

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: DG-16-23

Relating to: Revisions to subch. II of ch. NR 809 related to control of lead and copper in public drinking water, to be consistent with revisions to the federal Lead and Copper Rule and the federal Lead and Copper Rule Improvements.

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

The rules will be proposed as permanent rules.

2. Detailed description of the objective of the proposed rule:

The objective of the proposed rule is to update subch. II of ch. NR 809, Wis. Adm. Code, related to control of lead and copper in public drinking water, to be consistent with 2021 revisions to the Federal Lead and Copper Rule, 40 CFR 141.80 to 141.93, and with the anticipated 2024 federal rule revision – Lead and Copper Rule Improvements.

Additional rule changes may be considered to effectuate the goals in this scope statement, clarify ambiguities, and address circumstances unique to Wisconsin.

Areas of the rule the department expects to address include:

- General requirements for the control of lead and copper in public drinking water.
- Compliance monitoring, supplemental monitoring, and analytical requirements for lead and copper.
- Descriptions and applicability of corrosion control treatment steps for small, medium and large-size water systems.
- Description of corrosion control treatment requirements.
- Source water monitoring and treatment requirements.
- Lead service line inventory requirements.
- Lead service line replacement requirements.
- Public education and outreach requirements.
- Monitoring requirements and corrective actions for lead and copper in tap water, including individual tap samples.
- Requirements for establishing and maintaining optimal water quality parameters.
- Monitoring requirements for water quality parameters.
- Monitoring requirements for lead and copper in source water.
- Reporting requirements for lead and copper.
- Monitoring and notice requirements for lead in schools and childcare facilities.
- Small water system compliance flexibility.
- Recordkeeping requirements.

Any other changes necessary for Wisconsin administrative rules to be no less stringent than the requirements of the federal Lead and Copper Rule, including the 2021 Revisions and the Lead and Copper Rule Improvements.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Under the Safe Drinking Water Act (Act), the U.S. Environmental Protection Agency (EPA) establishes regulations that public drinking water systems must meet. Under Section 1413 of the Act, EPA authorizes states, territories, and Indian Tribes to have primary responsibility for administration and enforcement of these drinking water regulations (also called primacy) if they meet certain requirements. When EPA issues new drinking water regulations, primacy agencies are required to adopt these new requirements within two years after the EPA regulation is promulgated. However, states may apply for an extension of up to two additional years and EPA may approve the extension if it meets certain regulatory criteria.

The Federal Lead and Copper Rule Revisions (LCRR) went into effect on December 16, 2021. Shortly thereafter, EPA announced its intention to propose changes to the LCRR requirements that could affect all parts of the rule other than the initial lead service line inventory submission. EPA refers to the additional rule changes they intend to propose in 2023 and finalize in 2024 as the Lead and Copper Rule Improvements (LCRI). To avoid the inefficient adoption of multiple rules over a short period of time EPA recommends that states group the promulgation of the LCRR and LCRI requirements into a single action. Wisconsin Department of Natural Resource (DNR), as a primacy agency, is required to promulgate state administrative rules that are no less stringent than the federal LCRR and LCRI requirements by the dates established by the EPA.

Under the existing lead and copper rule, public water systems are required to monitor lead and copper concentrations in drinking water and take follow-up actions if the 90th percentile of their monitoring results exceed the lead or copper action level. Required follow-up actions include public education; water quality parameter and source water monitoring; system evaluation; and recommending a plan of action to reduce lead and/or copper levels in drinking water. In addition, following an action level exceedance (ALE), certain systems are required to conduct a corrosion control treatment (CCT) study and/or to undertake lead service line replacements.

Under the 2021 LCRR all systems are required to develop and submit a lead service line inventory and submit annual inventory updates to the department; the EPA has indicated that these lead service line inventory requirement will not change under the LCRI. Additionally, unless changed by the LCRI, the LCRR will also strengthen monitoring requirements and add more stringent requirements for systems that exceed the lead action level. If not changed by the LCRI, the LCRR will also add new requirements for public water systems to monitor in schools and childcare facilities, and water systems that exceed a new lead trigger level must plan for how to control lead contamination in the event that they later exceed the action level.

It is not known with certainty at this time what changes EPA will make to the LCRR in the LCRI but EPA has signaled that they are considering requiring full lead service line (LSL) replacement for all systems, regardless of whether they have an ALE, over a set period of time.

The alternative is to not promulgate these rules, in which case the federal regulations would still apply to all Wisconsin public water systems. However, the EPA would administer and enforce the regulations in Wisconsin rather than the Wisconsin DNR. This is because not promulgating these rules would result in Wisconsin losing primacy for the lead and copper rules under the Safe Drinking Water Act (SDWA) and for administering and enforcing the SDWA lead and copper rules in Wisconsin.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Under s. 281.17(8)(a), Wis. Stats., “the department may establish, administer and maintain a safe drinking water program no less stringent than the requirements of the Safe Drinking Water Act, 42 USC 300f to 300j-26.” Chapter NR 809, Wis. Adm. Code, is Wisconsin’s safe drinking water program and establishes minimum standards and procedures for the protection of public health, safety and welfare in obtaining safe drinking water.

Additionally, s. 280.11(1), Wis. Stats., provides department authority, after a public hearing, to prescribe, publish and enforce minimum reasonable standards and rules and regulations for methods to be pursued in the obtaining of pure drinking water for human consumption and the establishing of all safeguards deemed necessary in protecting the public health against the hazards of polluted sources of impure water supplies intended or used for human consumption. The department has general supervision and control of all methods of obtaining groundwater for human consumption including sanitary conditions and generally to prescribe, amend, modify or repeal any rule or regulation theretofore prescribed and shall do and perform any act deemed necessary for the safeguarding of public health.

Under the SDWA and 40 CFR § 142.10, the EPA Administrator determines primary enforcement responsibility for public water systems based on the state’s legal authority, which must include “drinking water regulations which are no less stringent than the national primary drinking water regulations . . . in effect under” 40 CFR part 141.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule :

The department estimates that approximately 3400 hours of staff time will be required to complete the proposed rule.

6. List with description of all entities that may be affected by the proposed rule :

- Municipal community water systems (cities, townships, sanitary districts)
- Other-than-municipal community water systems (mobile home parks, apartment buildings, condominium associations)
- Non-transient non-community water systems (small businesses with 25 or more employees that are not on a municipal source)
- Wisconsin Department of Natural Resources
- Wisconsin Department of Health Services
- Wisconsin Public Service Commission
- Wisconsin Department of Safety and Professional Services
- Treatment installation businesses
- Consumers of water from Wisconsin public drinking water systems

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :

The Wisconsin rule is intended to correlate to federal regulation related to control of lead and copper, to be consistent with 2021 Lead and Copper Rule Revision, 40 CFR 141.80 to 141.93, and with the anticipated 2024 federal rule revision – Lead and Copper Rule Improvements, as described in #3 above.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses):

The implementation of LCRR is likely to realize significant health benefits, such as reducing incidences of preterm birth, hypertension and coronary heart disease; and improving cognitive function in children. Furthermore, implementation of the LCRR is expected to result in significant non-health benefits as well,

such as reducing corrosion damage to drinking water and wastewater infrastructure. A study published in the July 15, 2023 issue of Environmental Research found the benefit-cost ratio of national implementation of LCRR to be 35:1 underscoring the importance of the rule revision.

Preliminary analysis suggests the rule may have a significant economic impact if the LCRI includes a requirement for full LSL replacement. The extent of the economic impact will depend on changes to the federal rule, which are anticipated to happen during the early phases of this rulemaking process. The impacts will be evaluated in more detail during development of the economic impact analysis for the rule.

9. Anticipated number, month and locations of public hearings:

The department anticipates holding one public hearing in the month of June 2025. The department will hold the hearing virtually to allow for as many people to attend as possible.

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