

# AMENDMENTS TO THE LEAD AND COPPER RULE PLACE STRICTER RESPONSIBILITIES ON WATER SUPPLIERS

*Hodgson Russ Environmental, Municipal, and Public Finance Alert*  
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On October 10, 2019, the United States Environmental Protection Agency (EPA) issued proposed amendments to its long established Lead and Copper Rule (LCR), designed “to protect the public health and reduce exposure to lead and copper in drinking water.” These revisions represent the first major changes to the LCR since its 1991 promulgation, and are part of the Federal Action Plan to Reduce Childhood Lead Exposures and Associated Health Impacts. Lead pipes and brass or bronze faucets and fixtures are the most common sources of lead in drinking water and the cause of significant health issues, especially for children and pregnant women. Note that the proposed rule revisions do not contain any amendments to the copper requirements contained in the current LCR.

The pre-publication version of the proposed revisions (an unofficial version for the purpose of public comments) are comprehensive and address, among other things, establishing a lead trigger level, corrosion control treatment, lead service line (LSL) inventory, LSL replacement, monitoring requirements for lead and copper in tap water sampling, water quality parameter monitoring, source water monitoring, public education and sampling at schools and childcare facilities, and find-and-fix and reporting requirements.

Key provisions of the proposed rule include:

1. Identifying the areas most impacted: requires water systems to “complete and maintain a lead service line inventory,” obtain tap samples of LSL if they are present in that water system, reduce elevated levels of lead in certain systems, prepare and update a publicly-available inventory of lead service lines and requires water systems to “find-and-fix” sources of lead when a sample in a home exceeds 15 parts per billion (ppb).

2. Strengthening drinking water treatment requirements: while the proposed revisions do not change the current level of acceptable lead exposure at 15 ppb, the revisions do establish a lower trigger level of 10 ppb, meaning that water systems with test results meeting or exceeding the trigger level are required to work with their state to take action to improve corrosion control treatment and conduct LSL replacement.

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3. Replacing LSL: requires the water system to replace its portion of an LSL when a customer desires to replace its customer-owned portion of a LSL. When tap samples indicate that lead levels exceed the existing action level and the proposed trigger level, the water systems will be required to institute full LSL replacement (LSLR) programs. The annual replacement of a minimum of 3% of the number of known or potential LSLs in a water systems' inventory at the time when systems are above the action exceedance level is mandated by the proposed rule provisions.

4. Increasing sampling reliability: tap sampling procedures are revised as are the criteria for choosing homes from which to collect tap samples. Revisions include disallowing certain pre-sampling procedures that could result in lower concentrations in the sample, including flushing the system and cleaning or removing the aerator.

5. Improving risk communication: water systems must notify customers within 24 hours if a tap sample exceeds the 15 ppb level; regular outreach must be conducted by the water systems to homeowners who have LSLs; and the LSL inventory must be made publicly available.

6. Protecting children in schools and childcare facilities: requires water systems to collect samples from schools and childcare facilities that are serviced by the systems.

It is estimated that there are between 6 to 10 million lead service lines in the country, meaning that these proposed changes would impact a significant number of communities. One of the biggest changes would be that *all* systems, regardless of size, must develop an LSL inventory (or demonstrate absence of LSLs) within the first three years of final rule publication. The LSL inventory must be updated annually, and all systems with known or possible LSLs must develop an LSL replacement (LSLR) plan.

The sampling, investigations, inventory process, and LSL replacement are important measures calculated to protect public health and children's safety, but they are complex and can be costly. Together, the EPA and U.S. Department of Housing and Urban Development encourage states and municipalities to take advantage of the funding and financing options available through the federal government. Information about those funding options may be viewed here: <https://www.epa.gov/ground-water-and-drinking-water/lead-service-line-replacement>

EPA continues to host public webinars to help local and state governments navigate lead service line replacement programs. The next will be December 5, 2019 at 2:00 p.m. and will focus on small public water systems. If interested, additional information, registration, and recordings of past webinars can be found here: <https://www.epa.gov/dwreginfo/lead-service-line-identification-and-replacement-webinars>

EPA expects to promulgate the final rule in 2020. The next step is publishing the proposed rule in the Federal Register, which commences the public comment process. You may submit comments on the proposed rule by visiting <http://www.regulations.gov> and searching Docket ID No. EPA-HQ-OW-2017-0300.

There is no question the final rule will place additional financial stress on communities, especially financially challenged municipalities with aging infrastructure. Many communities are already undertaking LSL replacement actions; all need to proactively include LSLR planning into their into capital plans.

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