

**FOR INFORMATIONAL PURPOSES ONLY. NOT INTENDED AS LEGAL
ADVICE.**

**HELLO WATER PROVIDERS--
IS YOUR SYSTEM READY FOR THE NEW LEAD & COPPER RULE?
Key Revisions and Potential Impacts of the LCRR
July 27, 2022**

By Jim Steinkrauss

As background, the Lead and Copper Rule (LCR) provisions of the Safe Water Drinking Act provide for compliance activities that water providers must undertake to minimize exposure of lead and copper in water provided to consumers. Lead plumbing materials and lead solder were banned in 1986; however, many water systems, homes, and buildings nationwide contain legacy public and private lead service lines and lead plumbing materials. The LCR established a Lead Action Level (LAL) of 15 µg/L (or 15 parts per billion) and systems conduct sampling at select representative sites either annually or triennially and must report the sample results for lead and copper to their state primacy agency. Should a system's 90th percentile sample exceed the LAL, then systems must institute mandatory lead service line (LSR) replacement, public education and notifications, sampling, and reporting requirements.

On December 23, 2020, the United States Environmental Protection Agency (EPA) announced the final revisions to the Lead and Copper Rule (LCRR) after years of draft revisions, outreach, and public comment to revise the LCR to reduce the impacts and exposure of lead in drinking water. Lead exposure is an important public health concern which impacts everyone, especially young children, nursing and pregnant women, as well as adults and has environmental justice impacts as well. On January 15, 2021, EPA published revisions to the LCR that were to become effective on March 16, 2021, with a compliance deadline of January 15, 2024.

In response to Executive Order 13990, EPA published two subsequent notices delaying the implementation of the LCRR for further review and public comments. These notices delayed the effective date of the LCRR until December 16, 2021, and extended the compliance date to October 16, 2024. On December 17, 2021, EPA published a notice that the LCRR was final and effective; however, EPA did not amend the compliance date. Pursuant to LCRR, public water systems of all sizes will be impacted by these revisions and must comply by the extended deadline of October 16, 2024.

EPA will develop a proposed National Primary Drinking Water Regulation: Lead and Copper Rule Improvements (LCRI) to address the issues identified in this notice and Executive Order 13990, which will be subject to further public comment and feedback. EPA must take final action on the LCRI by October 16, 2024. EPA will not change the compliance deadline for public water systems to complete and submit their LSL inventories by October 16, 2024. Due

One Capital Plaza
Concord, NH 03302-1500
T (603) 226-2600
F (603) 226-2700

20 Trafalgar Square
Suite 307
Nashua, NH 03063
T (603) 889-9952
F (603) 595-7489

120 Water Street
2nd Floor
Boston, MA 02109
T (617) 523-8080
F (603) 226-2700

26 State Street
Suite 9
Montpelier, VT 05602
T (802) 552-4037
F (603) 226-2700

1855 Elm Street
Manchester NH 03104
T (603) 226-2600

to anticipated changes to the LSL replacement plan (LSLR), potential trigger/action level and the tap sampling plan, EPA will likely delay implementation of the LSLR plan and tap sampling plan submission beyond the current October 16, 2024 deadline.

To adequately prepare for compliance, public water systems and water providers of all sizes should begin preparing now for the upcoming changes that must be implemented as part of this rule change. This article highlights some of the key changes in the Final Revisions to the LCR and how they may impact your water system. Here is a summary of those key revisions:

1. Inventory Requirements: All water systems must complete and maintain a Lead Service Line (LSL) inventory and collect tap samples from homes with LSLs if lead is present in the distribution system. Inventories must be maintained, reported to the state and made publicly available. Systems serving more than 50,000 people must publish this inventory on their websites. The inventory must also be updated annually. Systems will have three (3) years to complete this inventory which includes not only lead service lines, but also galvanized lines requiring replacement and “lead service status unknown service lines” (previously unknown services). Systems exceeding the LAL and subject to a mandatory Lead Service Line Replacement (LSLR) program will need to prepare an inventory and submit it to the state before October 16, 2024.

2. Find-And-Fix: The final rules include a “find-and-fix” approach that requires water systems to perform additional actions when an individual tap sample exceeds the LAL. The final rule puts an emphasis on localized distribution system management as the likely “fix” and implementation of mitigation strategies could include flushing or other strategies to improve water quality management. This also requires efforts to remove and/or encourage customers to replace their lead lines for those sites with samples above the LAL.

3. New Trigger Level (10 µg/L) and Corrosion Control Treatment (CCT) Impacts: The Final Rule creates a new Trigger level (10 µg/L) and includes expanded requirements for corrosion control treatment (CCT) evaluation based upon sampling results. A Trigger level exceedance requires systems that currently have CCT to re-optimize existing treatment. Systems that do not have CCT must conduct a corrosion control study. A Trigger level exceedance also requires systems to replace 3% of LSLs annually. The final rule also provides new compliance alternatives for both LSLR and CCT for small systems including Point-of-Use (POU) treatment and replacement of lead bearing plumbing fixtures.

4. New Requirements for Replacing Lead Service Lines: Water systems exceeding the LAL must initiate a LSLR removing LSLs, permanently reducing a significant source of lead. All systems with LSLs or lead status unknown service lines must create an LSLR plan by the rule compliance date (October 16, 2024), regardless of whether or not they are below the LAL. As stated above, the deadline may get amended by future EPA revisions. As of now, systems above the Trigger level, but at or below the LAL, must conduct replacements at a goal rate approved by the state. Systems above the LAL must annually replace a minimum of 3%, based upon a 2-year rolling average of the number of known or potential LSLs in the inventory at the

time of the LAL exceedance. States are required by the rule to set a more aggressive rate of replacement, if feasible. The prior rule required systems to replace 7% of LSLs per year, but allowed systems to suspend replacements if they had 2 consecutive sampling rounds below the LAL. The new rule does not allow systems to end their replacement program until they demonstrate lead levels below the LAL for 2 years. Partial relays are discouraged and will not count towards the required LSLR replacement goals. Systems cannot use sampling results in lieu of replacement.

If a customer notifies a system that they chose to replace their customer-owned portion of the line, the system must replace its portion of the LSL within 45 days but may have up to 180 days with notification to the state.

5. Sampling Protocols and Methodology Revisions: EPA implemented changes to the tiered system for prioritizing and selecting sampling sites placing an obligation on systems to first sample sites with known LSLs. For those systems with LSLs, they must now collect a fifth liter sample for lead and use the first liter for copper sampling results. Systems without LSLs will continue to collect the first liter sample for lead and copper results. Sampling instructions and protocols now prohibit pre-stagnation flushing, cleaning or removing aerators, and samples must be collected using wide-mouth bottles.

6. Risk Communication and Mitigation Changes: Any consumers with individual samples exceeding the LAL must be provided with notice of the sample results no later than three (3) days, or as soon as practicable. Systems must also provide pre-notification to customers with LSLs, galvanized service lines requiring replacement and lead status unknown service lines before undertaking activities that may disturb the lead line (including service line replacement, changing meters, temporary service shut-off). The system must also take risk mitigation procedures including flushing, provision of pitcher filters (with filters for 3 months) and mandatory revised health effects language.

A key change also requires systems with a 90th percentile test exceeding the LAL to make a public notification to all consumers, system-wide within 24 hours. The rule treats the LAL exceedance as a Tier 1 event under the WIIN Act modifications to the SWDA, with notices also to the State and EPA. Individual notices to customers with tap samples exceeding the LAL must also be provided as soon as practicable but not later than 24 hours. Those notices must use clear and concise language in Public Notifications and Public Education materials including the Consumer Confidence Report (CCR).

7. Public Education Requirements: The final rule increases the number, forms of communication and comprehensiveness of public education materials. Systems must make their LSL inventory publicly available and must notify occupants of homes with LSLs every year about their LSL, drinking water exposure risks and mitigation options, including removal. Systems that have an annual goal for LSL replacement that do not meet the goal must also undertake certain mandatory public education efforts including attending/hosting public

events, public notices, social media, newspaper and other advertisements, etc. The final revision also revised the mandatory health effects language that must be utilized.

8. School & Childcare Sampling: Community Water Systems (CWS) must now take samples and test for lead in drinking water in schools and childcare facilities. Systems must conduct drinking water sampling in 20% of all elementary schools and childcare facilities per year, completing all sampling within an initial 5-year period. Systems must provide the schools and childcares with sample results and information on actions that they can take to reduce lead in drinking water (EPA's 3T's information). Systems are also required to provide the school and/or childcare with methods to communicate results to users of the facility and parents. During that initial 5-year period, CWSs must provide testing to secondary schools upon request. After the 5-year period, CWSs must then provide testing at the request of any elementary schools, secondary schools or childcare facilities.

The LCRR changes are complex and may provide a number of compliance challenges for water systems to develop an inventory, LSLR plan or small system alternative plan within 3 years. In addition, there are a number of operation and communication changes that could impact day-to-day operations of both public and private water systems. Finally, the Bipartisan Infrastructure Law passed in November 2021 included funding for systems to finance the removal of lead service lines and reduce exposure to lead in drinking water. For additional information or advice on how your system can comply with the LCRR or information regarding the Bipartisan Infrastructure Law, please email or call Jim Steinkrauss at jjis@rathlaw.com or 603-410-4314.

Jim Steinkrauss is a member of the Environmental Practice Group at Rath, Young & Pignatelli, P.C. as Of Counsel, but previously served as Deputy General Counsel to the Boston Water & Sewer Commission. In that role, he managed the Commission's Lead & Copper Rule compliance and Lead Replacement Incentive Program for over 15 years, including interaction with state and federal regulators.