

Proposed EPA Rulemakings: Clean Water Act and Safe Drinking Water Act August 2020

Safe Drinking Water Act Rulemakings

Lead and Copper Rulemaking: EPA's proposed Lead and Copper Rule Revisions (LCRR) includes a suite of actions to reduce lead exposure in drinking water where it is needed the most. The proposed rule targets the most at-risk communities and ensures water systems have plans in place to take actions to reduce elevated levels of lead in drinking water. The proposed LCRR retains the current Maximum Contaminant Level Goal (MCLG) of zero and the Action Level (AL) of 15 ppb. The proposed rule requires a more comprehensive response for systems that exceed the AL and introduces a new trigger level of 10 ppb that requires systems to re-optimize existing treatment, plan for potential treatment and, where applicable, establish lead service line replacement goals. **Key dates**: Proposed rule was published in federal register on November 13, 2019. Draft final rule was sent to OMB in July with a final rule expected in Fall 2020.

PFAS: On February 20, 2019, EPA announced its proposed decision to regulate PFOA and PFOS in Drinking Water. EPA also sought information and data on other PFAS substances, as well as comments on potential monitoring requirements and regulatory approaches that EPA is considering for PFAS chemicals. On February 26, 2020 EPA released the [PFAS Action Plan: Program Update February 2020](#).

Key dates: The public comment period for the proposed decision closed on June 10, 2020. A final regulatory decision is expected in January 2021. If a positive determination is made, the proposed MCL would be expected in January 2023 (24 months after positive determination), and the final MCL in July 2024 (18 months after proposed MCL).

Perchlorate: On June 18, 2020, EPA made a final determination not to regulate perchlorate in drinking water at this time. EPA considered the best available science and the proactive steps that EPA, states and public water systems have taken to reduce perchlorate levels. Based on this updated data and analysis, EPA has determined that perchlorate is not found in drinking water with a frequency and at levels of public health concern to support a meaningful opportunity for health risk reduction through a national perchlorate drinking water regulation.

UCMR 5: EPA uses the Unregulated Contaminant Monitoring Rule (UCMR) to collect data for contaminants that are suspected to be present in drinking water and do not have health-based standards set under SDWA. The next monitoring cycle is scheduled for 2023-2025 and will include additional PFAS compounds.

Key dates: Proposed rule is expected in the Fall 2020 with a final rule in Winter 2021.

Clean Water Act Rulemakings

Navigable Waters Protection Rule (NWPR): EPA and Army Corps of Engineers (ACE) began implementing the NWPR on June 22, 2020, which redefined what waters of the United States (WOTUS) are subject to CWA jurisdiction. The final rule excludes most ditches, ephemeral streams and wetlands lacking direct hydrologic surface connections with navigable waters and their

tributaries from CWA jurisdiction. The new WOTUS definition is being implemented with oversight from joint ACE/EPA Division Implementation Teams. Tools to implement the NWPR are being developed by EPA and ACE. The Antecedent Precipitation Tool (APT) to implement the “typical year” requirements is available in a beta version. Streamflow duration assessment methods (SDAMs) are being developed by EPA to implement the flow duration requirements of the NWPR; a module for the Arid Southwest is expected to be released in a draft version in August/September 2020. EPA and ACE have been conducting a series of training webinars for states and tribes on various aspects of the NWPR; recordings are posted [online](#).

[CWA §401 Certification Rule](#): EPA published the §401 Certification Rule on July 13, and it will become effective on September 11, 2020. The Final Rule requires federal permitting agencies to establish set time frames for certifying authorities to submit §401 certifications, not to exceed one year, limits the scope of the definition of “water quality requirement” for §401 certifications, and requires certifying authorities to cite each condition to a particular water quality requirement. Under the Final Rule, §401 conditions will become conditions on the federal permit or license being certified. EPA conducted a public webinar on the final rule on June 17, 2020; a recording is now available [online](#). Future trainings are planned for State and Tribal authorities; no dates have been set.

[Revisions to State and Tribal §404 Assumption Regulations](#): States and tribes are authorized to assume the federal §404 permitting program under §404(g). To date, only two states (Michigan & New Jersey) have assumed the §404 program. In the 2018 Spring Regulatory Agenda, EPA published a plan for a revision to existing §404(g) regulations to increase state and tribal interest in assuming the §404 program. In September 2018, EPA sent letters to state governors and tribal leaders announcing the rulemaking effort and opportunities for input. A final rule is expected in 2021.