

The EPA Acting Administrator, Jane Nishida, signed the following rule on 3/9/2021, and EPA is submitting it for publication in the Federal Register (FR). While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's FDsys website (<https://www.gpo.gov/fdsys/>). It will also appear on Regulations.gov (<https://www.regulations.gov/>) in Docket No. EPA-OW-2017-0300. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[EPA-OW-2017-0300; FRL-10020-99-OW]

RIN 2040-AF15

Delay of Effective Date of National Primary Drinking Water Regulations: Lead and Copper Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; delay of effective date.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is issuing a short delay of the March 16, 2021, effective date of the National Primary Drinking Water Regulations: Lead and Copper Rule Revisions (LCRR), published in the *Federal Register* on January 15, 2021. The LCRR will now become effective on June 17, 2021. This final rule does not change the compliance date of January 16, 2024. This 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 sole purpose of this delay is to enable EPA to take public

comment on a longer extension of the effective date for EPA to undertake its review of the rule in a deliberate and thorough manner consistent with the public health purposes of the Safe Drinking Water Act and the terms and objectives of recent Presidential directives and in consultation with affected stakeholders.

DATES: This regulation is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OW-2017-0300, is available at <http://www.regulations.gov>. 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. For further information about EPA Docket Center Services and the current status, please visit us online at <https://www.epa.gov/dockets>. If you are having trouble locating EPA docket materials, contact the EPA Reading Room Staff for assistance by calling (202) 566-1744, or send a message to Dockets Customer Service (Docket-customerservice@epa.gov).

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: On January 20, 2021, President Biden issued an “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 memo) (86 FR 7424, January 28, 2021); the memorandum directs agencies to consider postponing the effective date of regulations, like the LCRR, 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 to these presidential directives, the LCRR has been challenged in court by 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. The litigants and other stakeholders raise concerns about key aspects of the rule, including whether to have a maximum contaminant level, the action level, the pace of lead service line replacements, and the requirements for small water systems, as well as compliance with SDWA rulemaking requirements such as those governing risk assessment, management and

communication, and the opportunity for a public hearing. EPA also received a letter on February 4, 2021 from the American Water Works Association requesting that EPA not delay the rule.

I. Reason for today's rule.

Consistent with the above directives, EPA is reviewing the LCRR. In order to ensure that there is an opportunity for engagement with the public in this review, including public input on the critically important public health issues associated with lead in drinking water, and to enable EPA to complete its review of the rule in a deliberate and thorough manner consistent with the public health purposes of the Safe Drinking Water Act, EPA expects that this review will take 9 months and thus will not conclude until December 2021. The sole purpose of today's action is to provide a short delay of the effective date of the LCRR so that EPA can request comment on a longer extension – until December 2021 – of the LCRR effective date and corresponding compliance dates. The proposed longer extension, published elsewhere in today's Federal Register, would allow EPA to complete its review of this important rule and consult with stakeholders who have raised significant concerns about the rule, including those who have been historically underserved by, or subject to, discrimination in federal policies and programs prior to the rule going into effect. The longer extension will also avoid expenditures or other irreversible commitments that would be wasted if, at the end of EPA's review, it decides to propose revisions to the LCRR.

Because of the short duration of today's action, the procedural nature of this action, and the fact that the compliance dates for the LCRR are well in the future and this action provides a reprieve for immediate planning for compliance, this action should have minimal adverse impact on regulated entities or the public. No regulatory changes to the LCRR are made by today's action. Rather, EPA is taking this action for the sole purpose of providing time for a public comment

period which will allow all interested parties to provide input to the agency about whether to extend the LCRR effective date, and corresponding compliance dates, prior to that rule going into effect. To enable this comment process, today's rule provides a short delay of the LCRR effective date, to June 17, 2021 and EPA is simultaneously publishing a proposed rule that, if finalized, would extend the effective date for an additional 6 months (see the "Proposed Rule" section of today's *Federal Register*).

II. Importance of EPA's review of the LCCR 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.

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 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 short delay in effective date accomplished by this rule will enable the Agency to separately take comment on the need for a further extension of the effective date and an extension of the compliance dates so that the Agency can conduct a thorough review of the rule and engage meaningfully with the public on this all-important public health regulation. In a separate notice of proposed rulemaking, published in the “Proposed Rule” section of today’s *Federal Register*, EPA is requesting public comment on the additional 6-month extension of the June 17, 2021 effective date of the LCRR to December 16, 2021, and a 9-month extension of the current compliance date of January 16, 2024, to September 16, 2024, respectively. EPA will engage with stakeholders during this 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.

The LCRR’s effective date (which is 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 generally 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 requirements in the rule. Without a delay in the effective date of the rule, regulated entities may feel it necessary to undertake activities and spend scarce resources on compliance obligations that could change at the end of EPA's review period.

III. Compliance with the Administrative Procedure Act.

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. As further explained below, EPA has determined that there is good cause to delay the effective date of the LCRR for 90 days without prior proposal and opportunity for comment because pre-promulgation public comment on this short notice is impracticable and contrary to the public interest. Namely, in this instance, where the LCRR will go into effect on March 16, 2021, less than two months after the start of this new Administration, it is impracticable for EPA to provide notice and gather comment prior to the rule going into effect. For the reasons explained above and below, allowing the rule to go into effect without further public engagement will also be contrary to the public interest.

Consistent with Executive Order 13990 and the January 20, 2021 White House memorandum, EPA has determined that the LCRR needs additional assessment of policy and legal issues, as well as stakeholder consultations on issues critical to the protection of public health. As discussed above, this rule is about the significant public health issues associated with

lead in drinking water that is both nationally significant and has had a particular impact, in some instances overwhelming, on some American communities -, particularly some minority and low income communities. As noted above, stakeholders that represent some of these communities have raised concerns that the LCRR, which is a revision of an existing lead drinking water rule, is not sufficient to provide needed protection from the dangers of lead in drinking water and that it may, in some respects, actually represent a retreat from protections provided by the existing rule. For example, in a March 4, 2021 letter, stakeholders raised concerns about key aspects of the rule, including whether to have a maximum contaminant level, whether the lead action level of 15 ppb is too high, the pace of lead service line replacements, and the flexibilities in the LCRR for small water systems, as well as whether the Agency complied with SDWA rulemaking requirements such as those governing risk assessment, management and communication and the opportunity for public hearing. Indeed, representatives of these stakeholders have asked EPA to suspend the rule for 6 months for these and other reasons. EPA has concluded, as a result, that it is critical to engage these stakeholders and other interested parties in reexamining the rule to ensure that it is maintaining and enhancing public protection from lead in drinking water for all Americans. EPA believes it is vital and in the public interest to engage this community in a review of this rule before it goes into effect.

At the same time, EPA recognizes that water systems and States must expend funds and begin to make near term and significant programmatic and legal changes in order to be in compliance with the rule within the three year timeframe provided by the statute. These changes include assigning and training personnel, obtaining funds, developing lead service line inventories, preparing plans, adopting new rules and/or obtaining legislative authorization, and modifying data systems. If after the review of the rule, EPA concludes that significant portions

of the rule should change, these activities, and the funds that support them will have been expended in ways that could be less protective of public health from the significant adverse effects from lead in drinking water than if these communities made expenditures after the Agency has determined what constitutes the best approach to addressing this problem under the SDWA. The Agency feels strongly that the diversion of funds from cash-strapped communities and public agencies in this manner should be avoided. As a result, it is also in the public interest to delay the effective date during the time that EPA is reviewing the rule so that critically limited public funds needed to address this public health crisis are not wasted on implementation activities that may not be warranted after reexamination of the rule. It is further in the public interest to briefly delay this rule in order to take comment from affected parties on whether a longer delay of the effective date and compliance date is necessary and appropriate.

EPA has acted quickly during the transition to address concerns about this rule. Within a short period of time after the transition, the Agency determined that it was critically important to engage with the public and interested stakeholders through multiple avenues – including an opportunity for written public comments, meetings with stakeholders – prior to completing its review of the LCRR and allowing it to become effective. Today’s rule was expeditiously prepared by the Agency in order to be published within less than two months of the change in Administration.

EPA is promulgating today’s rule to allow time for the public to comment on whether to further extend the effective date of the LCRR. That proposal is published elsewhere in today’s Federal Register. This opportunity for public input on whether to allow the rule to go into effect as it currently stands, would be foreclosed if EPA were to provide for pre-promulgation notice and comment. EPA has weighed carefully the fact that this objective is being achieved by

deferring the effective date through use of the good cause exception under the APA. The Agency has concluded that the LCRR presents the exceptional case in which reliance on good cause to forgo pre-promulgation notice and comment is appropriate due to the impacts of allowing the rule to go into effect without further public input and engagement. EPA finds that the totality of the circumstances here – the short duration of and important purpose served by the delay, the serious issues raised by the stakeholders and litigants which deserve careful evaluation by the Agency prior to the rule becoming effective, the concerns raised by stakeholders about potential harm from allowing the rule to go into effect, and that, at the same time as publishing this final rule, EPA is also publishing a proposed rule inviting public comment on whether the effective date should be delayed – provide good cause to forego notice and an opportunity for comment in these limited circumstances.

Section 553(d)(3) of the APA provides that final rules shall not become effective until 30 days after publication in the Federal Register “except . . . as otherwise provided by the agency for good cause.” The purpose of this 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 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). Thus, in determining whether good cause exists to waive the 30-day delay, an agency should “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 there is good cause for making this final rule effective immediately where, as explained above, the impact of this rule is to provide affected persons additional time before the LCRR goes into effect.

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)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. This rule is not subject to notice and comment requirements because the Agency has invoked the APA “good cause” exemption under 5 U.S.C. 553(b).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531—1538. 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 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 action does not have tribal implications as specified in Executive Order 13175. This action is not subject to Executive Order 13175 because it will 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 action is not subject to Executive Order 13045 because the delay of the effective date, by itself is not economically significant.

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

This 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 rulemaking does not involve technical standards.

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

This 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. This action delays the effective date that, by itself, does not concern an environmental health risk or safety risk.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). EPA has made a good cause finding for this rule as discussed in the SUPPLEMENTARY INFORMATION section of this document, including the basis for that finding.

List of Subjects

40 CFR Part 141

Environmental protection, Copper, Indians – lands, Intergovernmental relations, Lead, Lead service line, National Primary Drinking Water Regulation, Reporting and recordkeeping requirements, Water supply.

[Delay of Effective Date of National Primary Drinking Water Regulations: Lead and Copper Rule Revisions; page 15 of 16]

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Jane Nishida,
Acting 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) and (a)(4)(i)—(ii).

The revisions read as follows:

§ 141.80 General requirements.

(2) The requirements of this subpart are effective as of June 17, 2021.

(4) ***

(i) Between June 17, 2021, and January 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 June 17, 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.