



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[EPA-HQ-OW-2017-0300; FRL-10021-00-OW]

RIN 2040-AF15

National Primary Drinking Water Regulations: Lead and Copper Rule Revisions; Delay of Effective and Compliance Dates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; delay of effective and compliance dates.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is proposing to delay until December 16, 2021, the effective date of the National Primary Drinking Water Regulations: Lead and Copper Rule Revisions (LCRR), which was published in the *Federal Register* on January 15, 2021. EPA is also proposing to delay the January 16, 2024, compliance date established in the LCRR to September 16, 2024. The proposed delay in the effective date is consistent with presidential directives issued on January 20, 2021, to heads of Federal agencies to review certain regulations, including the LCRR. The delay will allow sufficient time for EPA to complete its review of the rule in accordance with those directives and conduct important consultations with affected parties. The proposed delay in the compliance date of the LCRR ensures that any delay in the effective date will not reduce the time provided for drinking water systems and primacy states to take actions needed to assure compliance with the LCRR.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OW-2017-0300, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov/> (our preferred method).
Follow the online instructions for submitting comments.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Office of Water Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, D.C. 20460.
- Hand Delivery / Courier (by scheduled appointment only): EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, D.C. 20004.
The Docket Center's hours of operations are 8:30 a.m. – 4:30 p.m., Monday – Friday (except Federal holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking.

Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov/> or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Jeffrey Kempic, Office of Ground Water and Drinking Water, Standards and Risk Management Division, at (202) 564-3632 or e-mail kempic.jeffrey@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Purpose of the Regulatory Action

On January 20, 2021, President Biden issued “Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.” (86 FR 7037, January 25, 2021) (“Executive Order 13990”). Section 2 of Executive Order 13990 directs the heads of all agencies to immediately review regulations that may be inconsistent with, or present obstacles to, the policy set forth in Section 1 of Executive Order 13990. In the January 20, 2021 White House “Fact Sheet: List of Agency Actions for Review,” the “National Primary Drinking Water Regulations: Lead and Copper Rule Revisions” (LCRR) is specifically identified as an agency action that will be reviewed in conformance with Executive Order 13990 (<https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/>). Also on January 20, 2021, Ronald A. Klain, the Assistant to the President and Chief of Staff, issued a Memorandum for the Heads of Executive Departments and Agencies entitled, “Regulatory Freeze Pending Review” (White House memorandum) (86 FR 7424, January 28, 2021); the memorandum directs agencies to consider postponing the effective date of regulations that have been published in the *Federal Register*, but have not taken effect, for the purpose of reviewing any questions of fact, law, and policy the rules may raise. In addition, the LCRR has been challenged in court by the Natural Resources Defense Council, Newburgh Clean Water Project, NAACP, Sierra Club, United Parents Against Lead and the Attorneys General of New York, California, Illinois, Maryland, Minnesota, New Jersey, Oregon, Pennsylvania, Wisconsin, and the District of Columbia. Those cases have been consolidated in *Newburgh Clean Water Project, et al., v EPA*, No. 21-1019 (D.C. Cir.). EPA also received a letter on March 4, 2021 from 36 organizations and five individuals requesting that EPA suspend the March 16, 2021 effective date of the LCRR to review the rule and initiate a new rulemaking. EPA also received a letter on February 4, 2021 from the American Water Works Association requesting that EPA not delay the rule.

Consistent with Executive order 13990 and the White House memorandum, EPA has decided to review the LCRR, which was published in the *Federal Register* on January 15, 2021.

The Agency is simultaneously publishing, in the “Final Rules” section of this issue of the *Federal Register*, a final rule providing for a short delay of the LCRR’s effective date to June 17, 2021, while EPA seeks comment on this proposal to extend the effective date further to December 16, 2021. The purpose of an extension of the effective date to December 16, 2021, is to allow EPA to conduct a review of the LCRR and consult with stakeholders, including those who have been historically underserved by, or subject to discrimination in, Federal policies and programs prior to the LCRR going into effect. The LCRR made extensive and significant changes to the existing regulatory requirements, involving complex factual, legal, and policy issues. This proposed extension of the effective date would allow EPA adequate time to conduct a thorough review of this complex set of requirements to assess whether the LCRR is inconsistent with, or presents obstacles to, the policy set forth in Section 1 of the Executive Order 13990, and to consult with stakeholders in that review prior to the rule going into effect.

The LCRR’s effective date (when the rule is codified into the *Code of Federal Regulations*) is different from the compliance date. Section 1412(b)(10) of the Safe Drinking Water Act specifies that drinking water regulations shall generally take effect (i.e., require compliance) three years after the date the regulation is promulgated. This 3-year period is used by states to adopt laws and regulations in order to obtain primary enforcement responsibility for the rule and by water systems to take any necessary actions to meet the compliance deadlines in the rule. EPA is also proposing to extend the January 16, 2024, compliance dates in the LCRR by nine months to September 16, 2024, to correspond to the proposed delay in the effective date (nine months from the original effective date of March 16, 2021). This proposed extension would have the effect of maintaining the same time period between the effective date and the compliance date in the LCRR that was published on January 15, 2021. EPA expects that the duration of the compliance date extension would provide drinking water systems with adequate time to take actions needed to assure compliance with the LCRR after it takes effect. It should

also provide states with primary enforcement responsibility adequate time to revise their primacy program in light of EPA's final LCRR.

Importance of EPA's review of the LCRR for protection of public health.

The impact of lead exposure, including through drinking water, is a public health issue of paramount importance and its adverse effects on children and the general population are serious and well known. For example, exposure to lead is known to present serious health risks to the brain and nervous system of children. Lead exposure causes damage to the brain and kidneys and can interfere with the production of red blood cells that carry oxygen to all parts of the body. Lead has acute and chronic impacts on the body. The most robustly studied and most susceptible subpopulations are the developing fetus, infants, and young children. Even low level lead exposure is of particular concern to children because their growing bodies absorb more lead than adults do, and their brains and nervous systems are more sensitive to the damaging effects of lead. EPA estimates that drinking water can make up 20 percent or more of a person's total exposure to lead. Infants who consume mostly formula mixed with tap water can, depending on the level of lead in the system and other sources of lead in the home, receive 40 percent to 60 percent of their exposure to lead from drinking water used in the formula. Scientists have linked lead's effects on the brain with lowered intelligence quotient (IQ) and attention disorders in children. Young children and infants are particularly vulnerable to lead because the physical and behavioral effects of lead occur at lower exposure levels in children than in adults. During pregnancy, lead exposure may affect prenatal brain development. Lead is stored in the bones and it can be released later in life. Even at low levels of lead in blood, there is an increased risk of health effects in children (e.g., less than 5 micrograms per deciliter) and adults (e.g., less than 10 micrograms per deciliter).

The 2013 Integrated Science Assessment for Lead and the HHS National Toxicology Program Monograph on Health Effects of Low-Level Lead have both documented the association between lead and adverse cardiovascular effects, renal effects, reproductive effects,

immunological effects, neurological effects, and cancer. EPA's Integrated Risk Information System (IRIS) Chemical Assessment Summary provides additional health effects information on lead.

Because of disparities in the quality of housing, community economic status, and access to medical care, lead in drinking water (and other media) disproportionately affects lower-income people. Minority and low-income children are more likely to live in proximity to lead-emitting industries and to live in urban areas, which are more likely to have contaminated soils, contributing to their overall exposure. Additionally, non-Hispanic black individuals are more than twice as likely as non-Hispanic whites to live in moderately or severely substandard housing which is more likely to present risks from deteriorating lead based paint. The disparate impacts for low-income and minority populations may be exacerbated because of their more limited resources for remediating the sources of lead such as lead service lines.

For example, stakeholders have raised concerns that to the extent water systems rely on homeowners to pay for replacement of privately owned portions of lines, lower-income homeowners will be unable to replace lines, resulting in disparate levels of protection. Moreover, the crisis in Flint, Michigan, has brought increased attention to the challenge of lead in drinking water systems across the country.

Given the paramount significance to the public's health for ensuring that lead in drinking water is adequately addressed under the Safe Drinking Water Act, and the concerns raised by litigants and other stakeholders about the LCRR, it is critically important that EPA's review of the LCRR be deliberate and have the benefit of meaningful engagement with the affected public, including underserved communities disproportionately affected by exposure to lead.

In conducting its review, EPA will carefully consider the concerns raised by stakeholders, including disadvantaged communities that have been disproportionately impacted, states that administer national primary drinking water regulations, consumer and environmental

organizations, water systems and other organizations. There is a wide range of stakeholder views regarding the LCRR; some argue that it does not sufficiently protect the public health while others raise concerns that the rule imposes burdens that states and water systems do not have the resources to address. For example, a primary source of lead exposure in drinking water is lead service lines. Stakeholders have raised concerns that despite the significance of this source of lead, the LCRR fails to require, or create adequate incentives, for public water systems to replace all of their service lines. In addition, stakeholders have raised concerns that portions of many lead service lines are privately owned and disadvantaged homeowners may not be able to afford the cost of replacing their portion of the lead service line and may not have this significant source of lead exposure removed if their water system does not provide financial assistance. Other stakeholders have raised concerns regarding the significant costs public water systems and communities would face to replace all lead service lines. Based upon information from the Economic Analysis for the Final Lead and Copper Rule, EPA estimates that there are between 6.3 and 9.3 million lead service lines nationally and the cost of replacing all of these lines is between \$25 and \$56 billion.

Another key element of the LCRR relates to requiring public water systems to conduct an inventory of lead service lines so that systems know the scope of the problem, can identify potential sampling locations and can communicate with households that are or may be served by lead service lines to inform them of the actions they may take to reduce their risks. Some stakeholders have raised concerns that the rule's inventory requirements are not sufficiently rigorous to ensure that consumers have access to useful information about the locations of lead service lines in their community. Other stakeholders have raised concerns that water systems do not have accurate records about the composition of privately owned portions of service lines and that have concerns about public water systems publicly releasing information regarding privately owned property.

A core component of the LCRR is maintaining an “action level” of 15 parts per billion (ppb), which serves as a trigger for certain actions by public water systems such as lead service line replacement and public education. The LCRR did not modify the existing lead action level but established a 10 ppb “trigger level” to require public water systems to initiate actions to decrease their lead levels and take proactive steps to remove lead from the distribution system. Some stakeholders support this new trigger level while others argue that EPA has unnecessarily complicated the regulation. Some stakeholders suggest that the Agency should eliminate the new trigger level and instead lower the 15 ppb action level.

Some stakeholders have indicated that the Agency has provided too much flexibility for small water systems and that it is feasible for many of the systems serving 10,000 or fewer customers to take more actions to reduce drinking water lead levels than required under the LCRR. Other stakeholders have highlighted the limited technical, managerial, and financial capacity of small water systems and support the flexibilities provided by the LCRR to all of these small systems.

Stakeholders have divergent views of the school and childcare sampling provisions of the LCRR; some believe that the sampling should be more extensive, while others do not believe that community water systems should be responsible for it and that such a program would be more effectively carried out by the school and childcare facilities.

Finally, some stakeholders have expressed concerns that the Agency did not provide adequate opportunities for a public hearing and did not provide a complete or reliable evaluation of the costs and benefits of the proposed LCRR.

The significant issues identified by stakeholders warrant careful and considerate review of the rule, as well as relief from the compliance deadlines as EPA considers the issues raised by stakeholders and litigants. After publication of a final national primary drinking water rule, states and water systems commence activities to achieve compliance with the rule by the deadline

established in the LCRR based on the requirements of Section 1412(b)(10) of SDWA. States will undertake actions to obtain primacy to implement the regulations and water systems will begin the actions to prepare lead service line inventories, and as appropriate to prepare lead service line replacement plans. The postponement of compliance dates through this action is intended as a stopgap measure to prevent the unnecessary expenditure of resources by water systems and states on those efforts until EPA completes its review of the LCRR and can provide some certainty that the LCRR requirements will not be changed. Without a delay in the effective date of the rule, regulated entities may make decisions and spend scarce resources on compliance obligations that could change at the end of EPA's review period.

Section 1412(b)(9) of the Safe Drinking Water Act authorizes EPA to review and revise national primary drinking water rules "as appropriate" and directs that any revision "shall maintain, or provide for greater, protection of the health of persons." 42 U.S.C. 300g-1(b)(9). This proposed delay is consistent with EPA's exercise of this discretionary authority to revise its drinking water rules. As noted above, some stakeholders have raised questions about the lead service line replacement requirements and the small system flexibility requirements, including whether they are consistent with the "anti-backsliding" standard in section 1412(b)(9). EPA would evaluate those concerns during its review of the rule.

EPA is requesting public comment on this additional 6-month extension of the June 17, 2021, effective date to December 16, 2021, and the 9-month extension of the current compliance date of January 16, 2024, to September 16, 2024, respectively. EPA will engage with stakeholders during the 9 month review period to evaluate the rule and determine whether to initiate a process to revise components of the rule. If EPA decides it is appropriate to propose revisions to the rule, it will consider whether to further extend compliance dates for those specific obligations.

Specifically, EPA is seeking comment on the duration of the effective date and compliance date extensions and whether the compliance date extension should apply to the entire LCRR or certain components of the final rule. EPA intends to issue a final decision on this proposal prior to the June 17, 2021, effective date promulgated in the “Final Rules” section of this issue of the *Federal Register*.

II. Public Participation

Submit your written comments, identified by Docket ID No. HQ-OW-2017-0300 at <https://www.regulations.gov> (our preferred method), or the other methods identified in the ADDRESSES section. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit to EPA’s docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

EPA is temporarily suspending its Docket Center and Reading Room for public visitors, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov/> as there may be a delay in processing mail and faxes. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please

visit us online at <https://www.epa.gov/dockets>. EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID-19.

III. Statutory and Executive Order Reviews.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This action does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action if finalized would not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This proposed action would not impose any requirements on anyone, including small entities.

D. Unfunded Mandates Reform Act (UMRA)

This proposed action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531—1538. The proposed action would impose no enforceable duty on any State, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This proposed action does not have federalism implications. It would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This proposed action does not have tribal implications as specified in Executive Order 13175. This proposed action is not subject to Executive Order 13175 because it would not have a substantial direct effect on tribes or on the relationship between the national government and tribes.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are economically significant, per the definition of “covered regulatory action” in Section 2-202 of the Executive Order. This proposed action is not subject to Executive Order 13045 because the proposed delays of the effective date and the compliance date are not economically significant.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This proposed rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

This proposed action is not subject to Executive Order 12898 (59 Fed 7629, Feb. 16, 1994) because it does not establish an environmental health or safety standard.

Jane Nishida,
Acting Administrator.

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