



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[EPA-HQ-OW-2017-0300; FRL-10024-33-OW]

RIN 2040-AG15

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is delaying 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 delaying the January 16, 2024 compliance date established in the LCRR to October 16, 2024. The delay in the effective date is consistent with presidential directives issued on January 20, 2021, to the 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 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: *Effective date:* This final rule is effective December 16, 2021.

Delayed effective date: As of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], the effective date of the final rule published on January 15, 2021, at 86 FR 4198, and then delayed in a rule published March 12, 2021, at 86 FR 14003, is furthered delayed until December 16, 2021.

Compliance date: The compliance date for the final rule published on January 15, 2021, at 86 FR 4198, is delayed until October 16, 2024.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OW-2017-0300. All documents in the docket are listed on the <https://www.regulations.gov> website.

Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Jeffrey Kempic, Standards and Risk Management Division, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW, Mail Code 4607M, Washington, D.C., 20460; telephone number: (202) 564-4880 (TTY 800-877-8339); email address: kempic.jeffrey@epa.gov. For more information visit <https://www.epa.gov/dwreginfo/lead-and-copper-rule>.

SUPPLEMENTARY INFORMATION:

I. Purpose of the Regulatory Action

On January 15, 2021, EPA published in the *Federal Register* the “National Primary Drinking Water Regulation: Lead and Copper Rule Revisions” (86 FR 4198) (LCRR) with an effective date of March 16, 2021, and a compliance date of January 16, 2024. On January 20, 2021, President Biden issued the “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 1 of Executive Order 13990 states that our nation has an abiding commitment to empower our workers and communities; promote and protect our public health and the environment; and conserve our national treasures and monuments, places that secure our national memory. Where the Federal Government has failed to meet that commitment

in the past, it must advance environmental justice. In carrying out this charge, the Federal Government must be guided by the best science and be protected by processes that ensure the integrity of Federal decision-making. It is, therefore, the policy of the Administration to listen to the science, to improve public health and protect our environment, to ensure access to clean air and water, to limit exposure to dangerous chemicals and pesticides, to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities, to reduce greenhouse gas emissions, to bolster resilience to the impacts of climate change, to restore and expand our national treasures and monuments, and to prioritize both environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals. Section 2 of Executive Order 13990 directs the heads of all Federal 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. The January 20, 2021 White House “Fact Sheet: List of Agency Actions for Review,” identified the LCRR as an agency action to 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/>).

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.

Stakeholders have a range of concerns about the LCRR. 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 lead 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 LCRR'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 lead service lines and also 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 those actions 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 provisions 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.

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 5 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 Memorandum for the Heads of Executive Departments and Agencies titled, “Regulatory Freeze Pending Review” (86 FR 7424, January 28, 2021), EPA decided to review the LCRR. EPA published a final rule on March 12, 2021 (86 FR 14003), which provided for a short delay of the LCRR’s effective date from March 16, 2021 to June 17, 2021, to allow the agency to seek comment on a separate proposal, also published on March 12, 2021 (86 FR 14063), to extend the effective date further to December 16, 2021. EPA explained that the further delay was needed to allow the agency adequate time to conduct a

thorough review of the complex set of LCRR requirements and to assess whether the regulatory changes are inconsistent with, or present obstacles to, the policy set forth in Section 1 of Executive Order 13990, and to 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. In the proposal, EPA also sought comment on an extension of the compliance dates by nine months from January 16, 2024, to September 16, 2024.

The LCRR's effective date (i.e., when the rule is codified into the *Code of Federal Regulations*) is different from the compliance dates. Section 1412(b)(10) of the Safe Drinking Water Act (SDWA) specifies that drinking water regulations shall generally take effect (i.e., require compliance) three years after the date the regulation is promulgated.¹ This 3-year period is used by states to adopt laws and regulations in order to obtain primary enforcement responsibility (primacy) for the rule and by water systems to take any necessary actions to meet the compliance deadlines in the rule. EPA is extending the January 16, 2024 compliance date in the LCRR by nine months to October 16, 2024, to correspond to the delay in the effective date. EPA set the compliance date to October 16, 2024, to be consistent with its intent, described in the proposal, to provide a full nine month delay, to maintain the same time period between the effective date and the compliance date in the LCRR, published on January 15, 2021. EPA expects that the duration of the compliance date extension will provide drinking water systems with adequate time to take actions needed to assure compliance with the LCRR after it takes effect.

EPA recognizes that under Section 1413(a)(1) and 40 CFR 142.12(b), states must submit complete and final requests for approval of program revisions to adopt new or revised EPA regulations not later than two years after promulgation of the LCRR (with the possibility for an

¹ In this action, EPA uses the term "compliance date" to refer to the date water systems must comply with national primary drinking water regulations (referred to as the "effective date" in Section 1412(b)(10) of the SDWA) and the term "effective date" to refer to when the rule is codified into the *Code of Federal Regulations* (see Section 553(d) of the Administrative Procedure Act and 1 CFR 18.17).

extension of up to two years based on certain criteria in EPA's regulations). After completion of the stakeholder engagement process, EPA will consider whether to let the rule take effect on December 16, 2021, with a compliance deadline of October 16, 2024, or whether the agency intends to initiate a new rulemaking to withdraw or modify the LCRR. At that time, EPA and states will have greater clarity with respect to the primary enforcement (primacy) application process and relevant timeframes. If EPA decides to withdraw the LCRR before it takes effect, then there will be no revised regulation that triggers the duty for primacy agencies to submit a program revision to EPA since the previous regulation (i.e., those regulations that are in place until such time that the LCRR takes effect) will remain in effect. If EPA modifies the LCRR, the agency will establish a new deadline for primacy applications as a part of that regulatory action. If EPA decides to make no further changes to the rule, the agency intends to use the date on which EPA announces that decision in the *Federal Register* – no later than December 16, 2021 – as the promulgation date for the LCRR for purposes of the primacy revision application deadline under 40 CFR 142.12(b)(1). Accordingly, EPA recommends that states consider each of these possibilities in their planning and resource allocation decision-making and that states do not submit primacy applications to the agency at this time because EPA is not expecting to begin review of primacy packages until there is more certainty as to the agency's path forward on the LCRR.

II. Importance of EPA's Review of the LCRR for Protection of Public Health

The impact of lead exposure, including from 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 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 Health and Human Services 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

exposure to all sources of environmental lead experienced by low-income and minority populations may be exacerbated because of their more limited resources for remediating lead service lines, which if present in a home, can be a significant source of lead exposure.

For example, stakeholders have raised concerns that, to the extent water systems rely on homeowners to pay for replacement of customer-owned portions of lines, lower-income homeowners may be unable to afford to replace lines, resulting in disparate levels of protection. In addition, a higher incidence of renting among lower-income people may prevent residents from removing lines where the property owner does not consent or finance replacement of the customer-owned portion of the line. Moreover, the crisis in Flint, Michigan, has brought increased attention to the challenge of lead in drinking water systems across the country.

Prior to EPA's actions to delay the effective and compliance dates of the LCRR, litigants and stakeholders had expressed a wide range of concerns about the LCRR's requirements that addressed both the rule's ability to protect public health and the implementation burden that will be placed on systems and states. Specific components of the rule for which concerns have been raised include: the 15 parts per billion (ppb) action level; the 10 ppb trigger level; the lead service line inventory requirements, the lead service line replacement requirements; the flexibility given to small systems; and the sampling of drinking water at schools and child care facilities.

Given the paramount significance to the public's health for ensuring that lead in drinking water is adequately addressed under the SDWA, 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 overburdened and underserved communities disproportionately affected by exposure to lead, prior to the rule going into effect.

III. Summary of Public Comments on the Extension of the Effective and Compliance Dates of the LCRR and EPA's Responses

In the proposed rulemaking, EPA solicited public 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.” A summary of the comments received on the extensions, as well as the agency’s responses is provided in this section.

The majority of commenters expressed support for the delay of the effective and compliance dates of the LCRR. These commenters, representing states, water systems, environmental and public health organizations, provided a number of reasons for their support as well as suggestions for how EPA should utilize the additional time. Commenters indicated that the delay would allow time for the agency to conduct a more thorough and complete review, collect and analyze new data, engage with stakeholders, and hold public meetings to solicit further comment on the LCRR as it relates to state and local implementation of drinking water standards, public health protections, lead in school drinking water issues, and specifically to listen to people who are living in communities disproportionately affected by exposure to lead and underserved communities suffering from lead-contaminated drinking water about their recommendations for the rule. Several commenters urged EPA to suspend the March 16, 2021 effective date of the LCRR to review the rule and initiate a new rulemaking to address issues with the rule published in the *Federal Register* on January 15, 2021 at 86 FR 4198. Commenters also expressed support for the 9-month compliance date extension from the current compliance date of January 16, 2024. Commenters stated that if the rule’s effective date were delayed from March 16, 2021, to December 16, 2021, the compliance date should be delayed the same amount of time, ensuring that utilities do not lose any of the time they had been expecting to have available to implement the rule once there is regulatory certainty. Additional commenters indicated that the extension of the compliance date would allow resource-constrained systems and communities needed time to implement the regulatory requirements of the LCRR in general, and more specifically, the lead service line (LSL) inventory and school and child care facility

monitoring requirements. Two commenters indicated that the compliance date should be delayed as long as possible.

EPA agrees with commenters that support a delay of the effective date of the LCRR to December 16, 2021. This time is necessary and sufficient to accommodate a thorough review of the requirements of the LCRR and engage with a wide range of stakeholders, including disproportionately affected and underserved communities on the issue of controlling lead in drinking water. The additional 6-month delay of the June 17, 2021 effective date to December 16, 2021, is necessary to develop, publicize, and implement a public engagement process that accommodates the significant and widespread public interest in this rulemaking, coupled with the time needed to compile and evaluate input received during the public engagement process and make a decision as to whether to let the LCRR as published take effect or initiate a rulemaking to withdraw or modify the rule. EPA is currently implementing a public engagement plan that includes public listening sessions, community, tribal, and stakeholder roundtables, and a co-regulator meeting in addition to receiving written public comment on the LCRR as part of its engagement process. EPA believes that the extension of the effective date to December 16, 2021, is sufficient for the review of the LCRR in accordance with Executive Order 13990.

EPA also agrees with commenters that support the 9-month delay of the compliance date. The SDWA typically provides a 3-year time period for drinking water systems and states to assure compliance with new or revised drinking water standards. If the compliance date is not delayed, systems and states would expend resources now to assure compliance with the LCRR by January 16, 2024, particularly given the significant effort required to develop the LSL inventory, LSL replacement plan, and to re-evaluate the tap sampling locations used in their sampling pool, all of which are required before the compliance date and underpin the implementation of the larger requirements of the LCRR. EPA estimated in the economic analysis of the final LCRR that systems and states would spend between \$57-60 million, in 2016 dollars, in the first year following promulgation of the rule, working towards compliance by January 16,

2024. The majority of these funds are spent by systems to read and understand the new regulatory requirements, develop implementation plans, train staff, and participate in trainings and technical assistance interactions with the states; and by states to adopt the rule and develop the changes needed to their implementation programs, modify their data systems, provide training to their staff, and provide training and technical assistance to the regulated systems.

If EPA determines to initiate a rulemaking to withdraw the LCRR or significantly revise it as a result of the Executive Order 13990 review process, then these compliance expenditures might be unnecessary to comply with applicable regulatory requirements. Without a delay in the effective and compliance dates of the rule, states and regulated entities may make decisions and spend scarce resources on compliance obligations that could change at the end of EPA's review period. To avoid imposing unnecessary costs on water systems and states, and to allow systems and states sufficient time to prepare for compliance once regulatory certainty has been achieved, EPA has determined to delay both the effective and compliance dates of the LCRR to December 16, 2021, and October 16, 2024, respectively.

EPA received a small number of comment letters that, in general, supported a delay in the effective date and compliance dates, but did not want the agency to delay the implementation of some of the regulatory requirements they felt would increase public health protection. These commenters indicated that the following improvements could be implemented during EPA's reconsideration of the other aspects of the LCRR: the LSL inventory requirements, improved corrosion control treatment requirements, and strengthened monitoring provisions, including provisions that would prevent sampling that is likely to underestimate the actual lead levels in drinking water. Other commenters indicated that any delay to the LCRR effective date and compliance date must apply to the entire LCRR given the interrelated nature of the different aspects of the rule. According to these commenters, having the compliance date extension apply to the LCRR in its entirety will simplify communication, reduce complexity and confusion,

improve compliance by the regulated community, and provide additional time to obtain the data management tools and resources required to implement the rule.

Because there is only one effective date for the LCRR, it can take effect or be withdrawn only in its entirety. EPA cannot selectively allow some aspects of the rule to become effective in advance of other parts of the rule without undertaking a separate notice and comment rulemaking. While EPA could establish different compliance dates for different parts of the LCRR as part of a notice and comment rulemaking, the agency has determined not to do so at this time because it would pre-determine the outcome of the public stakeholder process, create confusion for implementing authorities and regulated entities, impose potentially unnecessary costs, and undermine the re-evaluation process by diverting agency and stakeholder resources that would otherwise be devoted to the re-evaluation process. EPA is currently seeking input on all aspects of the rule as part of the stakeholder engagement process. To proceed with implementation of selected portions of the rule during EPA's review of the entire rule would be both impractical and inconsistent with the agency's stated intention to re-evaluate the LCRR in light of stakeholder input on the entire LCRR. Moreover, as explained in the proposal, stakeholders have raised concerns with nearly all aspects of the LCRR, including the LSL inventory requirements. Therefore, EPA has determined to delay the effective date and all of the compliance dates in the rule at this time.

EPA received a total of four comment letters indicating opposition to the extensions of the effective and compliance dates, and an additional two that did not explicitly support or oppose the delay in the effective and compliance dates of the LCRR. In general, the commenters opposing the extensions stated that delaying the effective and compliance dates would delay the public health improvements that would be achieved with implementing the LCRR, in part or in total, as finalized on January 15, 2021.

The comments opposing a delay in the compliance deadline include the following, from the Association of Metropolitan Water Agencies (AMWA), which stated that it "has concerns

that EPA’s proposal to delay the effective date ... would postpone the significant public health improvements that will be achieved by implementing the rule as finalized.” They go on to state, “the benefits of this [delay] must be weighed against the costs of postponing the public health improvements that will be achieved when water systems begin to comply with the final rule in its current form.” AMWA identifies the customer-initiated LSL replacement provision, the LSL inventory, and the school and child-care testing provisions as public health improvements that would be postponed by a delay of the rule effective and compliance dates. Also, the Kentucky and Tennessee Water Utility Councils (KY/TN WUC) of the American Water Works Association stated that they “are concerned that extending the dates of the Rule could delay the enhanced awareness, detection, communication, and elimination of potential lead exposure in communities.” Another public commenter opposed the effective and compliance date extensions, arguing that EPA should instead simultaneously implement and revise the LCRR because of certain aspects of the rule that the commenter claims “would provide immediate public health benefits” – such as the LSL inventory and associated public notification requirements, as well as changes in the sampling requirements.

Similarly, one anonymous commenter argued that to delay the rule is tantamount to repeal of the rule and that EPA has not analyzed the effects on human health of the delay that the LCRR was designed to benefit, or considered why it is worth forgoing the benefits of the rule for nine months in exchange for evaluation of the LCRR which, the commenter claims, could be done without delaying the compliance dates. The commenter also claims that EPA has failed to provide a meaningful opportunity for the public to comment “[b]ecause of these substantive oversights, including the failure to consider the merits of the LCRR and the deficiencies of the preexisting requirements in its proposal that would allow those preexisting requirements to remain in effect for a longer period of time.”

The KY/TN WUC opposed the delay of the LCRR effective and compliance dates, noting that EPA has already conducted extensive outreach during the development of the LCRR,

stating, “EPA’s thorough and extensive review and stakeholder engagement process resulted in a final Rule that strengthens every aspect of the current rule and accelerates actions that can reduce lead in drinking water.” This concept of EPA having already conducted extensive outreach was echoed by AMWA, noting that the agency “has been discussing options for the rule with these communities, other stakeholders, and the public since at least 2010.” However, AMWA “agrees that engagement with at-risk communities is critical.” The commenter opposing the delay and arguing that EPA should simultaneously implement and revise the LCRR, also expressed support for EPA’s effort to seek additional stakeholder input on the LCRR. Another comment letter, from the American Water Works Association (AWWA) recommended that EPA consider the extensive outreach that the agency has already conducted on the LCRR.

EPA received two comment letters that did not explicitly support or oppose the delay in the effective and compliance dates of the LCRR. One comment letter, jointly signed by the U.S. Conference of Mayors, the National League of Cities, and the National Association of Counties, indicated that the LCRR as published on January 15, 2021, at 86 FR 4198 “satisfactorily addressed the local government perspective in both protecting public health and reducing lead contamination of drinking water.” Another comment letter from AWWA requests that the effective and compliance dates be extended in an amount commensurate with the additional time used for stakeholder outreach. AWWA noted that the “[u]ncertainty ... which is naturally generated through reconsideration efforts” will make it difficult for public water systems to prepare for compliance and make investments needed to meet the interrelated requirements of the rule, as such efforts may prove to be wasted or wasteful if the Rule ultimately changes in its particulars.” Accordingly, AWWA requests that “all extensions to the effective date of the LCRR and any subsequent agency activity that seeks to change the LCRR should be accompanied by an extension to the compliance timeframes.” AMWA, though opposing the delays in the LCRR implementation, also expressed support for an extension of the compliance dates by nine months if EPA delays the June 17, 2021 effective date of the rule.

For reasons discussed in the proposal and this action, EPA disagrees with the commenters asserting that the LCRR, as published on January 15, 2021, at 86 FR 4198, should take effect on June 17, 2021. EPA provided a reasoned explanation in the proposal for the delayed effective and compliance dates while the agency conducts this re-evaluation. The explanation identified EPA's concern that water systems and states could unnecessarily expend significant resources on compliance with a rule that may ultimately be withdrawn or substantially modified and, which many commenters have urged, may not be a sufficient improvement in public health protection in comparison to the existing protection of the LCR, or even possibly reduce public health protections.

This action will enable EPA to engage with communities, stakeholders, tribes, and states to gather more information about their concerns with the LCRR and to share information about actions that can reduce drinking water lead exposure. The LCRR virtual engagement process is providing benefits in three ways. First, the engagement is increasing public and community awareness of the potential harmful health effects of lead and the ways individuals and communities may proactively reduce their exposure. Because the effective implementation of drinking water lead reduction requirements, such as LSL replacement, depends on the actions of both water systems and private citizens, the increased awareness fostered by EPA's LCRR review outreach activities will improve the implementation of the LCRR and/or a future lead in drinking water regulatory action. Second, the information gained by the agency from listening to the public and communities that have been dealing with lead in drinking water issues across the country will provide EPA with new information that will help in the development of more effective implementation guidance for the LCRR or any future revisions of the LCRR. Information gathered from this process may be especially useful for the guidance on developing the initial LSL inventory and the LSL replacement plan. Third, the delay of the effective date, to engage with communities, will allow the agency to potentially develop future regulatory revisions to the Lead and Copper Rule, consistent with Executive Order 13990, that will be more

effective at reducing the lead in drinking water in real world communities and better at targeting disadvantaged underserved communities.

EPA's economic analysis of the LCRR supports the conclusion that the relatively-short delay in the effective date and compliance dates for this rule, in particular, will not significantly reduce the benefits of the LCRR. The economic analysis of the final LCRR estimated that the annual total incremental cost of the regulatory requirements, in 2016 dollars, would range from \$161 to \$335 million at the 3 percent discount rate, and \$167 to \$372 million at the 7 percent discount rate. The annual total incremental monetized benefits, in 2016 dollars, of the final rule were estimated to be between \$223 to \$645 million, at a 3 percent discount rate, and \$39 to \$119 million at the 7 percent discount rate. The delay of the original compliance date, of January 16, 2024, by nine months pushes back in time both the cost born by complying entities and the monetized benefits received by the public as a result of lower lead levels in drinking water, by nine months, assuming all other environmental and regulatory conditions remain the same. EPA selected the conservative assumption of modeling a one year delay in the regulatory costs and benefits impacts. The estimated annual total incremental cost of the rule given the one-year delay ranged from \$153 to \$320 million, at the 3 percent discount rate, and \$155 to \$346 million at the 7 percent discount rate, in 2016 dollars. The monetized annual incremental benefits, in 2016 dollars, given a one-year delay of the compliance date would range from \$213 to \$616 million, at the 3 percent discount rate, and \$37 to \$111 million at the 7 percent discount rate. The estimated change in the monetized incremental annualized social costs and benefits of the delay in the compliance date are approximately of equal size over the 35-year period of analysis (\$7 to \$27 million for costs and \$3 to \$29 million for benefits in 2016 dollars), but, as previously discussed, the expected first year (post rule effective date) expenditures by systems and states would be between \$57-60 million, in 2016 dollars. These first-year expenditures to prepare for regulatory compliance with the LCRR could be unnecessary if EPA determines to initiate a rulemaking to withdraw or significantly revise the LCRR as a result of the Executive Order 13990 review

process. The estimated first year (post rule effective date) benefits are zero given that the regulatory requirements that produce monetized benefits are not implemented until the compliance date three years after the effective date.

Moreover, EPA notes that there is an existing National Primary Drinking Water Rule, the Lead and Copper Rule, that will continue to provide public health protection and benefits during this short delay in the most recent revisions to that rule. Water systems will continue to implement the LCR, which includes requirements to monitor for lead and optimize corrosion control treatment.

Given the relatively small impact to the stream of monetized social costs and benefits over the 35-year period of analysis, which has the potential to dramatically change based on the results of EPA's Executive Order 13990 review process, the significant and potentially unnecessary implementation expenses estimated in the first year following the original effective date, of March 16, 2021; the need to provide systems and states sufficient time to prepare for compliance; the potential positive gains to implementation and collection of new information; and, the existing safeguards to protect against lead contamination in drinking water, EPA has determined to delay both the effective and compliance dates of the LCRR to December 16, 2021, and October 16, 2024, respectively.

EPA also disagrees with those commenters that suggested EPA let the LCRR take effect on June 17, 2021, and then initiate a process to revise it. Although EPA carefully considered whether to allow the rule to take effect on June 17, 2021, while postponing the compliance dates for only certain aspects of the rule, EPA has determined not to do so at this time because it would pre-determine the outcome of the public stakeholder process, create confusion for implementing authorities and regulated entities, impose potentially unnecessary costs, and undermine the re-evaluation process by diverting EPA and stakeholder resources that would otherwise be devoted to the re-evaluation process. Moreover, as explained in the proposal, stakeholders have raised concerns with nearly all aspects of the LCRR, including the LSL inventory requirements.

Accordingly, EPA has determined that this approach, to let the rule take effect while postponing compliance dates for some aspects of the rule, is not appropriate at this time.

EPA agrees that in developing the LCRR it has already conducted extensive stakeholder engagements. However, to the extent commenters are suggesting that additional stakeholder input is not warranted at this time, the agency disagrees. EPA did not conduct any public meetings on the LCRR revisions in the two years prior to promulgation of the final rule, which includes the time period between the proposal and the final rule. Similarly, in the two years preceding promulgation of the final rule, EPA did not conduct any targeted meetings to get input on the proposed revisions from communities historically underserved by, or subject to discrimination in, Federal policies and programs, or those communities that have been significantly affected by lead in drinking water. The information shared by these communities could prove to be valuable in understanding potential rule implementation issues that could lead to improved and more effective LCRR requirements and implementation guidance. As discussed previously, EPA agrees with commenters that the delay of the effective date warrants a delay in the compliance dates for the rule. EPA's re-evaluation of the LCRR creates regulatory uncertainty during the 3-year time period typically provided for drinking water systems and states to assure compliance with new or revised drinking water standards. If the compliance date is not delayed, systems and states would expend resources now, to assure compliance with the LCRR by January 16, 2024. EPA estimated in the economic analysis of the final LCRR that systems and states would spend between \$57-60 million, in 2016 dollars, in the first year following promulgation of the rule working towards compliance. If EPA were to initiate a rulemaking to withdraw or significantly revise the LCRR, then these compliance expenditures would be unnecessary to comply with applicable regulatory requirements. Therefore, EPA is delaying the compliance date of the LCRR to October 16, 2024, to avoid imposing these potentially unnecessary costs on water systems and states, and to allow systems and states sufficient time to prepare for compliance once regulatory certainty has been achieved.

EPA has complied with the applicable Administrative Procedure Act and SDWA requirements for this rule. If EPA decides that further regulatory changes are necessary, EPA will comply with the applicable requirements of the Administrative Procedure Act and the SDWA, and conform to the relevant EOs, including EOs 13132 and 13175, regarding federalism and tribal consultations, respectively.

Many commenters on the proposal to extend the effective and compliance dates also provided input on all aspects of the LCRR, including the action and trigger levels, LSL inventories, LSL replacement requirements, as well as the requirements for optimal corrosion control treatment, tap sampling, public education and notification, and school sampling, and EPA's compliance with both the substantive and procedural requirements for promulgation of a revised drinking water regulation. The extent and breadth of these comments demonstrates the significant concern that stakeholders, from a range of perspectives, have with the LCRR and the procedures EPA followed in promulgating the rule. EPA appreciates this input on the LCRR and is considering these comments as part of its re-evaluation process.

IV. Final Rule Revisions

This final rule extends the effective date of the National Primary Drinking Water Regulations: Lead and Copper Rule Revisions (LCRR) to December 16, 2021. This rule also extends the compliance date to October 16, 2024.

The significant factual, legal, and policy issues identified by stakeholders and litigants, and summarized in Section II of this document, warrant careful and considerate review of the rule, as well as relief from the compliance deadlines as EPA considers these issues. After publication of the final National Primary Drinking Water Regulation, 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 the SDWA. Under the final rule promulgated on January 15, 2021, water systems will begin the actions to prepare LSL

inventories, and, as appropriate, to prepare LSL 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 on those efforts until EPA completes its review of the LCRR and can provide some certainty that the regulatory requirements will not be changed. Without a delay in the effective and compliance dates 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 SDWA 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 delay is consistent with EPA's exercise of this discretionary authority to revise its drinking water rules.

EPA will engage with stakeholders during this time period to evaluate the rule and determine whether to initiate a process to revise components of the rule. If EPA decides to withdraw the LCRR, the agency will propose, take comment on, and issue a withdrawal prior to December 16, 2021. If EPA decides it is appropriate to modify the LCRR, it will consider whether those modifications warrant further extensions to compliance dates for the requirements that will be modified to provide time to promulgate those revisions before water systems and states must take actions to comply. If EPA decides to revise the LCRR, the agency will follow the requirements of the SDWA and other applicable statutes and EOs to propose and promulgate those revisions.

V. Compliance with the Administrative Procedure Act

Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. Chapter 5, generally provides that rules may not take effect until 30 days after they are published in the *Federal Register*. The purpose of this APA provision is to "give affected parties a reasonable time to adjust their behavior before the final rule takes effect." *Omnipoint Corp. v. Fed. Comm'n*, 78 F.3d 620, 630 (D.C. Cir. 1996); *see also United States v. Gavrilovic*, 551 F.2d 1099,

1104 (8th Cir. 1977) (quoting legislative history). However, when an agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse. Thus, APA Section 553(d) allows an effective date less than 30 days after publication for any rule that “grants or recognizes an exemption or relieves a restriction” (see 5 U.S.C. 553(d)(1)). An accelerated effective date may also be appropriate for good cause pursuant to APA Section 553(d)(3) where an agency can “balance the necessity for immediate implementation against principles of fundamental fairness, which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.” *Gavrilovic*, 551 F.2d at 1105.

EPA has determined that this final rule is effective immediately upon publication because it relieves a restriction by extending the effective date and compliance deadlines of the LCRR, thereby providing water systems with additional time to come into compliance. In addition, there is good cause for immediate implementation of these provisions because, as previously explained, the impact of this rule is to ensure that water systems do not unnecessarily expend resources to come into compliance with the LCRR until EPA concludes its review and stakeholder engagement process and makes a decision as to whether to revise the LCRR in whole or in part or to let it take effect as published on January 15, 2021.

VI. 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 any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing

regulations and has assigned OMB control number 2040-0204. This action delays of the effective and compliance dates of the LCRR until December 16, 2021 and October 16, 2024, respectively, and does not alter any of the information collection activities required under the LCRR.

C. Regulatory Flexibility Act (RFA)

EPA certifies that this action will 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 action delays compliance with the regulatory requirements of the LCRR and does not impose any additional requirements on either large or small entities. EPA has therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects 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 action does not have tribal implications as specified in Executive Order 13175. The Executive order defines tribal implications as “actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian

Tribes.” The delay of the effective and compliance dates of the LCRR until December 16, 2021 and October 16, 2024, respectively, will not have a substantial direct effect on one or more tribes, change the relationship between the Federal Government and tribes, or affect the distribution of power and responsibilities between the Federal Government and Indian Tribes. Thus, Executive Order 13175 does not apply to this action.

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 action is not subject to Executive Order 13045 because the delays of the effective and compliance dates, until December 16, 2021 and October 16, 2024, respectively, do not have a significant economic impact.

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

This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. EPA has concluded that the delay of the effective and compliance dates of the LCRR, which were published in the *Federal Register* on January 15, 2021, until December 16, 2021 and October 16, 2024, respectively, is not likely to have adverse energy effects. This conclusion is based on the fact that delaying the regulatory requirements of the LCRR will reduce near term demand for energy commodities that would be required to install and operate corrosion control equipment, remove LSLs, or produce and deliver public education materials.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

EPA believes that it is not feasible to determine whether this action has disproportionately high and adverse effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The purpose of this rule is to extend effective date of the LCRR to December 16, 2021, to allow EPA to conduct a review of the LCRR, under Executive Order 13990, 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. Because EPA is still in the collection process of potentially significant environmental justice information on the distributional impacts of drinking water lead-related regulatory requirements, it is not feasible to determine with certainty the impact of the delay of the effective and compliance dates of the LCRR.

K. Congressional Review Act (CRA)

This action is subject to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act or CRA), and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The Office of Information and Regulatory Affairs has determined that this action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 141

Environmental protection, Copper, Drinking water, Indians—lands, Intergovernmental relations, Lead, Lead service line, Reporting and recordkeeping requirements, Water supply.

Michael S. Regan,
Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 141 as follows:

PART 141 - NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, 300j-9, and 300j-11.

2. Amend § 141.80 by revising paragraphs (a)(2) through (4) to read as follows:

§ 141.80 General requirements.

(a) ***

(2) The requirements of this subpart are effective as of December 16, 2021.

(3) Community water systems and non-transient, non-community water systems must comply with the requirements of this subpart no later than October 16, 2024, except where otherwise specified in §§ 141.81, 141.84, 141.85, 141.86, and 141.90, or where an exemption in accordance with 40 CFR part 142, subpart C or F, has been established by the Administrator.

(4)(i) Between December 16, 2021, and October 16, 2024, community water systems and non-transient, non-community water systems must comply with 40 CFR 141.80 through 141.91, as codified on July 1, 2020.

(ii) If an exemption from subpart I of this part has been issued in accordance with 40 CFR part 142, subpart C or F, prior to December 16, 2021, then the water systems must comply with 40 CFR 141.80 through 141.91, as codified on July 1, 2020, until the expiration of that exemption.

* * * * *

3. Amend § 141.84 by revising paragraphs (a)(1) and (b) introductory text to read as follows:

§ 141.84 Lead service line inventory and replacement requirements.

(a) ***

(1) All water systems must develop an initial inventory by October 16, 2024, and submit it to the primacy agency in accordance with § 141.90(e).

(b) *Lead service line replacement plan.* All water systems with one or more lead, galvanized requiring replacement, or lead status unknown service lines in their distribution system must, by October 16, 2024, submit a lead service line replacement plan to the State in accordance with § 141.90(e). The lead service line replacement plan must be sufficiently detailed to ensure a system is able to comply with the lead service line replacement requirements in accordance with this section. The plan must include a description of:

4. Amend § 141.86 by revising paragraphs (d)(1)(i) and (d)(1)(ii) introductory text to read as follows:

§ 141.86 Monitoring requirements for lead and copper in tap water.

(d) * * *

(1) ***

(i) All water systems with lead service lines, including those deemed optimized under § 141.81(b)(3), and systems that did not conduct monitoring that meets all requirements of this section (e.g., sites selected in accordance with paragraph (a) of this section, samples collected in accordance with paragraph (b) of this section, etc.) between January 15, 2021, and October 16, 2024, must begin the first standard monitoring period on January 1 or July 1 in the year following October 16, 2024, whichever is sooner. Upon completion of this monitoring, systems must monitor in accordance with paragraph (d)(1)(ii) of this section.

(ii) Systems that conducted monitoring that meets all requirements of this section (e.g., sites selected in accordance with paragraph (a) of this section, samples collected in accordance with paragraph (b) of this section, etc.) between January 15, 2021, and October 16, 2024, and systems that have completed monitoring under paragraph (d)(1)(i) of this section, must continue monitoring as follows:

5. Amend § 141.90 by revising paragraphs (e)(1) and (2) to read to read as follows:

§ 141.90 Reporting requirements.

(e) ***

(1) No later than October 16, 2024, the water system must submit to the State an inventory of service lines as required in § 141.84(a).

(2) No later than October 16, 2024, any water system that has inventoried a lead service line, galvanized requiring replacement, or lead status unknown service line in its distribution system must submit to the State, as specified in § 141.84(b), a lead service line replacement plan.

[FR Doc. 2021-12600 Filed: 6/15/2021 8:45 am; Publication Date: 6/16/2021]