documents/_epaig_20180719-18-p-0221.pdf

²³ https://www.epa.gov/sites/production/files/2019-09/documents/_epaig_20190925-19-p-0318.pdf

²⁴ <https://usepa.sharepoint.com/sites/OW/DWPB/ERI/Oversight/Shared%20Documents/Forms/AllItems.aspx>

²⁵ 40 CFR §35.178

²⁶ 2 CFR §200 and 2 CFR §1500

jurisdiction. Some regional Water Divisions align the annual drinking water program review process (described above) with the annual grant reporting requirements. In conducting its workplan reviews and approvals, each regional Water Division should ensure that the state PWSS workplan includes only allowable costs, meaning costs deemed necessary and reasonable for the state to implement the PWSS program as defined in SDWA and clarified by 40 CFR §35.170, including the associated program regulations in 40 CFR §§141-143.

To assist regional Water Divisions in carrying out this oversight element, OW plans to collaborate with regional Water Divisions to develop internal guidance to (1) clarify allowable costs of PWSS grants; (2) describe how Regions may ensure that state PWSS grant workplans meet requirements under 40 CFR §35.107; and (3) document other key elements of grant management. In addition, implementation of the guidance would assist OW in meeting OMB requirements for reporting annual goals and measures under the GPRA Modernization Act.

File Reviews

The purpose of a file review is to provide an audit of a state's data record. Specifically, the file review seeks to determine if the state is making appropriate compliance determinations for federal drinking water regulations, and whether the associated data is accurately reported to SDWIS/Fed, the compliance database of record.

The goal is that a file review will be completed for each state every four years. OW is working with regional Water Divisions to develop a National File Review Program Implementation Strategic Plan. Part of that plan includes OW support for development of tools and training to develop and maintain capacity in regional Water Divisions to conduct file reviews and meet a four-year cycle goal. In addition, the plan will identify the support and technical assistance needed by regional Water Divisions to achieve this goal.

Implementation Process:

OW developed data capture forms and a trip tracker to facilitate and ensure national consistency of file reviews. These reviews may be completed by EPA regional Water Divisions, OW staff (e.g., when conducting a review of regional DI programs), or a combination of regional Water Division and OW staff (e.g., when OW staff support a regionally-led file review). When feasible, OW provides staff and contractor support for regional Water Divisions when additional support is needed.

The recommendation is that the file review team receives final responses from the state no more than two weeks from completion of the onsite review. Within two weeks from receiving these answers, the file review team will draft a summary of the findings, using the "File Review Debrief Template," to brief regional management, as well as OW. The file review team would concurrently develop the draft file review report within two weeks of receiving final responses from the state, while the information from the review is still fresh in the team members' minds. The "File Review Report Template" provides the file review team with an easy approach to develop a report quickly and consistently across the country. As resources allow, OW will continue to update and revise the report template to ease the burden associated with developing the report including automation. Updates to any of the file review tools will be shared with the file review workgroup.

Following management review and approval, the report should be shared with the state agency for a 30-day factual accuracy review and comment period. Upon receiving comments from the state, regional Water Division staff would complete the final report within two weeks and route through the management review process. As designed, the overall expectation is that the final file review report would be completed within 10 weeks of the file review. The purpose of this schedule is to provide timely feedback to the state, facilitate prompt implementation of any corrective actions, and fully capture the results of the file review in the report. The reports should include recommended actions for the states to improve any identified issues, and the Annual Program Reviews (discussed above) should be used to discuss the status of these actions. OW requests a copy of the completed file review for both tracking purposes and to identify common national trends that could be the focus for future training and TA efforts.

OW hosts a regular file review workgroup call to inform regions of updates, improvements, and current events related to drinking water file review. Each regional Water Division is encouraged to attend these calls to learn of these updates, as well as to ask questions and provide information on current and upcoming reviews. OW also provides regular training sessions through the workgroup on how to run file reviews from preparation through report writing. The workgroup develops tools to improve the file review process, track state progress, and help ensure that state programs work to address issues identified during the file reviews and continue to improve their PWSS programs. Finally, OW will continue to provide training to regions on conducting file reviews, as well as provide rule training to states and drinking water system personnel, as requested.

In-depth Analysis

The goal of these joint analyses by EPA and our state partners is to identify challenges in implementation of a specific regulation and to share best practices to enhance national implementation of SDWA. An in-depth analysis seeks to identify and address those compliance challenges that result in health-based violations for water systems. EPA and the states work together to understand the root causes of the compliance challenge and identify best practices/lessons learned to share. EPA will further use this information to develop and provide targeted training, technical assistance, and lessons learned guidance to enhance the effectiveness of SDWA programs.

This national effort will be strategic in scope, conducted as a joint effort between EPA and the states, and will serve to enhance EPA/state collaboration. The effort is organized by OW with a regional Water Division lead working with the states. EPA works with the states to select areas for analysis. EPA has completed an analysis of Stage 2 Disinfection Byproducts Rule and consecutive systems and is developing an analysis on the Ground Water Rule.²⁷

Implementation Process:

The in-depth analysis starts with the selection of a proposed topic and some alternatives for discussion with state agencies, for example at an Association of State Drinking Water Administrators (ASDWA) meeting. Topics are selected based on non-compliance with SDWA requirements as reported in SDWIS/Fed. If a topic is agreed to, EPA also seeks state partners to participate in this collaborative effort.

²⁷ <https://www.epa.gov/dwreginfo/diving-regulations>

The in-depth analysis typically involves a national data review to understand the patterns and trends in the data related to the selected regulation, followed by state site visits to understand their process, implementation challenges and to identify lessons learned. Regional Water Division participation is critical in this part of the effort. The last step is a national call for additional lessons learned and best practices which is done in partnership with ASDWA.

OW will compile the information gained through the analysis to develop a report highlighting the challenges, results of the national data analysis, and state best practices. Following the development of the report on this topic, EPA will work to incorporate information gained into training materials and related outreach efforts, all of which will be posted on the in-depth analysis webpage. OW and regional Water Divisions will use the information from the analysis for training and technical assistance to improve rule implementation. The expectation is that an in-depth analysis from beginning to the development of the report should take one year.