



TO: U.S. Environmental Protection Agency
Docket ID No. EPA-HQ-OW-2018-0007
FROM: National Rural Water Association (contact: Mike Keegan, Analyst)
DATE: March 8, 2018
RE: Long-Term Lead and Copper Rule Federalism Consultation

Thank you for the opportunity to comment on regulatory revisions to the drinking water Lead and Copper Rule (LCR) under the Agency's Executive Order 13132, "Federalism" consultation.

*Headquartered in Duncan (Oklahoma), the **National Rural Water Association (NRWA)** is the nonprofit association of the federated state rural water associations with a combined membership of over 30,000 small and rural communities. NRWA is the country's largest water utility association and the largest community-based environmental organization. State Rural Water Associations are non-profit associations governed by elected board members from the membership. Our member utilities have the very important public responsibility of complying with all applicable U.S. Environmental Protection Agency (EPA) regulations and for supplying the public with safe drinking water and sanitation every day.*

We appreciate the many opportunities the Agency has provided to all stakeholders to participate in the crafting of revisions to the LCR such as providing comments, numerous substantive discussions, and many formal public consultations. In addition to this latest opportunity for public input, NRWA participated in the November 2011, Federalism Consultation, the August 2015 Lead and Copper Working Group to the National Drinking Water Advisory Council (LCRWG), and the December 2015 deliberations of the National Drinking Water Advisory Council (NDWAC). The Agency's outreach effort for seeking public and stakeholder participation for crafting revisions to the LCR is likely the broadest and most transparent process conducted for any federal National Primary Drinking Water Regulation to date. NRWA supports the August 2015 recommendations supported by the majority of participants on LCRWG that were subsequently endorsed by the NDWC (December 15, 2015). We believe our comments today are consistent with the LCRWG recommendations.

NRWA shares the EPA's goal of eliminating all lead from the public's drinking water. Local governments and state governments exist solely to protect and assist their citizens. The provision of safe drinking water is perhaps the most elemental purpose of local government. Every one of the approximately 68,122 U.S. public drinking water supplies that are regulated under the LCR has a unique set of vulnerabilities and challenges. If you apply a uniform regulatory standard to mandate protection in all of them, you will not only fail to address the greatest risks in many communities, but you will force many other communities to implement unnecessary regulations that fail to address their threats. We believe the current LCR can be modified to result in enhanced public health protection and drinking water safety.

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Rural and small communities support the Administration's two principled objectives in reforming federal regulations: (1) respecting the decisions of the people as reflected in their local governments (including when it is in conflict with federal unfunded mandates) under the concept of "cooperative federalism," and (2) respecting the authority of Congress by administering enacted statutes within the authority granted by Congress.

"As the Administrator of the Environmental Protection Agency, I am a firm believer in EPA's mission to protect human health and the environment and am committed to helping provide future generations with a better and healthier environment. I also firmly believe that federal agencies exist to administer the law. Congress passes statutes, and those statutes outline the responsibilities and work that EPA must do. Any action by EPA that exceeds the authority granted to it by Congress, by definition, cannot be consistent with the Agency's mission... EPA can accomplish a lot when the Agency focuses on working cooperatively with the states and tribes to improve health and the environment. It is essential for the federal government, state governments, and tribal governments to work together to provide the environmental protection that our laws demand and that the American people deserve. I strongly support cooperative federalism, and make every effort to partner with EPA's counterparts in state, local, and tribal governments to further these goals."

Administrator Scott Pruitt
Before the Subcommittee on Interior, Environment, and
Related Agencies, U.S. House of Representatives
June 15, 2017

The reason local governments support cooperative federalism is because federal regulations, while well-intentioned, may have an adverse effect on public health. Some federal regulations may include mandates that local communities and consumers pay the cost of federal compliance that they don't believe is resulting in the most beneficial public health or environmental policy. This dynamic is especially acute and problematic for economically disadvantaged populations. This is the case under the current LCR.

- Communities are conducting repeated and complicated samplings in local homes that have for decades tested negative for lead and where the local water utility has no lead service lines.
- Local residents find the current in-home sampling overly complicated and arbitrary which results in local resistance and unwillingness to participate in lead drinking water sampling. The success of any drinking water safety program is dependent on local support.
- Communities are mandated to pay for very costly replacement of portions of lead service lines that are resulting in increased exposure to lead in drinking water.
- Communities are required to introduce additional chemicals to their public's drinking water when they are not persuaded there is a correlating public health benefit and when they believe there were less costly and more protective options (that are not permitted under the LCR).

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- Communities are mandated into federal compliance schemes when the federal drinking water program can't tell the public the one thing it wants to know -- how much lead in drinking water is unsafe? Instead, federal agencies say the obvious, that no amount of lead in your water is good and impose a highly convoluted standard (action level) of 15 parts per billion on a certain percentage of the homes tested. Is the 15 parts per billion level measuring safety? That is what is implied. Is a 15.5 parts per billion level unsafe... for children... for a one-time drink of that water? Should a family feel safe with water tested at 14.9 parts per billion level?

NRWA supports the Agency's concept of "shared responsibility" among federal, state, and local governments - and the public. Any new LCR should be fundamentally modified to reflect this principle. Unfortunately, much of the local opposition to the current rule is based on its arbitrary and uniform mandates that result in many communities believing many of the rule's requirements are unnecessary or diverting the community from implementing the most effective policy from preventing lead in drinking water. To ensure the greatest possible future success and the greatest possible public health protection, any new rule should be a shared responsibility, meaning local governments and local populations should agree the resulting policies are necessary, tailored to local conditions, and result in a commensurate public health benefit. This intergovernmental collaborative should be incorporated into the details of the rule in: monitoring schemes, lead service line replacement plans, efficacy of corrosion control treatment, public education, remedies to high household tap samples, and the provision of pitcher filters to certain customers. In all of these key rule elements, provisions should be included to ensure any uniform federal remedy does not usurp any solution that is preferable by the local citizens and more protective of public health.

Specific Shared Responsibility Opportunities to Improve the LCR

- **Sampling:** Local governments should have the authority to develop locally supported and tailored in-home tap sampling schemes. Later in these comments, we argue that the current in-home tap sampling scheme exceeds the authority provided to the Agency under the Safe Drinking Water Act (SDWA). EPA's responsibility should be limited to sampling guidance, technical and education information. Local governments can better craft monitoring plans and schedules based on local preference including sampling during day-time hours, targeting schools for testing, varied aerator removal, targeting homes with children such as daycare centers, resistance of homeowner participation, sampling flushed water samples versus first draw, historically negative sampling results, findings of no potential lead sources (plastic pipe systems), etc.
- **Decouple Tap Sampling from Utility Compliance:** Allow utility compliance (primarily corrosion control treatment) to be tested through water quality parameter sampling within the public water system. Results from in-home tap sampling should be used for a catalogue of response options that target the causes of elevated sampling results at the specific site including the following: possible replacement of

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lead service lines in the home, assessment of in-home plumbing fixtures, notification and assistance of additional governmental service agencies, etc.

- **Lead Service Line Replacement:** Any mandatory policy for the replacement of lead service lines should respect local ordinances and property rights; homeowners should not be mandated to modify their private property if they believe it is not affordable and community taxpayers should not be required to pay for an individual property owner's plumbing upgrades (transfer public funds to private use). Any mandatory replacement policy should have special affordability considerations for situations where the replacement is cost-prohibitive in economically disadvantaged communities without a finding of elevated lead in drinking water levels.
- **Public Education and Pitcher Filters:** Local governments should be granted authority to modify public notice and educational material to reflect local conditions and risk communications. Our concern is the current EPA information is unnecessarily alarming the public regarding the safety of their drinking water. Many violations of EPA standards are not necessarily an indication of unsafe drinking water (i.e. a temporary exceedance for a small fraction of a part per million that is causing the public to stop drinking their water and not trust their local government). The information provided to the public needs to be commensurate with any public health risk from the drinking water. Some states have been compelled to issue additional public notices to warn consumers of the significance of EPA mandated warnings. More and better tailoring of public information would make for a better educated public. Also, local governments should have the flexibility to decide when providing individual customers with a pitcher filter is necessary. EPA guidance on the use of pitcher filters would be helpful and welcome.
- **Intergovernmental Cooperation:** Create a new process or guidance to encourage multi-government contribution to crafting lead in drinking water prevention initiatives, locally supported monitoring schemes, educating vulnerable populations, and response actions when sampling detects elevated lead levels in drinking water. The LCRWG presented a number of recommendations to further "cooperation with state, county and local health departments to promote an integrated approach to childhood lead poisoning screening, prevention, and protection that emphasizes drinking water and its potential as a primary lead source (e.g. infants dependent on reconstituted formula)." We endorse this concept of a new intergovernmental cooperation.

Regarding principle of respecting the authority of Congress by administering enacted statutes within the authority granted by Congress, we respectfully urge the Agency to consider if the existing LCR's mandate that allows for the effects of a private homeowner's plumbing (i.e. a kitchen faucet) on the water passing through that fixture should result in very burdensome and possibly unrelated requirements on the utility (i.e. treatment installation or adjustments, removal of underground water lines, and alarming public notices) as authorized under the SDWA. We understand the Agency believes it has statutory authority to regulate utilities' water as it relates to the safety of the water that comes from a customer's tap. However, under the existing LCR, the Agency does not

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make any finding of contamination or adverse effect on the health of persons before the reaction with homeowner's private public fixtures as required by the SDWA. Additionally, the SDWA limits EPA's authority to regulate the quality of drinking water *"in the water in public water systems."* We believe the current LCR regulatory nexus between the results of tap sampling (when EPA has made no finding of contamination or any adverse effect on the water leaving the public water systems) and correlating mandates on the greater community exceeds the authority provided under the SDWA.

We urge the Agency to craft a new rule that decouples the regulatory requirements on water utilities from results of tap sampling. The results of tap samples should be used for every community to implement a locally-tailored lead reduction plan that corresponds to the risk in that particular community. This will result in greater potential to reduce lead in drinking water by allowing for more community involvement and responsibility in sampling and remediation, better use of local limited resources, and remediation plans that are more targeted to local conditions.

We do believe that EPA has the authority to regulate the quality of the water within the public water systems as it relates to the potential for lead occurrence at the tap through water quality parameters, corrosion control treatment, and each community's historic tap sampling results.

Thank you for the opportunity to comment and participate. We are very appreciative of the Agency's many public outreach opportunities. We believe that our recommendations will result in a better federal lead rule and greater public health protection by recognizing the need for the public to support and participate in their local government and accept responsibility for its operation. We need to acknowledge that with respect to the crisis in Flint, Michigan, the current LCR was unable to prevent it, and unable to tell us whether Flint violated the federal lead standard while delivering alarming amounts of lead to citizens in their water. Additionally, it is a case where no one knows what level of government is to blame. We believe our recommendations will begin to correct the status quo by granting additional authority and responsibility to the people. Flint should serve as a wake-up call for the public as the guarantor of the safety of their public drinking water through their local governments. The public owns and operates their public drinking water supply and is ultimately responsible for its safety.

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