



February 12, 2020

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Re: National Primary Drinking Water Regulations: Proposed Lead and Copper Rule Revisions, EPA-HQ-OW-2017-0300; FRL-10001-16-OW

Clean Water Action and Clean Water Fund respectfully submit these comments regarding the Environmental Protection Agency (EPA) National Primary Drinking Water Regulations: Proposed Lead and Copper Rule Revisions. Key elements of our comments include:

1. EPA failed to address the best opportunity to reduce lead at the tap. EPA should require full lead service line replacement (LSLR) at all regulated water systems.
2. EPA should prohibit partial lead service lines except in emergency situations.
3. EPA should provide Guidance to assist water systems with locating existing partial lead service lines including "customer-owned" lead service lines.
4. The proposed Lead and Copper Rule Revisions (LCRR) appears to minimize concerns about corrosion control treatment requirements that could increase nutrient pollution and be in conflict with other EPA priorities. We argue that we must reduce lead at the tap effectively while considering downstream pollution loadings that could lead to Harmful Algal Blooms (HABs) and other water quality risks.
5. Current funding levels for critical program areas will not support implementation and enforcement of the proposed LCRR nor meet expectations of the public and policymakers

Our comments are presented in the order they appear in Part III. “Proposed Revisions to 40 CFR Subpart I Lead and Copper” in the Supplemental Information section.¹

A. Trigger Level

The newly proposed Trigger Level of 10 g/L requires water systems to take a series of proactive measures when they are not in exceedance of the Action Level of 5 g/L. We support promoting early action to reduce lead levels at the tap, but having two tiers of activities based on sampling results sets up a complicated process for water systems and States to manage and for the public to understand. Given the potential for confusion in conducting and overseeing this new tier of requirements - and that EPA has determined that the new Trigger Level activities are warranted if more than 10% of samples are above the 10 g/L Trigger Level - EPA could also streamline the proposal by lowering the Action Level to 10 g/L. If EPA retains the Trigger Level approach, under the full replacement requirement that we are proposing EPA would need to reconsider all of the activities prompted by reaching the Trigger Level. For example, if all systems are engaged in full lead service line replacement, the requirement to begin goal-based programs is moot. Resumption of regular monitoring rather than reduced monitoring would still make sense.

B. Corrosion Control Treatment (CCT)

EPA should take an integrated approach to its final LCR revisions by considering the water quality impacts of preferring orthophosphate for corrosion control. Orthophosphate treatment is a critical item in our toolbox for preventing corrosion and controlling lead at the tap, but its use can have the unintended consequence of increasing phosphorus loadings to downstream surface waters and wastewater treatment facilities. Nutrient pollution like phosphorus can trigger excessive plant and algal growth in streams, lakes, reservoirs, and estuaries. Certain algae are toxic and can make people sick if they swim or come in contact with contaminated water. In extreme cases algal growth can result in “dead zones” devoid of any aquatic life. When harmful algal blooms (HABs) occur in streams, lakes, or reservoirs that are drinking water sources, it can create treatment challenges for drinking water systems. There are also economic impacts to nutrient pollution, both in the form of treatment costs for wastewater

¹ *Federal Register* at 84 Fed. Reg. 61,684, November 13, 2019

utilities that may have to meet certain Clean Water Act pollution limits for nutrients and in the form of lost recreation and tourism dollars when a lake, river, or beach is closed because of a toxic algal bloom.

Because of the scope of this problem EPA has been working with states for decades to address nutrient pollution. In September 2016 the agency released a memo describing its “renewed call to action to address nutrient pollution,” by “keeping the focus on nutrient reduction from all sources.”² Reducing nutrient pollution and HABs is also a priority in EPA’s 2021 proposed budget. The agency’s budget proposes \$22.4 million to address and reduce HABs, including \$15 million to establish a new grant program to target nutrient pollution reduction across the country.³

In the proposed LCRR preamble EPA acknowledges that “use of orthophosphate for corrosion control can increase phosphorous loading to wastewater treatment facilities,” which “may be a concern for wastewater systems with phosphorous discharge limits.”⁴ However, the preamble goes on to state “that water systems conducting corrosion control studies would not be able to rule out orthophosphate simply based on the increase in loading to wastewater treatment facilities.”⁵ It is shortsighted of EPA to not take potential increases in phosphorous loadings to surface waters more seriously. EPA’s analysis concluded phosphorous entering surface waters from orthophosphate would be small compared to total phosphorus loads from all other anthropogenic sources.⁶ Yet EPA’s analysis underestimates the scope of the problem—the agency’s most recent assessment of water quality in lakes and rivers found that 40 percent of lakes have excessive levels of total phosphorus⁷ and that 40 percent of stream and river miles

²Joel Beauvais, Deputy Assistant Administrator, U.S. EPA, Memorandum to State Environmental Commissioners, State Water Directors, “Renewed Call to Action to Reduce Nutrient Pollution and Support for Incremental Actions to Protect Water Quality and Public Health,” September 22, 2016, <https://www.epa.gov/sites/production/files/2016-09/documents/renewed-call-nutrient-memo-2016.pdf> (attached).

³ U.S. EPA, FY 2021 Budget in Brief, February 2020, <https://www.epa.gov/sites/production/files/2020-02/documents/fy-2021-epa-bib.pdf>

⁴ Federal Register, Vol. 84, No. 219 at 61693.

⁵ *Id.*

⁶ Federal Register, Vol. 84, No. 219 at 61722

⁷ U.S. EPA, National Lakes Assessment 2012: A Collaborative Survey of Lakes in the United States, EPA-841-R-16-113, December 2016

have elevated phosphorus levels.⁸ Even a relatively small increase in total phosphorus in water bodies already impaired for phosphorus is problematic considering there is wide agreement among scientists that the frequency and distribution of algal outbreaks have increased in recent years.⁹

EPA's analysis also failed to consider regional or watershed impacts of additional total phosphorus loadings from drinking water systems using orthophosphate. For instance, in arid and semi-arid regions of the country, streams can be effluent dominated during drier times of the year, which means any additional phosphorus loading can have a significant impact on water quality. In these same regions of the country outdoor irrigation can account for a significant portion of total water usage. Water that is used for irrigation won't all be captured by a wastewater treatment plant that could limit the amount of phosphorus discharged, and instead phosphorus pollution from irrigation can run-off into nearby streams or seep into groundwater where it can eventually migrate to surface waters. In Denver, Colorado 40 percent of all treated drinking water is used outside the home for irrigation.¹⁰ Concerns about the water quality impact that requiring Denver Water to use orthophosphate to reduce lead at the tap brought the metro community together to come up with an innovative plan to drastically reduce lead exposure in drinking water while protecting local water bodies from additional phosphorus pollution.¹¹ EPA should expand its analysis to examine more closely the impacts its proposed LCR revisions could have on water quality in different regions of the country. It should also expand its economic analysis to consider not just the potential cost of phosphorus removal for wastewater utilities, but also the potential loss of revenue for recreation, fisheries, and tourism industries from HABs.

EPA's approach to CCT risks increasing nutrient pollution in a manner that is in conflict with the agency's long-professed priority goal of reducing all sources of nutrient pollution nationwide. We argue that rather than minimizing this conflict, public health protection and water quality can

⁸U.S. EPA, Office of Water and Office of Research and Development, National Rivers and Streams Assessment 2008-09: A Collaborative Survey, EPA 841-R-16-007, March 2016, https://www.epa.gov/sites/production/files/2016-03/documents/nrsa_0809_march_2_final.pdf

⁹National Office for Harmful Algal Blooms at Woods Hole Oceanographic Institution, "Recent Trends: National Changes," July 11, 2016, <https://www.whoi.edu/redtide/regions/us-recent-trends>

¹⁰ Colorado Department of Public Health and the Environment, Watershed & Wastewater Stakeholders Summary Report, September 9, 2019, <https://drive.google.com/drive/folders/1HizHWRwG1YwRYb9HgLctMTAOVtE0Dt5q>

¹¹ <https://www.denverwater.org/your-water/water-quality/lead/lead-reduction-program>

benefit by acknowledging the need for a holistic approach. This holistic approach should include aggressive programs to remove lead including a requirement for full lead service line replacement, which has the additional benefit of addressing particulate lead which is not always reduced by orthophosphate treatment. EPA should also support research into innovative approaches to phosphorous management and continue to support advanced understanding of corrosion control practices. We do not suggest taking lightly the need to reduce exposure to lead at the tap, regardless of its source. We do ask EPA not to dismiss the need to address the unintended consequences of contributing more nutrient pollution to water bodies that in many cases are already impaired or experiencing HABs.

C. Lead Service Line Inventory

We agree with EPA that better information on the number and location of lead service lines is essential in order for water systems to inform the public about lead risks and to reduce lead exposure. Inventories are critical to effective implementation of the current rule framework, and would be the foundation of the regulatory requirement for full lead service line replacement that we are proposing. We fully support the proposal that all water systems create an inventory of all LSLs in their distribution systems, regardless of whether they are under public or private property or considered to be "system-owned" or "customer-owned."

EPA requests comment on the feasibility of water systems creating initial inventories by the compliance date, which is three years after publication of the final rule. As EPA points out, water systems should be well on their way to having this information given that they have had to compile this information to identify sampling sites.¹² Any system that has been required to replace lead service lines as a result of an Action Level exceedance should also have initial inventory information. In addition, the February 2016 memo from EPA Assistant Administrator for Water to State SDWA primacy agency Directors requested that materials inventories required under the original LCR "as well as updated information on LSLs" be posted on water system or state agency website, with a priority for large systems.¹³ In general, State agencies replied that

¹² *Federal Register* at 61,695

¹³ U.S. Environmental Protection Agency Assistant Administrator for Water Joel Beauvais memo to State environmental and health agency Commissioners, February 9, 2016; <https://www.epa.gov/sites/production/files/2016-03/documents/samplelettercommissionersfeb2016.pdf>

they had begun working with water systems on this task.¹⁴ Given work that water systems have already engaged in to assess materials in their distribution system and to inventory LSLs, submitting initial inventories within the proposed deadline is feasible.

EPA should emphasize and provide guidance on existing “customer-owned” partial lead service lines usually located under private property. EPA also requests comment on whether additional Guidance is needed related to the content or format of inventories. We agree that the inventory must include all lead service lines, including existing partials that are located under private property (or on the “customer side.”) EPA should emphasize this requirement and provide Guidance for systems on how to work with existing records to determine the location of existing partials on the “customer-owned” side since water systems have in general not thought of these service lines as “theirs.” It is imperative that water systems include existing partials on the “customer-owned” side in inventories, and it is equally imperative to recognize that many water systems may not have prioritized recording these as part of their distribution systems whether they exist due to partial replacements conducted in the course of routine operations or whether they result from historic replacement programs conducted only on the “system-side.” We are concerned that lack of clarity on this will result in many existing partials on the “customer-owned” side being omitted from inventories and not included in full replacement programs.

EPA asks for comments on the treatment of “unknown” service lines. We agree that water systems should designate service lines as “unknown” if their materials can not be confirmed by the compliance date. These unknown service lines should be treated as lead for the purposes of calculating the total number of lead service lines and for public education activities. In annual inventory updates, water systems should be moving service lines into the “lead” or “not lead” categories.

We offer comments on several other aspects of the required LSL inventories:

¹⁴ State environmental and health Commissioners responses to 2/9/16 memo: <https://www.epa.gov/dwreginfo/epa-lead-and-copper-rule-state-response-documents>

LSL Definition: EPA's definition of a *Lead Service Line* is inconsistent with the public health protection goals of the LCR. EPA's definition continues to exclude goosenecks, pigtails and other connectors often used to connect service lines to the large water main. EPA's proposed definition only includes these connectors if they are connected to a galvanized line considered an LSL:

*Lead service line means a service line made of lead, which connects the water main to the building inlet. A lead service line may be owned by the water system, owned by the property owner, or both. For the purposes of this subpart, a galvanized service line is considered a lead service if it ever was or is currently downstream of any lead service line or service line of unknown material. If the only lead piping serving the home or building is a lead gooseneck, pigtail, or connector and it is not a galvanized service line that is considered an LSL, the service line is not a lead service line.*¹⁵

EPA does not offer a justification for excluding goosenecks, pigtails, and connectors in the definition of lead service line. It does not appear that EPA is excluding them because they do not pose a public health risk. EPA proposes mandatory replacement of lead goosenecks, pigtails, and connectors when a water system finds them during the course of routine or emergency repairs to provide a beneficial and lower burden opportunity for the water system to remove a lead service line from its distribution system.¹⁶

D. Lead Service Line Replacement

EPA's proposed revisions to the LCR fall short in a fundamental way. We urge EPA to revisit the decision NOT to require full replacement of lead service lines. Where lead service lines are present, they are the largest source of lead in tap water.¹⁷ While water chemistry and treatment play a role in whether lead leaches from pipes and fixtures, removing sources of lead in contact with water is the best way to reduce lead at the tap. EPA missed an opportunity to articulate a vision and put in place requirements to get lead out of drinking water distribution

¹⁵ *Federal Register* at 61,744

¹⁶ *Federal Register* at 61,697

¹⁷ National Primary Drinking Water Revisions: Proposed Lead and Copper Rule Revisions, *Federal Register* Vol. 84 No. 219, November 13, 2019, p. 61694; American Water Works Association (AWWA) Water Research Foundation (2008) "Contributions of Service Line and Plumbing Fixtures to Lead and Copper Rule Compliance Issues" (Sandvig et al., 2008) estimates that 50 percent to 75 percent of lead in drinking water comes from lead service lines.

systems. Fully replacing all lead service lines over time is an ambitious undertaking. Nevertheless, momentum toward this goal is greater than it has ever been as indicated by water system activities, state policy developments, Congressional interest, and EPA's own proposal. The LSL replacement plans that EPA proposes water systems submit with their inventories will support such a requirement.

Water systems across the country have fully replaced lead service lines, are in the process of implementing plans to do so, or are considering putting programs in place.¹⁸ EPA references several of these in the proposal. For example, in discussion of the importance of an accurate inventory, EPA cites Madison Wisconsin's federalism letter to EPA on LCR revisions to note that an accurate inventory allows a water system to incorporate full replacement of lead service lines into its ongoing infrastructure improvement work.¹⁹ Madison's replacement efforts were part of a full replacement plan that has largely been completed.²⁰

States are also putting policies in place that will ultimately support full replacement. For example, Illinois, Michigan and Ohio all require inventories of lead service lines.²¹ Michigan's revised LCR is the only one in the country to date that requires full lead service line replacement within 20 years.²²

The U.S. Congress has also recognized the importance of addressing lead service lines. In its proposal, EPA references the 2018 America's Water Infrastructure Act (AWIA) requirement that EPA include the costs of full replacement in the next *Drinking Water Infrastructure Needs Survey* to support proposed requirements for water systems to inventory lead in the distribution system.²³ This AWIA provision also supports a vision of full replacement of lead service lines by including the cost of replacing the whole line, regardless of whether it lies under public or private property, in the analysis of the nation's drinking water infrastructure needs.

¹⁸ Environmental Defense Fund, "Recognizing Efforts to Replace Lead Service Lines," <https://www.edf.org/health/recognizing-efforts-replace-lead-service-lines>

¹⁹ *Federal Register*, p. 61,698

²⁰ <https://www.cityofmadison.com/water/water-quality/water-quality-testing/lead-copper-in-water>

²¹ *Federal Register*, p. 61,695

²² https://www.michigan.gov/egle/0,9429,7-135-3313_3675_3691-9677--,00.html

²³ *Federal Register*, p. 61,694

In the proposed LCRR, EPA itself indicates that full lead service line replacement is a desirable goal that is achievable. EPA proposes that within 3 years, water systems prepare lead service line replacement plans that include a wide range of details that would be involved in planning for full replacement, including a replacement rate developed in consultation with the State, plans for notifying customers, procedures for filter provision and post-replacement flushing, and a funding strategy²⁴. While EPA's proposal envisions these plans being used in the event replacements are done in the event of elevated lead levels, they suggest that EPA has determined that all systems with lead service lines or service lines of unknown composition are able to develop such plans. Indeed the exercise could lead water systems to determine that executing these plans over time until all lead service lines are replaced is more within reach than previously thought. Yet, EPA stops short of putting a requirement in place.

In *Strategies to Achieve Full Lead Service Line Replacement (LSLR)*, an EPA document published to support the proposed LCRR, EPA notes that "LSLR programs can be structured in ways to overcome potential legal, financial, and practical challenges related to full LSLR."²⁵ The document offers solutions to critical replacement program issues around legal issues and financing.

In numerous ways, EPA's proposed LCRR suggests that fully replacing lead service lines is an appropriate goal and is achievable. Yet EPA stops short of articulating a vision of drinking water distribution systems without lead service lines. Using lead in water distribution systems - a practice that began over 100 years ago - was a regrettable choice about which there was concern about public health risks at the time.²⁶ EPA should make the right choice now and require all lead service lines to be fully replaced

EPA should set 10 years as a baseline goal for full replacement. This is an ambitious rate of replacement commensurate with the public health risk posed by lead exposure, especially for vulnerable populations including children under 6. Water systems like Newark, New Jersey are demonstrating that accelerated full replacement is possible. In setting up a full replacement requirement with a ten year baseline goal, EPA should work with stakeholders to develop a

²⁴ 40 C.F.R. § 141.84 (b)

²⁵ *Strategies to Achieve Full Lead Service Line Replacement*, October 2019, EPA 810-R-19-003, page 5

²⁶ Rabin, Richard, "The Lead Industry and Lead Water Pipes: A Modest Campaign," *American Journal of Public Health*, Vol. 98, No. 9, September 2008

system of bins or off-ramps to address water systems with special circumstances, for example an inordinately high number of lead service lines. Illinois now requires annual reporting of service line material inventories. In its most recent submission, Chicago Water reported having 392,614 LSLs. 75% of the total service lines in its water system that serves 2.7 million people living in the city and the city's 125 suburbs are lead. The number of LSLs is over three times higher than any other city.²⁷ It is reasonable to develop a strategy to protect public health while designing a replacement program including a completion goal that recognizes what appears to be an extraordinary situation. A limited variance approach could also support this objective.

EPA should require water systems to cover the cost of replacement regardless of ownership or whether the line is located under private or public property. We recognize that this challenges conventional wisdom about how to finance full replacement programs. However, under either our proposed scenario of a full replacement requirement or under EPA's proposed rule framework, more LSLs are going to be replaced. Partial replacements will not count for the purpose of meeting replacement goals, and under our proposal would be prohibited except in the case of emergencies. We make several arguments about why water systems should cover the cost of full replacement:

1. Requiring home or building owners to cover the cost of replacement of the "customer-owned" part of the lead service line disparately impacts low-income people. The environmental justice review commissioned by EPA as part of the rulemaking process found that low-income and minority populations are more likely to live in older housing that has LSLs, which when present are the largest source of lead in drinking water. The review found that some of the proposed LCR revisions would benefit all populations equally. However, the environmental justice review also found that LCR provisions that presume customers must pay for things, including covering part of the cost of LSLs, will leave low-income people with disproportionately higher health risks.²⁸ EPA notes this finding in the proposed LCR preamble, but determines that as a whole the proposed LCR meets the intent of *Executive Order 12898 - Federal Actions to Address Environmental*

²⁷ <https://www2.illinois.gov/epa/topics/drinking-water/public-water-users/Pages/lead-service-line-information.aspx>

²⁸ Abt Associates, *Environmental Justice Analysis for the Proposed Lead and Copper Rule Revisions*, October 22, 2019, Docket No. EPA-HQ-OW-2017-0300-0008

*Justice in Minority Populations and Low-Income Populations.*²⁹ This Executive Order requires incorporation of environmental justice into federal agency missions and requires agencies to determine if their actions “have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples.”³⁰ EPA appears to argue that because the majority of the benefit of the proposed LCR revisions come from the improved corrosion control provisions and since there are federal and state funding sources to cover these costs, the potential disparate impact of requiring customers to cover part of the cost of LSL replacement does not present disproportionate risk to low-income and minority populations. We argue that the potential for the benefits of full LSL replacement to be inequitably distributed is not consistent with the intent of the 1994 Executive Order on Environmental Justice if customers are required to cover these costs because of the inevitable uneven distribution of the long-term benefit of full LSL replacement.

2. As EPA itself notes, there are numerous sources of Federal and State funding to cover the cost of replacement on the “customer-owned side.” Water systems and States are finding creative ways to use those sources and other approaches to cover the cost of full replacement. The Pittsburgh Water and Sewer Authority is covering the cost of replacement on the “private side” with a combination of low-interest loans and grants from the Pennsylvania Infrastructure Investment Authority (PENNVEST).³¹ Newark, New Jersey is using a \$120 million bond issued by the Essex County Improvement Authority to fully replace all remaining lead service lines at no cost to customers.³² Quincy, Massachusetts is fully replacing lead service lines at no cost to the customer using a \$.15 million no interest loan from their supplier – the Massachusetts Water Resource Authority.³³
3. Under either our proposed scenario or EPA’s current proposed LCRR framework, there will be more full LSL replacements. This will dramatically increase the activity on the part of water systems to arrange for customers to cover costs of replacement if current

²⁹ Executive Order 12898 (59 FR 7629, February 16, 1994), <https://www.epa.gov/laws-regulations/summary-executive-order-12898-federal-actions-address-environmental-justice>

³⁰ *Federal Register*, p. 61,740

³¹ <http://lead.pgh2o.com/2019-lead-service-line-replacement-program-reaches-early-milestones/>

³² *How Newark is Getting the Lead Out*, City of Newark NJ, September 16, 2019, <https://www.newarknj.gov/news/how-newark-is-getting-the-lead-out>

³³ <https://www.quincyma.gov/news/displaynews.htm?NewsID=254&TargetID=17>

practices continue. As LSL replacements increase, costs in staff time and other expenditures to support customer contribution aspects of the programs will also increase. This is inefficient, especially if over time it will hamper full replacement in parts of the distribution system and result in an inequitable replacement program.

EPA should do more to prevent partial replacements: EPA asked the Science Advisory Board (SAB) to review existing scientific data and evaluate the effectiveness of partial lead service line replacements in reducing water lead levels. In 2011, the SAB found that available data was not adequate to fully answer this question. The board did conclude that data does not demonstrate that partial replacements reliably reduce water lead levels and that they can increase lead exposure for days, months, or even longer.³⁴

EPA's proposal reflects this finding that partial replacements do not reliably reduce lead at the tap, and may increase them. We support EPA's proposal that partial replacements will no longer count toward the goal based or mandatory percentage targets for replacement. We are calling on EPA to require full LSL replacement at all regulated water systems, and partial replacements should not count toward replacement goals in that scenario. Partial replacement should absolutely not count toward lead service line replacement percentage targets, since the water would run through the portion of the line that is still lead. EPA should retain this change in the final LCR revisions.

In addition, EPA proposes that if a water system replaces only part of a lead service line during routine maintenance activities or during emergency repairs, the system must take a number of risk mitigation steps because lead levels are likely to be elevated. These include notifying the customer, providing instructions on flushing taps, providing a pitcher filter and cartridges to last 3 months, and taking a tap sample between 3 and 6 months after the partial replacement. The risk mitigation steps that EPA proposes to require in the event of partial replacements reflect recognition of the public health risk inherent in partial replacements but **EPA should do more to limit this practice**. EPA should prohibit partial lead service line replacements during routine

³⁴ <https://www.epa.gov/sdwa/science-advisory-board-evaluation-effectiveness-partial-lead-service-line-replacements>

maintenance, with provisions for temporary waivers for special circumstances where customers refuse to work with the water system or to grant access to the property.

Routine maintenance is generally planned well ahead of time, allowing for arrangements to be made with customers. As water systems complete lead service line inventories and update them, they will be increasingly more prepared to identify when routine maintenance plans are likely to encounter lead service lines and at which homes or buildings. Where customer cooperation is impossible, the risk mitigation activities that would be retained for emergency repairs should also be conducted.

A prohibition on partial replacements except in emergencies and special circumstances, with a goal of virtually eliminating this practice, would be consistent with the public health protection goals of the LCR.

EPA asks for comments on the rates of replacement for goal-based and mandatory replacement rates. We are calling for EPA to require full replacement with a timeline base of 10 years. Under the current proposed LCR framework, EPA is proposing that if water systems exceed the Lead Action Level, they must take a number of actions including commencing lead service line replacement at a rate of 3% annually. EPA argues that at this rate, more LSLs will be replaced than under current requirements because partials replacements and "test outs" will no longer count toward replacement goals. We agree that partial replacements should not count toward replacement goals and that the "test out" practice should be eliminated. However, EPA should not lower the annual replacement rate. EPA acknowledges throughout the proposal that full lead service line replacement is an effective and desirable strategy to protect public health. Under the current proposed LCR framework, when systems exceed the Action Level the annual replacement rate should be at least 7%.

We are calling on EPA to requirement full replacement. If the current LCR framework is retained as proposed, several aspects of EPA's proposal support retaining or increasing replacement rates: EPA's proposed revisions support an annual replacement rate of at least 7% for systems that have had a Lead Action Level exceedance.

1. EPA's proposal would require all systems to conduct inventories of lead service lines and to continually improve and update them. Having reliable inventories of lead service lines already in place will enable systems to conduct replacement programs more efficiently than has generally been the case to date for water systems that experience a Lead Action Level exceedance.
2. Upon submission of the first inventories 3 years after the LCRR goes into effect, water systems are also required to submit a lead service line replacement plan. These comprehensive plans are intended to be followed should the system ever be required to commence replacement. Currently, systems that exceed the Lead Action Level often enter into a chaotic and inefficient process. Having comprehensive plans in place means that water systems required to replace lead service lines will be more prepared for all aspects of a replacement program and thus able to do replacements more efficiently and at a faster rate.

F. Public Education

We support EPA's proposal to improve public education around lead in water in general and in specific situations to specific audiences.

“Consumer notification” must be clarified: Audiences for public education and other communication requirements in the proposed revisions include customers, owners of service lines, residents, and consumers. The rationales for specifying “consumers” for certain public education requirements include reaching those who will be consuming lead through the service line. We support that rationale and urge EPA to be more specific about how water systems can identify and reach different types of consumers served by different types of water systems. For example, not all consumers will be residents of homes. Regulated water systems for the purposes of the Lead and Copper Rule continue to include both community water systems (CWS) and non-transient non-community systems (NTNCWS) that regularly supply water to at least 25 of the same people at least six months per year, but not year-round. Some examples are schools, factories, office buildings, and hospitals which have their own water systems. NTCWS need clarity on appropriate and effective mechanisms for reaching their consumers and different types of NTNCWS will face unique circumstances. Clear expectations for consumer-directed communication as well as Guidance will be needed.

General Matters – Implementation and Enforcement

We have addressed many of EPA's specific requests for comment in the relevant sections above. EPA has also requested comment on "General Matters," including ways it can "improve the ability of State or Federal government to enforce the rule and improve the ability of State or Federal government to assist water systems with compliance."³⁵ This distinction between "enforcement" and "implementation" (of which assisting water systems with compliance is a subset) is an important one and the two words appear to be used interchangeably in public discourse. Enforcement is the civil or criminal action EPA and primary agencies take when regulated entities are out of compliance with law and regulation. For SDWA programs, implementation includes assisting water systems with compliance but numerous other activities conducted by EPA and State primacy agencies. Because there is no level of lead exposure that is considered safe and because the burden of health effects from cumulative exposure can last throughout a person's life, aggressive implementation of the LCRR is particularly important. Effective enforcement capacity is critical as well, **but the prevention ethic implied in effective implementation is especially critical when it comes to lead.** Two shortcomings that go beyond the LCR concern us when it comes to enforcement and implementation of the proposed LCR revisions:

Funding: Given the appropriately heightened level of public and policymaker concern around drinking water, EPA programs related to drinking water are astonishingly underfunded. Core EPA SDWA activities, research, Public Water System Supervision (PWSS) grants to State agency partners implementing SDWA, and the Drinking Water State Revolving Fund (SRF) are all dramatically underfunded and this creates capacity issues that WILL affect implementing the final LCRR and impede reducing lead at the tap. The February 2020 White House budget for Fiscal Year 2021 includes a 36% cut to PWSS grants even though the proposed LCR revisions themselves will require increased – not decreased – effort by State agencies implementing the LCR provisions. EPA leadership must insist on administration support for funding commensurate with the need and the public's expectations about the federal government's role in reducing lead at the tap. Cuts to the EPA budget in the Fiscal Year 2021 White House federal

³⁵ *Federal Register*, p. 61,735

budget are the largest for any agency, a troubling reflection on commitment to an improved Safe Drinking Water Lead and Copper Rule and to safe drinking water for all communities.

Data Systems: The revised LCR will increase the need for water systems, States, and EPA to handle multiple types of data. We are concerned with delays in the SDIWS Prime process meant to modernize SDWIS (the State Drinking Water Information System for federal data). We are aware of similar concerns with the capacity of SDWIS/State. It is difficult to envision effective implementation and enforcement of a revised LCR without rapid progress in data systems.³⁶

Thank you for considering these comments. Questions can be addressed to Lynn Thorp, National Campaigns Director, Clean Water Action/Clean Water Fund, lthorp@cleanwater.org, 202-895-0420 ext. 109.

³⁶ *SDWIS Project Update*, Association of State Drinking Water Administrators, September 19, 2019, https://www.asdwa.org/2019/09/19/sdwis-project-update-september-2019/?sf_action=get_data&sf_data=results&_sft_category=sdwis-prime