



OFFICE OF GROUND WATER AND DRINKING WATER

WASHINGTON, D.C. 20460

November 7, 2024

MEMORANDUM

SUBJECT: Primacy Requirements for Control of Per- and Polyfluoroalkyl Substances National Primary Drinking Water Regulation

FROM: Marietta Echeverria, Director
Drinking Water Capacity & Compliance Assistance Division
Office of Ground Water and Drinking Water

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TO: EPA Regional Water Division Directors

This memorandum provides guidance to primacy agencies under the Safe Drinking Water Act (SDWA) concerning the requirements for the National Primary Drinking Water Regulation (NPDWR) for the Control of Per- and Polyfluoroalkyl Substances (PFAS), 40 CFR 141 Subpart Z. This regulation provides standards for five individual PFAS compounds for PFOA, PFOS, PFHxS, PFNA, HFPO-DA, and for mixtures of two or more of PFNA, PFHxS, HFPO-DA and PFBS. Specifically, this memorandum addresses:

1. PFAS implementation timeline;
2. The requirements for primacy including record keeping and reporting requirements; and
3. Exemptions and extensions.

PFAS NPDWR IMPLEMENTATION TIMELINE

The U.S. EPA published the PFAS NPDWR on April 26, 2024 (89 FR 32532), and corrections on June 11, 2024 (89 FR 49101). The final rule became effective on June 25, 2024. Entities regulated by this action are community water systems (CWSs) and non-transient non-community water systems (NTNCWSs).

Regulated water systems are required to complete their initial monitoring by April 26, 2027. Compliance monitoring begins following this date and systems are to conduct Public Notification (PN) when needed and include PFAS information in the Consumer Confidence Report (CCR) for CWSs. The EPA is exercising its authority under SDWA section 1412(b)(10) to implement a two-year nationwide capital improvement extension to comply with the MCL. All systems must comply with the MCLs by April 26, 2029.

Key Implementation Deadlines and Requirements	
April 26, 2024	PFAS NPDWR published in FR and promulgated. 89 FR 32532. Federal Register Vol. 89, No. 82.
June 25, 2024	The regulations in 40 CFR Part 141, Subpart Z, pertaining to the PFAS chemicals are effective, including analytical requirements. 40 CFR 141.900(b)(1); 40 CFR 141.901(b)(1).
April 27, 2026*	Agencies seeking primacy are required to submit their final program primacy revision package to the EPA or request an extension.
April 26, 2027	Compliance monitoring begins: <ul style="list-style-type: none"> • Initial monitoring or demonstration of previously collected data which satisfies initial monitoring requirements must be completed and provided to the State. 40 CFR 141.900(b)(2). • States must determine the compliance monitoring schedule for regulated systems. • CWSs and NTNCWs must start their ongoing compliance monitoring. 40 CFR 141.900(b)(3). • CWSs and NTNCWs must start issuing public notification for any monitoring and testing procedure violations. • CWSs must include results of their monitoring for the regulated PFAS in their next Consumer Confidence Reports (CCRs).
April 26, 2028	States with an approved primacy application extension submit their final program revision package to the EPA.
April 26, 2029	CWSs and NTNCWs must comply with all regulated PFAS MCLs and must provide public notification for violations of the PFAS MCLs. 40 CFR 141.900(b)(4).

*First business day after the two-year deadline.

REQUIREMENTS FOR PRIMACY

SDWA section 1413(a) establishes requirements for states, Tribes and territories to obtain approval for primary enforcement authority responsibility (primacy) for new or revised NPDWRs. SDWA provides two years for primacy agencies to complete the requirements for primacy which for the PFAS NPDWR will be April 27, 2026. Primacy agencies that meet the criteria in 142.12(b)(2) may request an extension of up to two years. EPA recognizes the workload for submitting primacy applications. EPA is developing primacy materials for the Consumer Confidence Report Rule Revisions and the Lead and Copper Rule Improvements in a timeframe that will allow a primacy agency to bundle the PFAS primacy application with either or both of these rules if they wish to do so.

Primacy agencies that apply for primacy without an extension agreement will need to have the authority to ensure that systems comply with the initial monitoring requirements. If a primacy agency is applying for primacy after the deadline for initial monitoring has passed, then the initial monitoring requirement will no longer be applicable. In that case, an NPDWR is nonetheless applicable to water

systems and implementation would be overseen through the extension agreement and enforced as appropriate by the EPA.

The requirements for the content of a primacy agency program revision are provided in 40 CFR 142.12(c) and include a side-by-side comparison of the Federal requirements and the corresponding State authorities, including citations to the specific statutes and administrative regulations or ordinances. To assist in the development of the primacy application, the EPA has provided a PFAS rule cross walk which is provided as an attachment to this memorandum. Other necessary documentation includes identification of those elements of the approved primacy agency program that have not changed because of the program revision; special primacy requirements provided in 40 CFR 142.16(r); and a statement by the State Attorney General (or the attorney for the State primacy agency if it has independent legal counsel) or the attorney representing the Indian tribe that certifies that the laws and regulations adopted by the State or tribal ordinances to carry out the program revision were duly adopted and are enforceable.

The EPA encourages primacy agencies to submit a preliminary request for primacy containing the information provided above in draft form as soon as possible. As provided under 40 CFR 142.12(d)(1), the preliminary request does not require an Attorney General's statement in draft form. The preliminary request does require draft State statutory or regulatory changes and a side-by-side comparison of State authorities with EPA requirements to demonstrate that the State program revision meets EPA requirements under 40 CFR 142.10. Pursuant to 40 CFR 142.12(d)(3) the EPA must act on the application within 90 days after receipt of a complete and final application package and inform the state in writing of its decision. A final determination by the EPA that a state has met or has not met the requirements for primary enforcement responsibility will take effect in accordance with the public notice requirements and related procedures under 40 CFR 142.13.

As provided under 40 CFR 142.14, primacy agencies must keep records of analytical results to determine compliance, system inventories, sanitary surveys, state approvals, vulnerability and waiver determinations, monitoring requirements, monitoring frequency decisions, enforcement actions, and the issuance of variances and exemptions.

EXEMPTIONS AND EXTENSIONS

As discussed above and upon consideration of information submitted by commenters, the EPA is exercising its authority under SDWA section 1412(b)(10) to implement a nationwide capital improvement extension to comply with the MCLs. All systems must comply with the MCLs by April 26, 2029. All systems must comply with other requirements of the NPDWR, including initial monitoring, by April 26, 2027. As the MCL compliance date is set at five years from rule promulgation, systems must report MCL violations in the CCR, accompanied by the required health effects language and information about violations, starting in 2029. SDWA section 1412(b)(10) does not provide the authority for EPA or a primacy agency to grant an additional two-year extension to comply with the NPDWR's MCL(s).

SDWA section 1416(a) and (b)(2)(C) provide the criteria under which the EPA or states may also grant an exemption for systems meeting specified criteria that provides an additional period for compliance. PWSs that meet the minimum criteria outlined in the SDWA may be eligible for an exemption from the MCLs for up to three years. For smaller water systems ($\leq 3,300$ population), exemptions can provide up to six additional years to achieve compliance with the MCLs. States exercising primacy enforcement responsibility must have adopted the 1998 *Variance and Exemption Regulation* for water systems in those jurisdictions to be eligible for an exemption.

Please share this information on the requirements for PFAS primacy with your primacy agencies. If you have additional questions about requirements for primacy for the PFAS NPDWR, please contact Ed Moriarty at 202-564-3864 (Moriarty.EdwardJ@epa.gov).

ATTACHMENTS

1. National Primary Drinking Water Regulation Crosswalk Control of Per- and Polyfluoroalkyl Substances (PFAS)

cc: Alan Roberson, Executive Director, Association of State Drinking Water Administrators