

STAFF SUMMARY

TO: Board of Directors
FROM: Frederick A. Laskey, Executive Director 
DATE: January 19, 2022
SUBJECT: Update on Revisions to EPA's Lead and Copper Rule

COMMITTEE: Water Policy & Oversight

X INFORMATION
 VOTE

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RECOMMENDATION:

For information only.

DISCUSSION:

In December 2021, as expected with the change of Administration, EPA released a federal register notice on further revisions to the Lead and Copper Rule. In short, the EPA notice indicated that the revisions promulgated in January 2021 will go into effect with a compliance deadline of October 2024, and that EPA anticipates making some additional changes over the next several years. Although EPA may change parts of the rule, MWRA and our member communities need to begin or continue moving towards compliance with all of the items that were in the January 2021 final regulation.

Summary of the January 2021 Revisions:

The principal point of EPA's December 2021 notice was to indicate that the January 2021 revisions were in effect and would require compliance by October of 2024. Staff reported to the Board on those long awaited revisions to the Lead and Copper Rule in February 2021 and conducted a training session for communities jointly with the Advisory Board in May 2021. Staff anticipate doing more training later this winter when EPA issues guidance manuals providing additional details on several areas of the revisions.

Highlights of the significant changes in the January 2021 rule revision include:

- A new requirement for "Tier 1" 24-hour notice if a water system exceeds the lead Action Level: similar to what is required for a confirmed *E. coli*.
This is likely to significantly complicate risk communication compared to the current rule that allows time for a community to develop a more complete and thoughtful communication and outreach plan after an Action Level exceedance.
- Changes to how sampling will be done. Systems with any lead services must collect all their samples from those homes, and sample using a new technique collecting five liters of

water and analyzing the fifth one for lead. This is designed to capture water from the service line.

While actual lead levels will not change, these changes will likely increase reported lead levels. It is anticipated that EPA may further change this requirement, perhaps requiring that both the first and fifth liter be analyzed and using the higher value for compliance.

- In the next three years (by October of 2024), each community will need to develop a complete inventory of all of its service lines, make it available to the public and annually notify each homeowner that they have a lead or galvanized service line, or one of unknown material.

The new notice explicitly indicated that this deadline is in force. While a number of MWRA communities have some type of existing inventory, meeting the new, more detailed requirements will be a significant undertaking for almost all communities.

- Also in the first three years, each community must develop and submit a plan to DEP for replacing lead and galvanized service lines. This plan would be put into action if a newly created Trigger Level of 10 parts per billion (ppb) or the existing action level of 15 ppb is exceeded.

While EPA announced its intention to revise this requirement and that the deadline may be changed, it will make sense for communities to begin to make plans for how lead service lines will be replaced, how to implement all the new associated notice and risk mitigation requirements, and in particular how funding for replacement of the private side of the service line will be handled.

- New requirements for sampling in schools and childcare facilities. Water systems must contact 20 percent of schools and childcare facilities for the first five years, offering to take lead samples. The requirement is for five samples in each school and two in each childcare facility. *There were substantial comments on this requirement, but no indication of any specific changes the new Administration might make. MWRA and its member communities will need to be prepared to implement this beginning in 2025.*

- New requirements for risk mitigation efforts, including a requirement to provide to customers point-of-use filters after activities that disturb the service line.

Communities will need to plan to do this and track compliance with the actions and deadlines.

- New requirements for “find and fix” activities at any home where the LCR sample is over the Action Level.

MWRA and its member its member communities will need to coordinate to conduct relatively short turn-around sampling both in the home and within the community distribution system to evaluate potential causes for the higher lead levels.

Staff anticipate that the addition of the new 10 ppb Trigger Level and changes to sampling will make it more likely that MWRA will need to re-evaluate its corrosion control treatment. MWRA is already working proactively to be ready to perform a review of corrosion control in a thorough and thoughtful way.

The changes in sampling, the new Trigger Level and the probable direction of any additional changes the Administration will make, described below, will also likely mean that many more communities will exceed the Action Level and thus be required to do the new 24-hour public notice and mandatory lead service line replacement. Staff are continuing to work with communities to take advantage of MWRA's zero-interest loans for lead service line replacement as discussed in December's staff summary on Lead and Copper Rule compliance.

The White House held a broader press conference with the Administration's 15-point Lead Pipes and Paint Action Plan that laid out actions and funding by multiple federal agencies to deal more holistically with both lead paint and lead pipes. Focusing federal programs to provide equity in risk reduction will be a major Administration priority. The press conference summarized all the funding from recent legislation and offered additional flexibility in how some previous funding could be used for remediating lead risks. Most of the funding will flow through the existing state revolving loan (SRF) programs.

Potential Areas of Change:

EPA's notice indicated that it does expect to make some additional changes to the rule. EPA will probably release a draft in 2022 and final revisions before October 2024. The notice did not specifically list expected changes, but hinted at potential areas for change. Potential changes to the January revisions include:

- strengthening the lead service line (LSL) replacement mandate, requiring more replacements per year if a community is over the Action Level, and possibly including requirements even for those with lower lead results to replace LSLs over time. A clear goal of the Administration is full removal of all LSLs;
- changing the sampling procedures in ways that would make it more likely that any given site would have higher lead results;
- re-examining the addition of a Trigger Level (10 ppb) to the rule in addition to the existing Action Level (15 ppb), which many commenters indicated added confusion to the rule. Two potential paths seem to be either lowering the Action Level to 10 ppb and eliminating the Trigger Level OR if the LSL replacement requirement is made stronger, keeping the existing Action Level and eliminating the Trigger Level, as it might now be unnecessary;
- including more explicit means of prioritizing actions in economic justice areas; and
- perhaps making administrative changes to reduce some of the state and utility paperwork and record keeping burden.

Staff will report to the Board when and if EPA releases any further changes to the rule.

BUDGET/FISCAL IMPACTS:

Staff will evaluate the anticipated impacts on required sampling and laboratory resources prior to the compliance date of October 2024 in developing the FY25 CEB. If changes in corrosion control treatment are determined to be necessary, staff will add any capital costs to the Capital Improvement Program and estimated operating costs to the appropriate CEB as those plans are developed.