



**American Water Works
Association**

Dedicated to the World's Most Important Resource™

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April 12, 2021

U.S. Environmental Protection Agency
EPA Docket Center
Office of Water Docket
Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

SUBMITTED ELECTRONICALLY

RE: National Primary Drinking Water Regulations: Lead and Copper Rule Revisions; Delay of Effective and Compliance Dates, Docket ID No. EPA-HQ-OW-2017-0300

Dear Sir or Madam,

The American Water Works Association (AWWA) appreciates the opportunity to comment on the above referenced proposal and writes to:

1. Recommend that the time period for any additional stakeholder outreach take into consideration the extensive stakeholder process that the U.S. Environmental Protection Agency (EPA) undertook before issuing the “National Primary Drinking Water Regulations: Lead and Copper Rule Revisions” (LCRR or Rule) on January 15, 2021;
2. Request that the effective and compliance dates for the LCRR be extended in an amount of time commensurate with the additional time used for additional stakeholder outreach so that public water systems can adequately plan for and implement changes needed to satisfy the new requirements; and
3. Note that because this proposal relates only to extending the Rule’s effective date and compliance date, any substantive changes should first receive public notice and comment through a separate announcement process.

Many of AWWA’s members are subject to the LCR and would be subject to any revisions that EPA decides to undertake related to the Rule. As a result, this Rule, and the timeline for its implementation, is of the utmost importance to our organization and its members. AWWA has long advocated for effective regulation to reduce lead in drinking water, with the recognition that such measures and their implementation schedule must be feasible for its members to implement.

EPA's Proposal

On March 12, 2021, the EPA published two notices in the Federal Register.^{1,2} The first was a final rule that extended the effective date of LCRR to June 22, 2021, to allow EPA further opportunity to review the LCRR and consult with stakeholders. No specific topics for public comment or means of stakeholder involvement were identified in that final Rule. The second requested comment on the following issues:

“EPA is requesting public comment on [an] additional 6-month extension of the June 17, 2021, effective date to December 16, 2021, and [a] 9-month extension of the current compliance date of January 16, 2024, to September 16, 2024, respectively. ... If EPA decides it is appropriate to propose revisions to the rule, it will consider whether to further extend compliance dates for those specific obligations.”³

Public Water Systems Need Time and Regulatory Certainty to Comply with EPA's Requirements

AWWA's public water system members, which are subject to the LCRR, face resource and budgetary constraints, as do their state regulators who will oversee the LCRR's implementation. As a result, it is of the utmost importance that any extension to allow for stakeholder outreach and reconsideration be accompanied by commensurate extensions of the Rule's effective and compliance dates. Uncertainty in final Rule requirements, which is naturally generated through reconsideration efforts, makes it difficult for public water systems to make investments needed to meet the Rule requirements, as such efforts may prove to be wasted or wasteful if the Rule ultimately changes in its particulars. While this challenge exists for all water systems subject to the rule it is particularly acute for smaller community water systems, many of which serve lower-income communities.

In short, water systems subject to the Safe Drinking Water Act (SDWA) rulemakings must align public support and local resources and take necessary steps to comply with major rulemakings. The LCRR is a very significant rulemaking with numerous inter-related requirements. Consequently, a lack of regulatory certainty interferes with water systems' capacity to prepare. The LCRR, as finalized, was premised on water systems starting to take critical steps immediately in order to meet compliance obligations beginning in January 2024 (*e.g.*, preparation of compliance inventories, documentation of organizations for directed monitoring, etc.). Therefore, all extensions to the effective date of the LCRR and any subsequent Agency activity that seeks to change the LCRR should be accompanied by an extension to the compliance timeframes.

Indeed, as EPA has recognized, Congress, when adopting the SDWA, anticipated that water systems and states that implement regulatory requirements would have a substantial time frame to come into compliance for any major rule:

“Section 1412(b)(10) of the Safe Drinking Water Act specifies that drinking water regulations shall generally take effect (*i.e.*, require compliance) three years after the date the regulation

¹ National Primary Drinking Water Regulations: Lead and Copper Rule Revisions; Delay of Effective Date, 86 Fed. Reg. 14003 (March 12, 2021).

² National Primary Drinking Water Regulations: Lead and Copper Rule Revisions; Delay of Effective and Compliance Dates, 86 Fed. Reg. at 14063 (March 12, 2021).

³ 86 Fed. Reg. 14065.

is promulgated. This 3-year period is used by states to adopt laws and regulations in order to obtain primary enforcement responsibility for the rule and by water systems to take any necessary actions to meet the compliance deadlines in the rule. ... EPA expects that the duration of the compliance date extension would provide drinking water systems with adequate time to take actions needed to assure compliance with the LCRR after it takes effect. It should also provide states with primary enforcement responsibility adequate time to revise their primacy program in light of EPA's final LCRR."⁴

As a result, EPA should extend both the effective date *and the compliance date* for the LCRR to fully adjust for any time EPA takes up during its reconsideration process.

Any Substantive Changes to the LCRR Should be Preceded by a New Proposed Rule

The Administrative Procedure Act ("APA") and SDWA both require EPA to develop a record and take public comment prior to promulgating revisions to a rule. In the current proposal, EPA has only requested comment on the extension of the effective date and compliance date and has not indicated that it is reopening the record for the LCRR as part of this stakeholder outreach period.

"EPA is requesting public comment on this additional 6-month extension of the June 17, 2021, effective date to December 16, 2021, and the 9-month extension of the current compliance date of January 16, 2024, to September 16, 2024, respectively. ... If EPA decides it is appropriate to propose revisions to the rule, it will consider whether to further extend compliance dates for those specific obligations."⁵

As a result, members of the regulated community, including AWWA members, have not been put on notice of any substantive changes EPA may make to the Rule. Nor have they been given the opportunity to comment on such changes. Therefore, the Agency must formally propose a new rule and provide a new notice and comment period if it wishes to make any substantive changes to the LCRR following the stakeholder period.

Moreover, the deeply intertwined nature of the provisions within the final LCR and the resulting implications for water system implementation and risk reduction will very likely necessitate a complete evaluation of the implications of both changes in overall rule construct, as well as, what would appear to be small changes to the rule requirements.

⁴ 86 Fed. Reg. 14064.

⁵ 86 Fed. Reg. 14063.

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Thank you for your consideration. If AWWA can be of assistance to the Agency in this matter, please contact me or Steve Via at (svia@awwa.org, (202) 326-6130).

Best regards,

ON BEHALF OF THE AMERICAN WATER WORKS ASSOCIATION



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Who is AWWA

The American Water Works Association (AWWA) is an international, nonprofit, scientific, and educational society dedicated to providing total water solutions assuring the effective management of water. Founded in 1881, the Association is the largest organization of water supply professionals in the world. Our membership includes more than 4,300 utilities that supply roughly 80 percent of the nation's drinking water and treat almost half of the nation's wastewater. Our 50,000-plus total membership represents the full spectrum of the water community: public water and wastewater systems, environmental advocates, scientists, academicians, and others who hold a genuine interest in water, our most important resource. AWWA unites the diverse water community to advance public health, safety, the economy, and the environment.