



February 1, 2024

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. N.W.
Washington, D.C. 20460

Brian Patrick Kennedy
Speaker Pro Tempore
Rhode Island General
Assembly
President, NCSL

Sabrina N. Lewellen
Deputy Director - Senate
Assistant Secretary of the
Senate
Arkansas General Assembly
Staff Chair, NCSL

RE: National Primary Drinking Water Regulations for Lead and Copper: Improvements (LCRI), Docket ID No. EPA-HQ-OW-2022-0801

Tim Storey
Chief Executive Officer
NCSL

Dear Administrator Regan:

On behalf of the National Conference of State Legislatures (NCSL), the bipartisan organization representing the legislatures of our nation's states, commonwealths and territories, we appreciate the opportunity to provide input on the proposed improvements to the national primary drinking water regulations for lead and copper. While we vigorously applaud the agency's efforts to address lead in the drinking water of vulnerable populations, we oppose the creation of new unfunded mandates. We look forward to working with the Environmental Protection Agency (EPA) to further strengthen the state-federal partnership to ensure clean and safe drinking water for all Americans.

Continue State Consultation

We are encouraged by the administration's actions to make improvements to the Lead and Copper Rule (LCR) and the Lead Copper Rule Revisions (LCRR), especially given ongoing lead contamination in drinking water systems. As states currently possess the ability to obtain and retain primary enforcement responsibilities (primacy) for public water system supervision under the Safe Drinking Water Act, we urge the EPA to work in tandem with primacy states on the proposed revisions to water testing, service line inventorying and record keeping, actionable lead levels, public notification and education, and other compliance requirements to develop the most effective methods and systems in the most cost-effective manner. We applaud the willingness the EPA has already demonstrated in engaging with primacy states in the development and implementation of best testing practices, many of which are already being utilized on the ground. Additionally, we urge the EPA to reject all potential new conditions for state primacy as suggested in the proposed Lead Copper Rule Improvements (LCRI) rule. Furthermore, to ensure the protection of human health, we also urge the EPA to base all potential revisions on scientifically sound principles.

Avoid Unfunded Mandates and Facilitate New Federal Funding Support

The implementation of LCRI is estimated to cost billions of dollars. By the EPA's own admission, implementation and administrative costs will likely be significant for various state activities related to the rule. The EPA indicates that even considering currently available federal funding opportunities, costs could exceed \$174 million per year. While NCSL recognizes the availability of additional federal funds outlined and recommended for utilization in LCRI, such as allocated funds from the Bipartisan Infrastructure Law, these funding sources are in no way guaranteed to all individual water systems. In fact, certain water systems may experience relatively disproportionate cost burdens due to a lack of expertise and capacity necessary to apply for or meet the conditions of supplemental funding. The LCRI's proposed unfunded requirements may also result in disproportionate cost burdens. Some requirements such as the full-service line replacement of all lead service lines (LSL) and galvanized requiring replacement service lines (GRR) under a water system's control or the requirement to make water systems serving a minimum population publish their service line

replacement plans on a publicly available and accessible platform may be prohibitively expensive and technically infeasible.

As the EPA moves forward in finalizing the LRCI, we urge the EPA to avoid creating new unfunded federal mandates, enable state flexibility and request sufficient funds from Congress to properly fund all existing mandates and requirements. Additionally, we ask the EPA to consult with states and confirm they have a clear understanding of any potential new costs as existing funding mechanisms are not sufficient to implement this rule.

Consider State Statutory Timelines and Revise Compliance Deadlines

NCSL strongly encourages the EPA to consider states' legislative session schedules while working to finalize the LRCI. The suggested revisions are substantial, and states must have adequate time to make any needed legislative changes to comply with new mandates. State legislatures and state administrators need to be given ample time to restructure their compliance approach to follow the potentially confusing EPA proposed plan of having water systems transition from compliance with LCR to compliance with LRCI, while simultaneously meeting interim LCRR inventory requirements. While NCSL applauds the streamlining of compliance requirements, we advocate for an appropriate timeline for states and water system entities to reorient, and, if needed, redesign their compliance plan, especially given the limited number of compliance extensions that are expected to be issued for this 10-year objective.

State legislatures' in-session dates vary significantly across the nation. Although special sessions may be held post adjournment, such sessions are often limited in scope and can cost tens of thousands of dollars per day. Depending on the timeline for finalizing the proposed rule, many states will not be able to address the rule until the start of their next legislative session. Many of these would not start until January 2025. For additional information on state legislative calendars and processes for special legislative sessions, please visit NCSL's website or contact NCSL staff member Selena Saucedo (303-856-1529 or selena.saucedo@ncsl.org)

NCSL looks forward to continuing dialogue as the EPA works to finalize LRCI. If you have any questions, please do not hesitate to contact NCSL staff members Ben Nasta (202.624.3597 or benjamin.nasta@ncsl.org) or Megan Bland (202.624.3569 or megan.bland@ncsl.org).

Sincerely,

A handwritten signature in blue ink that reads "Tim Storey". The signature is written in a cursive style with a long horizontal stroke at the beginning.

Tim Storey
Chief Executive Officer
National Conference of State Legislatures