



American Water Works
Association



THE UNITED STATES
CONFERENCE OF MAYORS



CITIES STRONG TOGETHER

May 22, 2023

Dr. Jennifer McLain
Director
Office of Ground Water and Drinking Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

TRANSMITTED ELECTRONICALLY

RE: National Primary Drinking Water Regulations: Consumer Confidence Report Rule
Revisions ([88 FR 20092](#), [EPA-HQ-OW-2022-0260](#))

Dear Dr. McLain,

On behalf of the nation's mayors, cities, and water systems, we appreciate the opportunity to provide information to the U.S. Environmental Protection Agency (EPA) as the agency considers updates to the Consumer Confidence Report Rule (CCR). Although all community water systems (CWS), regardless of ownership, are impacted by the Consumer Confidence Report rule and any revisions to it, many local governments operate water utilities and will be impacted by the rule. State agencies are also impacted through their oversight of rule compliance

This letter provides feedback on numerous aspects of the rule, all of which we believe are essential for EPA to address. We want to call special attention to several key items in our comments:

1. EPA has not addressed the primary causes of concerns around readability, understandability, and clarity as required by America's Water Infrastructure Act. This is a significant missed opportunity and puts the rule in jeopardy if EPA does not work to remedy it. See the discussion beginning on page 21 of these comments.
2. Finalizing the "don't say safe" provisions of the proposed rule would cause critical harm to public trust, undermine the Safe Drinking Water Act (SDWA), and potentially be Unconstitutional. See page 1 of these comments

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3. EPA needs to correct procedural errors by (1) separating out the compliance monitoring provisions into a separate rulemaking and (2) designating this proposal as “significant rulemaking.” See the discussion beginning on page 8.
4. There are some areas where we commend EPA for its proposals. EPA has chosen the best option for biannual CCRs balancing rigorous public disclosure with setting realistic goals on feasibility and resource availability by having the biannual CCR requirement for larger systems consist of a single annual CCR and a second CCR supplement. Although clarifications are needed (see the discussion beginning on page 11), the proposed supplement option meets these objectives better than breaking the CCR into two six-month reports, which is not feasible based upon the foundational timing of compliance monitoring periods in the standardized monitoring framework.

The undersigned organizations appreciate the opportunity to comment on this proposed rule. We look forward to opportunities to engage with EPA through this regulatory process. We encourage EPA to review the attached materials in detail. If you have any questions regarding this correspondence or if our organizations can be of assistance in some other way, please contact: Adam Carpenter (AWWA) at (202)326-6126 or acarpenter@awwa.org, Judy Sheahan (USCM) at 202-861-6775 or jsheahan@usmayors.org, or Carolyn Berndt (NLC) at 202-626-3101 or Berndt@nlc.org.

Best regards,



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About Our Organizations

The U.S. Conference of Mayors

The United States Conference of Mayors (USCM) is the official non-partisan organization of cities with populations of 30,000 or more. There are over 1,400 such cities in the country today. Each city is represented in the Conference by its chief elected official, the mayor.

National League of Cities

The National League of Cities (NLC) is the voice of America's cities, towns and villages, representing more than 200 million people. NLC works to strengthen local leadership, influence federal policy and drive innovative solutions.

American Water Works Association

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 4,500 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.

**COMMENTS OF THE
AMERICAN WATER WORKS ASSOCIATION
U.S. CONFERENCE OF MAYORS
NATIONAL LEAGUE OF CITIES
ON THE
NATIONAL PRIMARY DRINKING WATER REGULATIONS: CONSUMER CONFIDENCE REPORT
RULE REVISIONS
(88 FR 20092, EPA-HQ-OW-2022-0260)**

Submitted
May 22, 2023

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**COMMENTS OF THE
AMERICAN WATER WORKS ASSOCIATION
U.S. CONFERENCE OF MAYORS
NATIONAL LEAGUE OF CITIES
ON THE
NATIONAL PRIMARY DRINKING WATER REGULATIONS: CONSUMER CONFIDENCE REPORT
RULE REVISIONS
(88 FR 20092, EPA-HQ-OW-2022-0260)**

INTRODUCTION

The purpose of Consumer Confidence Reports (CCRs) is embedded in the name of the Safe Drinking Water Act (SDWA) provision that outlines their content, 42 U.S. Code § 300g–3(c)(4) – maintaining customer confidence in their water service. It does so by transparently communicating how the community receives its water, water quality challenges, and frank violations in SDWA compliance. The CCR is only one part of a community water system’s (CWS’s) communication program, but it is an important element. Regulatory requirements for CCRs should focus on both effective communication and sustainable implementation.

The following are specific recommendations on EPA’s proposed CCR rule.

“DON’T SAY SAFE” RULE PROVISIONS SHOULD BE REMOVED

EPA’s “Don’t say safe” rule provisions will create unnecessary confusion and will likely lead to widespread distrust.

On 88 FR 20100, the preamble describes § 141.151(g) of the proposed rule as precluding describing drinking water as safe (bold added for emphasis):

“EPA is proposing to prohibit water systems from including false or misleading statements in their CCRs. CCRs are intended to provide consumers, especially those with special health needs, with information they can use to make informed decisions regarding their drinking water. To make informed decisions, consumers need accurate, nuanced reports. Feedback received during the stakeholder engagement for this proposed rule indicated concern that some CCRs have misleading images and statements about the safety of the water that may not be supported by the contaminant data or other information in the reports. **For example, stating the water is “safe” may not accurately reflect the safety of the water** for sensitive populations, such as people with weakened immune systems, potential lead in drinking water exposure, or other inherent uncertainties and variabilities in the system, such as the potential presence of unregulated contaminants or fluctuation in water chemistry. EPA believes that consumers would benefit from messages tailored to the system and community to reflect local circumstances, that also acknowledge that water quality may fluctuate within the system, or may impact some populations differently, for example, children, immunocompromised, pregnant people, etc. The agency plans to support states and community water systems with tools and resources, such as templates and example

language that improve risk communication without misleading consumers or undermining the public trust in drinking water.”

This “don’t say safe” rule provision, which does not originate from the National Drinking Water Advisory Council (NDWAC) working group recommendations, amounts to an implicit ban on referring to drinking water as safe or even making meaningful comment on safety. This is contrary to nearly 150 years of continuous improvement in drinking water treatment including the entire history of the SDWA itself. Over that course of time, there have been massive accomplishments in drinking water safety including nearly eliminating many forms of waterborne disease and reducing risks through major Safe Drinking Water Act regulations addressing topics such as surface water and groundwater treatment, disinfection and disinfection byproducts, arsenic, lead, nitrates, radionuclides, and scores of others.

A ban on noting safety within the CCR is essentially a ban on noting safety anywhere within a CWS’s communications. Referring to water service in one context using a term banned in another is untenable. A requirement not to discuss safety will be perceived as either the CWS or EPA viewing water service as in fact unsafe. This will cause widespread confusion and distrust (in part because alternatives to water from CWS will not be subject to the same restrictions).

EPA’s stated goal to “support states and community water systems with tools and resources, such as templates and example language that will improve risk communication without misleading customers or undermining the public trust in drinking water” is likely to be impossible to accomplish as subsequent EPA guidance cannot change the underlying rule requirements.

Morning Consult, a major polling firm with extensive expertise on public opinions and sentiment, conducted a survey on AWWA’s behalf between May 9-11, 2023 to explore, among other issues, public perceptions of this potential requirement¹. This survey polled 2,022 adults served by a public water supply, with a margin of error of plus or minus 2 percentage points. The survey asked:

“As part of a proposed federal regulation, water utilities may be prohibited from referring to their drinking water as ‘safe’ even if they are in full compliance with all water quality requirements. Do you agree or disagree with the following statement related to this proposed regulation prohibiting the use of the word ‘safe’ to describe drinking water?”

Key findings from this question are:

1. That 77% of the public expect their water utility to say the water is safe, if in compliance with health-based regulations. Only 9% disagreed with this expectation.
2. That 74% of the public agrees “if my utility cannot say that its water is safe, it will cause me to believe that my water is unsafe.” Only 13% disagreed with this statement.

A full list of prompts are included in the attachment. Although there was some variation based upon gender, age, ethnicity/race, and community type, these values were similar for all groups studied (details included in attachment).

¹ Morning Consult. 2023 May. American Water Works Association Polling Presentation. Data summary and presentation with copyright waiver are included as an attachment to these comments.

A significant majority of the public clearly expects CWS to describe the safety of their water, and that by prohibiting CWS from doing so, EPA would be undermining public trust.

EPA's "Don't say safe" rule provisions undermine EPA's authority and the entire Safe Drinking Water Act. EPA is charged with ensuring the safety of drinking water through the regulation of CWS and oversight of primacy through the aptly named Safe Drinking Water Act. Congressional intent that SDWA is intended to assist in the provision of *safe* drinking water is implied in the act's name, as well as other requirements of the Act. As examples (bold added for emphasis):

- 42 USC 330g-2² requires for primacy that primacy agencies have "... adopted and can implement an adequate plan for the **provision of safe drinking water** under emergency circumstances..." If it is not possible to define safe drinking water, then it is not possible for any primacy agency, including EPA where applicable, to meet the requirements of 42 USC 330g-2
- 42 USC 200i-2 requires assessments of vulnerabilities that may "disrupt the ability of the system to **provide a safe and reliable supply of drinking water.**" Similar phrases are repeated throughout this section of the act. If drinking water cannot be clearly described as being safe, it is not possible for primacy agencies CWSs to comply with these provisions
- 42 USC 300j-1 authorizes the Administrator to conduct "research, technical assistance, information [and] training of personnel" for the purposes of "the provision of a **dependably safe supply of drinking water**" one of the provisions within being "improved methods for providing a **dependably safe supply of drinking water.**" If drinking water cannot be considered safe, then research, technical assistance, information [and] training of personnel" on a "dependably safe supply of drinking water" would not be possible.
- 42 USC 300j-3 includes provisions for demonstration projects for "**providing a dependably safe supply of drinking water** to the public" as well as "technologies for the **provision of safe water to the public for drinking.**" Similar text exists in several subsections of this provision.
- 42 USC 300j-4 includes provisions related to records and inspections in which EPA may provide notices to "the State agency charged with **responsibility for safe drinking water**" about inspections. If drinking water cannot be considered safe, then it is not possible to have States be charged with responsibility for it.
- 42 USC 300j-15 provides for assistance to colonias, with one of the three requirements of subsection (a)(2) being that the community "**lacks a safe drinking water supply** or adequate facilities for the **provision of safe drinking water** for human consumption." If no water supply can be defined as safe, then this provision would have no meaning, and Congress would not have included it.

These are only examples of direct conflicts with the Safe Drinking Water Act itself (more specifically Chapter 6a of Title 42 of the U.S. Code). To ban reference to safety with the CCR is to directly undermine the entire regulatory structure that EPA and primacy agencies have developed since the enactment of

² United States Code, Title 42 – The Public Health and Welfare, Chapter 6A – Public Health Service. Accessed 19 May 2023. <https://www.govinfo.gov/content/pkg/USCODE-2013-title42/html/USCODE-2013-title42-chap6A.htm>.

SDWA in 1974 and subsequent amendments. If the rules that exist under the Safe Drinking Water Act do not exist for the purpose of ensuring safety, why do they exist at all?

EPA's "Don't say safe" rule provisions are contrary to other federal policy and resources.

Other federal policies and resources point towards the safety of water. For example, there are many resources from the Centers for Disease Control and Prevention (CDC) that will be in conflict with this provision. As of the date of submission of the comment, the home page for public water systems for the CDC begins with "the United States is fortunate to have **one of the safest** public drinking water supplies in the world"³ (emphasis added). Within the CDC materials is CDC Advisory Toolbox which has numerous communications with discussions about making water safe to drink in an emergency.⁴ It is likely that an extensive review of other federal programs would uncover many other examples, hence the need for interagency review discussed elsewhere in this document.

Numerous federal agencies recognize that "safe" is not the absence of all risk. The following is a small subset of these applications:

- Every mile driven in a car carries a risk of injury or death due to accidents. Yet, the National Highway and Traffic Safety Administration issues safety ratings for automobiles⁵ and auto manufacturers routinely market their products as safe.
- Every pharmaceutical product and medical device carries risk of side effects or being ineffective for any particular patient. These can often include serious side effects, yet the Food and Drug Administration (FDA) assesses the safety of those products and they are routinely used and considered safe⁶. This includes COVID-19 vaccines which have been extensively described by federal agencies as safe despite some known but small risks such as allergy.
- Every type of workplace carries known occupational risks, yet the Occupational Safety and Health Administration (OSHA) issues safety standards, and workplaces with excellent safety histories routinely advertise this.⁷

If any of these sectors were prohibited from referring to their products and services as safe despite regulatory oversight, it is likely that the public would lose confidence in the products and services, and in the regulators as well.

³ Centers for Disease Control and Prevention. 2021 March 30. Public Water Systems. Accessed 19 May 2023. <https://www.cdc.gov/healthywater/drinking/public/index.html>.

⁴ U.S. Department of Health and Human Services, the Centers for Disease Control and Prevention, the U.S. Environmental Protection Agency, and the American Water Works Association. 2016. Drinking Water Advisory Communication Toolbox. <https://www.cdc.gov/healthywater/emergency/pdf/DWACT-2016.pdf>.

⁵ National Highway Traffic Safety Administration (NHTSA). N.D. Ratings. Accessed 19 May 2023. <https://www.nhtsa.gov/ratings>.

⁶ U.S. Food & Drug Administration. N.D. Safety. Accessed 19 May 2023. <https://www.fda.gov/safety>.

⁷ United States Department of Labor. N.D. Law and Regulations. Accessed 19 May 2023. <https://www.osha.gov/laws-regs>.

EPA's "Don't say safe" rule provisions are potentially Unconstitutional.

Banning CWS from providing a likely accurate description of their water raises First Amendment questions. Although it is widely accepted that reasonable regulations can be placed on false speech, especially in a commercial context, EPA's proposal suppresses likely truthful speech, and thus does not fall under an established First Amendment exemption unless it meets a compelling governmental interest and other requirements.

Central Hudson Gas & Elec. v. Public Svc. Comm'n, 447 US 557 (1980)⁸, sets a four-prong test for whether governmental regulation of commercial speech is constitutional. We believe that EPA has not met any of the four prongs in this instance:

- An outright ban on describing drinking water as safe covers many truthful situations for lawful activities (prong 1).
- EPA has demonstrated no substantial governmental interest in regulating the use of the word safe in a blanket manner (prong 2).
- EPA has not demonstrated that banning the use of the word safe advances a substantial government interest (prong 3).
- EPA has not shown that the intended regulation is as limited as possible to address the necessary interest from prongs 2 and 3 (prong 4).

EPA is inappropriately, and contrary to precedent, conflating "safe" with "free of all risk."

Safety is never an absolute. Every activity involves some form of risk, yet most activities are widely considered safe and often rated for and marketed as safe to the extent that millions of Americans engage in activities involving risk daily, such as driving or riding in a motor vehicle. There is case law that separates the concept of safety from the concept of being free of all risk.

*Industrial Union Department, AFL-CIO v. American Petroleum Institute*⁹ as decided in the Supreme Court addressed the Occupational Safety and Health Administration and the concepts of safety and risk. On 448 U.S. 642 there is a direct statement that "'safe' is not the equivalent of 'risk-free'" and gives examples similar to those discussed elsewhere in this comment (such as "driving a car or even breathing city air") that clearly have some risk but would still likely be considered safe by most people.

EPA's explanation on 88 FR 20100 cites known and unknown but likely small (and mostly unavoidable) risks as a justification for not being able to refer to drinking water as safe, EPA is conflating the concept of safety with the concept of "free of all risk." A "free of all risk" standard is impossible to achieve in drinking water or any other product, service, or activity, and inappropriate to include in the CCR rule revisions or any other regulation.

"False or misleading statements or representations" is not self-explanatory and is overly vague and subjective as currently written.

EPA's proposed "don't say safe" rule provision occurs within the broader context of a ban on "false or misleading statements or representations" (88 FR 20100). Although removing the "don't say safe" provision would reduce how problematic what EPA has proposed is, even without that provision the

⁸ U.S. Supreme Court. 1980 June 20. *Central Hudson Gas & Elec. V. Public Svc. Comm'n* 447 U.S. 557 (1980). Accessed 2023 May 19 through Justia. <https://supreme.justia.com/cases/federal/us/447/557/>.

⁹ U.S. Supreme Court. 1980 July 2. *Indus. Union Dept. v. Amer. Petroleum Inst.* 448 U.S. 607 (1980). Accessed 2023 May 19 through Justia. <https://supreme.justia.com/cases/federal/us/448/607/>

underlying requirement is not self-explanatory and as currently proposed is excessively vague and subjective. This will lead to confusion and further unnecessary distrust of EPA, state primacy agencies, and CWSs.

Although there are potentially straightforward examples of statements that could fall under this provision, such as intentionally providing false monitoring information, as currently written there is neither context nor bounds to this requirement.

Many CWS use the CCR as a vehicle to provide not only the required CCR elements, but also other information such as information about ongoing construction projects, a message from the CEO, and other information designed to engage and inform the reader. This provision does not limit its scope to the elements required by the CCR, and thus could be interpreted as applying to anything contained in the same document. When combined with the lack of definition of misleading, something like a summary of an ongoing construction project with an anticipated end date that ends up being incorrect due to delays could be construed as a “false or misleading statement or representation.” Although we are not arguing that CWS should be allowed to intentionally provide false statements, the effect of an overly broad and poorly defined definition will be that many CWS will reduce their CCR down to only the required elements and find another method to provide other information to customers. Because those engaging elements will be elsewhere, fewer customers will read their consumer confidence reports, and as a result, will not understand whether confidence in their water is warranted.

Additionally, false or misleading statements or representations are likely already covered under concepts such as falsification of records and thus this requirement is potentially redundant. However, there are other federal agencies that regulate some variation of “false or misleading” statements. If EPA wishes to pursue this, it will need to set up a structure similar to one or some combination of these, while identifying any relevant provisions within SDWA which give it the authority to do so:

- FDA regulates false and misleading statements around foods, such as health claims and nutrient content claims¹⁰ under the Federal Food, Drug, and Cosmetic Act. FDA has a series of processes set up to receive claims, evaluate claims, provide appeals for claim in dispute, and so forth. FDA does not regulate water (other than commercially bottled water) and thus these provisions do not apply to CWS.
- The Federal Trade Commission regulates truth in advertising under the Federal Trade Commission Act (FTC Act)¹¹. The FTC Act broadly covers commerce (with exceptions for a small number of types of entities covered by other systems). There is no explicit exemption for drinking water. Although a quick search did not reveal any enforcement actions against CWS, there have been enforcement actions against manufacturers of products claiming to improve drinking water when those claims were not substantiated.

EPA has not demonstrated analysis of these and other relevant laws (including falsification of records, fraud, state weights and measures laws, and so forth) and how they may or may not interact with a

¹⁰ U.S. Food & Drug Administration. 2023 Feb 09. Notifications for Structure/Function and Related Claims in Dietary Supplement Labeling. Accessed 2023 May 19. <https://www.fda.gov/food/information-industry-dietary-supplements/notifications-structurefunction-and-related-claims-dietary-supplement-labeling>.

¹¹ Federal Trade Commission. N.D. Federal Trade Commission Act. Accessed 2023 May 19. <https://www.ftc.gov/legal-library/browse/statutes/federal-trade-commission-act>.

proposed SDWA requirement. EPA also has not laid out a system by which potentially false or misleading statements would be evaluated using best practices such as the concept of substantiation of claims.¹²

EPA should proceed with a requirement like this one only if (a) it is clearly confined to only the required elements of the CCR and (b) it is built in such a way that it is clear exactly what does and does not constitute a “false or misleading statement or representation.”

EPA has alternative means to address the underlying concerns.

It is unclear what challenge EPA is trying to address through this requirement. However, there are multiple means available to EPA through the Safe Drinking Water Act to address the underlying items mentioned in the preamble with respect to this provision:

- There is already required CCR language (40 CFR 141.154) that is essentially a safety disclaimer. This language notes that “some people may be more vulnerable to contaminants in drinking water than the general population” and lists examples including immunocompromised individuals, and several others.
- For “sensitive populations, such as people with weakened immune systems,” EPA already incorporates a number of risk assessment and management techniques that recognize variation amongst individuals.
- For “potential lead in drinking water exposure,” EPA has recently promulgated the Lead and Copper Rule Revisions, which CWS are working to implement, and is currently working on further revisions in the Lead and Copper Rule Improvements rulemaking.
- For “other inherent uncertainties and variabilities in the system, such as the potential presence of unregulated contaminants or fluctuation in water chemistry,” EPA has multiple tools to address these concerns (some implemented directly and others through primacy agencies, including:
 - o For unregulated contaminants, the Contaminant Candidate List can be used to help prioritize research and the Unregulated Contaminant Monitoring Rule can be used to gather occurrence data.
 - o EPA can conduct research into addressing water chemistry issues.
 - o SDWA has an extensive focus on proactively searching for contaminants that could be present at a level of possible public health risk in drinking water.
 - o Sanitary surveys help to assess water system performance and identify potential deficiencies and pathways to remedy those deficiencies.

¹² Federal Trade Commission. 1984 November 23. FTC Policy Statement Regarding Advertising Substantiation. Accessed 2023 May 19. <https://www.ftc.gov/legal-library/browse/ftc-policy-statement-regarding-advertising-substantiation>.

PROCEDURAL PROVISIONS REQUIRE EPA'S IMMEDIATE ACTION

EPA should separate the compliance monitoring data reporting rule into a separate regulatory action with the appropriate procedures.

As mentioned in AWWA's April 20, 2023 letter¹³, the provisions of compliance monitoring data reporting should be removed from the CCR rule and placed in a separate regulatory action. To date, AWWA has not received a response to this request, and thus we have included comments on those provisions within these comments.

A separate rulemaking is needed so that EPA can provide a basis in the record for a state reporting requirement.

1. The preamble describes the collection of compliance monitoring data but the regulatory text would require states to submit all reports and records associated with compliance oversight. EPA does not accurately present the challenge such a duty would present to primacy agencies. The proposed rule reads as follows:

“Compliance monitoring data and related data necessary for determining compliance for all existing National Primary Drinking Water Regulations (NPDWRs) in 40 CFR part 141. Related compliance data include specified records kept by the State in § 142.14.”

Section 142.14 includes more than 120 types of data or reports, many of which are documents or a series of documents. Current EPA efforts are to develop an electronic data system. To make the proposed provision implementable EPA would need to implement a curated document management system. EPA does not have such a document management system nor does it describe a plan to do so in the record for this rulemaking.

In development of the compliance data reporting portal, EPA specifically limited the portal to data. Many reports submitted to EPA are not data, rather they are Adobe Acrobat files, Excel spreadsheets, and printed reports. Not only would EPA need either an electronic and/or physical warehouse for this annual submission, it would need extraction procedures to extract useful, accurate information.

2. For more than 15 years EPA SDWA data management planning has focused on data alone, and not the reports underpinning decisions as captured by § 142.14. Importantly, EPA has worked diligently for more than a decade to develop an electronic data system to support state reporting and EPA warehousing of a small fraction of the data encompassed by this proposed provision. That process has started and failed twice after the expenditure of millions of dollars and the commitment of countless hours of effort. The current technology solution is still in development and, if there are not any unanticipated delays, will not be operational for another two years. The project planning documents are caveated, “Because of known and expected changes and

¹³ American Water Works Association. 2023 Apr 20. Comment submitted by American Water Works Association. Accessed 2023 May 19. <https://www.regulations.gov/comment/EPA-HQ-OW-2022-0260-0042>.

impacts ..., the timelines will be significantly changed ..."14 This effort is referenced in the preamble as though it will allow reporting of all the records encompassed in the proposed rule language. It will not.

Also, we can reasonably state now that EPA does not have a clear understanding of when it would be prepared to receive the first, basic components of compliance monitoring data collected by states. The agency cannot establish a regulatory requirement with a data reporting element that, in order to function, requires implementation of a data repository by EPA that it has repeatedly failed to develop. Moreover, EPA is not yet in a position where it can articulate the burden associated with the rule requirements, because it does not understand the full cost of even the first step in the transfer of basic compliance monitoring data. The cost of this provision stated in this rulemaking record is fundamentally flawed because EPA did not prepare a cost estimate based on the rule provision, but rather anticipated costs associated with a relatively limited component of implementing the provision.

3. EPA states that the purpose of collecting records kept by the State under § 142.14 is to:
 - a. Strengthen EPA oversight
 - b. Provide public access to compliance monitoring data
 - c. Leverage public access to data to improve water system accountability

To achieve any of these three objectives the agency will need curated, accurate data that is fit for each purpose. Fundamental to both oversight and transparency, are presenting the correct data to answer the questions being posed, and clearly conveying the relevance and limitations of the available data to those questions. EPA cannot assume state records, records that were collected to meet specific needs, are ready for use for other purposes. Poorly curated data or misapplication of available data is likely to reduce public confidence in EPA, state primacy agencies, and water systems. Importantly, EPA cannot control how others use or misuse publicly available data. Consequently, it will need procedures to:

- a. Screen data for security considerations
- b. Organize and present publicly available data in a manner that makes deceptive uses challenging
- c. Incorporate feedback from state primacy agencies and water systems to correct EPA presentation of compliance data

It is not sound policy for EPA to require data submittal by states without a clear framework not only for collection retention of the required reporting but also a well-thought through plan for management and use of the information collected. Not only is

¹⁴ EPA. 2023. March 2023 DW-SFTIES Development Excel Dashboard v2.

developing a cohesive approach to achieving its objectives sound fiduciary practice, it is fundamental to justifying a new primacy burden.

4. EPA does not appear to recognize that once reported, data in the agency's control is subject to Freedom of Information Collection Act (FOIA) requests. Absent data management policies the collected information could be released through FOIA without adequate quality control or security safeguards. Poor data security practice by EPA could place the public at risk.
5. States and EPA could also find themselves subject to petitions regarding primacy decisions based on inadequately curated information. Transparency is an important and necessary goal, but the presence of an unmanaged collection of information creates more opportunity for misinformed second guessing of primacy decisions, including through legal petitions, than useful insights based upon the unmanaged data.

EPA has articulated thoughtful goals for the use of compliance monitoring data. With the advent of modern data systems there is the opportunity to present SDWA compliance data in a cohesive national framework. Doing so will require considerably more preparation than EPA has demonstrated in this rulemaking record. EPA would be ill-advised to proceed with this provision in the current rulemaking in the absence of a cohesive, adequately funded approach to managing the records it collects. To develop a cohesive approach it will be essential that EPA:

- Complete development of the next generation of the Safe Drinking Water Act Information System, such that it has a working system within a voluntary state participation framework. Learn from that experience before instituting a mandatory duty.
- Engage a broad set of stakeholders including AWWA, NLC, USCM, state primacy agencies, and commercial laboratories, in developing a prioritized list of data system objectives targeting EPA's objectives (particularly, strengthen EPA oversight and provide public access to compliance monitoring data) and selecting the subset of information primacy agencies would report to meet those objectives.
- If necessary, develop a sound information collection request (ICR) with adequate substantiation of associated financial and personnel hour burden.
- As necessary propose a rule that would assure information collection consistent with the prioritized objectives and associated ICR.

EPA should designate this rule as a significant rulemaking and follow all appropriate regulatory processes. EPA should designate this proposed rule as a "significant rulemaking" and conduct the necessary analysis and perform the necessary reviews under those procedures.

The "don't say safe" provisions (starting on page 1) are a prime example (but only one of several in the proposal) of why this rulemaking requires that designation, as there are significant impacts on trust in drinking water, trust in government, accessibility, and other concepts that make this proposal novel and likely of considerable inter-agency interest, and thus in need of the analysis required by designation as a

significant rulemaking, including interagency review. This issue is discussed in detail in our April 20, 2023 letter.

BIANNUAL DELIVERY REQUIRES CLARIFICATION

EPA should clarify the added flexibilities allowed because of a “supplement.”

There are at least two different requirements for which CWS that issue a six-month supplement would benefit from additional clarity as to flexibility in the rule requirements. EPA should identify and clarify these opportunities, which should be allowable but not required for CWSs.

First, the regulations around UCMR require that CWS provide UCMR data within 12 months. With distribution of the supplemental CCR there are two notices distributed within a 12-month period, regardless of when UCMR data becomes available. Systems should be able to comply with the requirement to include UCMR data if UCMR data is reported on either the primary CCR or the supplemental CCR.

Similarly, CWS are required to provide Tier 3 Public Notification (PN) Rule notices within 12 months. This commonly allows the CCR to be used to deliver Tier 3 notices. Currently, timing may be such that the first CCR is more than 12 months after the violation and cannot be used without there also being a separate notice. For systems subject to the supplemental CCR requirement, CWSs should be allowed to use either or both the primary CCR or the supplemental CCR for delivery of Tier 3 notices, since that would allow all Tier 3 notices to occur within 12 months. In some instances, the most appropriate practice may necessitate delivery of Tier 3 notices via another means, consequently requiring inclusion in the CCR is not appropriate. Thus, both the CCR and supplement should be an allowable means to provide Tier 3 PN notices but not a required method to do so.

EPA should clarify what requires the issuance of a “supplement”

Exactly what information triggers the issuance of a supplementary 6-month CCR should be very clear in the final rule. Section 141.155(j)(3) includes the following specific triggers:

- Violations and action level exceedances (ALEs) that occur between January 1 and June 30 of the current year
- Newly available Unregulated Contaminants Monitoring Rule (UCMR) monitoring results from the previous reporting year

However, on 88 FR 20101, EPA diverges from the list of triggers in the rule text to include “new information.” “New information” is vague, not defined, and could constitute almost anything. UCMR monitoring data is given only as an example in this section.

These are very different requirements. If the standard for issuance of a second CCR is simply “new information,” then it is likely every CWS serving a population of 10,000 or more will be required to issue a supplement and the issuance of a supplement will be as complicated or possibly more complicated than issuing the first CCR. If this is the case, then EPA’s economic analysis is considerably flawed, because it only contemplates this category as encompassing late-arriving UCMR data (as is noted elsewhere in the rule).

For these reasons, we believe EPA's intent is not to use the list of reasons to issue a supplement found in 88 FR 20101 but rather the list found in the rule text Section 141.155(j)(3) on page 88 FR 20114. EPA should clarify that the description on 88 FR 20101 is incorrect when publishing the final rule.

Annual timelines should be clarified and not advanced

Within EPA's questions, there is a discussion of changing the due dates for CCRs to different dates. The process of preparing a CCR involves many steps, which include, but are not necessarily limited to:

- Gathering and validating the relevant laboratory data (which can be sampled up to the end of the reporting year)
- For consecutive systems, communicating with and obtaining data from the wholesale provider
- Drafting the CCR
- Reviewing, validating, and updating information in the draft, in some cases in consultation with the primacy agency
- Preparing for delivery of the finished CCR
- Conducting the delivery (those using a billing statement or billing insert may have less time to accomplish this step due to billing cycles, especially those who do quarterly billing).

Because of the many steps involved, many CWS, especially those with more complex wholesaler-retailer relationships, find the current timeline to be achievable but containing little to no margin for error. Moving the deadline to an earlier date will not be feasible for many CWS.

The timelines for how the addition of enhanced translation requirements will fit into this process is also not clear. For all types of translations other than fully automated ones, performing a translation of the CCR for accommodations will likely take weeks. Much of the language (including mandatory language) of a typical CCR is technical and will likely limit the pool of available translators and require more time to complete the translation. The proposed rule is not clear on when translations would need to be available. If completed translations are expected to be available at the same time as the CCR is distributed in English, then that requirement already reduces the timeline available for CCR development by several weeks. It is also important to recognize that there are some places where the CCR rule applies (such as some U.S. Territories and Native American lands) where the primary language spoken is something other than English, and that the concepts of translation and meaningful access would apply *from* that primary language *to* English or other languages, which may change the amount of time necessary to complete those processes.

The cost of postcard delivery is likely greater than contemplated by EPA.

In EPA's analysis of economic impacts (EIA)¹⁵, the single largest cost of this proposal is the postage associated with sending postcards for the second CCR for systems serving 10,000 or greater. On page 42 of that economic analysis, EPA expects the postage of each postcard to be \$0.20 referring to it not by a USPS service rate, but as the "current rate for bulk post cards." It is unclear what USPS service EPA is

¹⁵ Environmental Protection Agency. 2023 March. Analysis of the Economic Impacts of the Proposed Consumer Confidence Reports Rule Revisions. 810-P-23-001. Accessed 2023 May 19. <https://www.regulations.gov/document/EPA-HQ-OW-2022-0260-0030>.

referring to and how it arrived at that value. Using the U.S. Postal Service’s price list Notice 123 as of January 22, 2023¹⁶, there are a numerous different postage rates that apply to postcards, with some more than doubling EPA’s assumed price. The only service that would meet EPA’s assumption is known as “Every Door Direct Mail” (EDDM). EDDM is a useful service in some circumstances, but it can only be used to deliver identical materials to every delivery location within a postal route. If postal delivery routes do not align precisely with CWS service boundaries, EDDM will result in some households receiving notices even though they are not served by the CWS, some households not receiving notices when they should, or a combination of the two. The EDDM cost cannot be used as a drop in for “current rate for bulk post cards.” A more accurate assumption of the cost would be to use the “First Class Commercial Postcard Machinable Presorted” price of \$0.394 (if EPA includes the cost of presorting postcards), which allows for addressing to individual households, or the “Single Piece – Postcard” price of \$0.48 which does not require advanced presorting and thus does not require the cost of presorting. EPA also appears to be modeling the future costs of postage exclusively using current postal rates, rather than recognizing that the cost postage can and does frequently increase.

ELECTRONIC DELIVERY FAILS TO TAKE ADVANTAGE OF CHANGING TECHNOLOGY AND SOME REQUIREMENTS ARE UNCLEAR OR CONTRADICTORY

EPA should allow meaningful flexibility in electronic formats.

AWIA requires EPA implement electronic delivery “consistent with” the provisions of EPA’s 2013 memo on electronic delivery. This does not mean that the requirement must be identical to the memo. Unfortunately, despite nearly a decade of experience and evidence showing that the current electronic delivery guidelines are highly limiting, to the public’s detriment, EPA has failed to take any meaningful action to address these shortcomings. Recommendations for EPA to address these challenges are included below.

EPA’s “one click” or “direct URL” provisions stifle innovation in providing information and engaging customers.

In FR 88 20101, EPA notes that “systems that use a web page to convey the CCR must include all the required information in §§ 141.153,141.154, and 141.156 so that the customer does not have to navigate to another web page to find any required CCR content.” This correlates to the 2013 electronic delivery memo’s “one click” or “direct URL” provisions which require that an electronic delivery method send customers to a single page where no navigation (other than unavoidable scrolling) is required to access all elements required within the CCR. Although this 2013 requirement was well-intentioned as a safeguard to prevent making material difficult to find, it was built at the time that contemplated electronic delivery of the CCR as nothing more than a way to send the same document that would have been mailed, just without the cost, complexity, and environmental impact of printing and postage. It was also constrained by the 1998 CCR rule’s provision that CWS “mail or otherwise directly deliver” the CCR, a provision that was constrained by the language of the SDWA itself at the time. After the 2018 AWIA amendments to SDWA, the current requirement is that CWS “mail or provide by electronic

¹⁶ United States Postal Service. 2023 January 22. Notice 123: Price List. Accessed 2023 May 19. <https://pe.usps.com/cpim/ftp/manuals/dmm300/notice123.pdf>.

means” the CCR. Although Congressional intent was clear that EPA should use the 2013 memo as a guide, it is not required to copy the memo’s requirements precisely.

EPA finds itself at a crossroads of how public information about CWS will be provided via the CCR, with two outcomes:

1. The path EPA is currently pursuing is one where the CCR will essentially remain a print document that may also be delivered electronically. This comes with the many limitations thereof, including little to no interactivity, little opportunity to innovate, and looking and feeling like a “compliance document” rather than a meaningful opportunity to engage customers in a clear, readable, and understandable way about their water.
2. EPA could instead choose a path where the CCR can be published as a dynamic, interactive, flexible, and adaptive experience where customers can explore data, interact with information, and in which CWS can innovate and use current and emerging methods to better engage, inform, and interact with the public.

Unfortunately, if EPA does not take steps to address the “one click” or “direct URL” provisions, it will be locking in the first path and essentially ensuring that the CCR is nothing more than a compliance document (and if other issues are not corrected, it will also be difficult to understand). Due to the significant number of changes in requirements of the CCR in this proposed rule, it is likely that many CWS that currently use it as a means to provide an annual report and provide meaningful opportunities to engage with the public will stop doing so and instead create a compliant but minimal CCR and separate those other communications to other methods of providing them.

AWWA has provided considerable material that addresses important facet of this and other issues¹⁷. It is up to EPA to decide which path the CCR will take, but it is our opinion that the dynamic, interactive, flexible, and adaptive experience will be of considerably more benefit to the public, and meet Congress’s charge to the EPA to make the CCR more clear, readable, understandable, and to improve risk communication. All these goals require a more readable report with contextual resources to help customers understand complex technical concepts that are presented in CCRs.

Proposed requirements for opt-out are not clear.

The proposal notes, on 88 FR 20101, that “if a community water system is aware of a customer’s inability to receive a CCR by the chosen electronic means, it must provide the CCR by an alternative means.” The overall goal of this provision is commendable in assuring that all customers should receive direct delivery. However, the concept of “awareness” is vague and is not explored further in the proposed rule and thus is subject to a wide variety of interpretations. This leaves it unclear how a CWS complies with this provision. Instead, it would be more straightforward, and accomplish the same intended outcome, by rephrasing in a way such as “if a community water system is contacted by a customer stating that they cannot receive the CCR by the electronic delivery method employed by the system, the system must provide the CCR by an alternative means.”

¹⁷ American Water Works Association. 2023 Apr 20. Comment submitted by American Water Works Association. Accessed 2023 May 19. <https://www.regulations.gov/comment/EPA-HQ-OW-2022-0260-0042>.

Proposed requirement to retain CCRs online for three years is partially in conflict with the “one click” provisions.

88 FR 20113 describes a proposed requirement that “systems that use a publicly available website to provide reports must maintain public access to the report for no less than 3 years.” Although this requirement when viewed in isolation is not likely to be of substantial concern, it is in partial conflict with other provisions of the proposed rule that should be resolved.

In FR 88 20101, EPA notes that “systems that use a web page to convey the CCR must include all the required information in §§ 141.153,141.154, and 141.156 so that the customer does not have to navigate to another web page to find any required CCR content.” Due to the restrictive nature of this requirement, it is likely that CWS will need to send customers to a static page (most likely a PDF) to assure that any internal navigation within a page could not be interpreted as having “to navigate to another web page.” However, it is unclear how, if at all, CWS would direct consumers to the prior year CCRs. Although EPA has not currently proposed that CWS direct customers to prior year CCRs in addition to the current year CCR, it would be considerably more effective in meeting both goals to allow CWS to have a “CCR Page” that could require the customer to select the desired year to access the information (and for more complex systems, to designate a location to assure the most applicable CCR is provided). At present, EPA’s requirements would not allow this.

EPA CANNOT REQUIRE THE USE OF A GUIDANCE DOCUMENT IN REGULATION NOR IMPLY LONG-STANDING LAW IS NEW

EPA’s discussion inappropriately implies Title VI and ADA requirements are new.

Title VI of the Civil Rights Act has existed in law since 1964. Likewise, the Americans with Disabilities Act (ADA) was passed by Congress in 1990.

Thus, EPA has already considered Title VI and the ADA in its requirements for the CCR for the original CCR rule in 1998, updates in 2005, the 2013 electronic delivery memo, and all guidance to the CCR since it was originated. Many of these activities also took place after EPA’s 2004 Title VI guidance and thus EPA’s prior decisions have been informed by them.

The expectations of Title VI and the ADA have existed since well before the original CCR Rule in 1998. Thus, EPA’s new expectations in this rule revision should stem from and be supported directly by revisions to those laws or from confirmed noncompliance with those laws that necessitate and can be adequately addressed by the proposed revisions. EPA does not make this assessment in the proposal, but rather portrays these new requirements as if Title VI and ADA are new statutes that were not already contemplated in the EPA’s previous rule.

EPA’s reference to Title VI guidance should point instead to Title VI statute.

On 88 FR 20099, the proposed rule states the following:

“EPA is proposing to revise 40 CFR 141.153(h)(3) to require primacy agencies to assist water systems in providing meaningful access to CCRs for LEP consumers in a manner consistent with the Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, which can be found at: <https://www.federalregister.gov/documents/2004/06/25/04->

14464/guidance-to-environmental-protection-agency-financial-assistance-recipients-regarding-title-vi (EPA Title VI Guidance)”

This requirement is likely not legal, as it proposes CWSs and primacy agencies must adhere to non-binding guidance in order to comply with an enforceable regulation.

EPA can and should work with the U.S. Department of Justice to appropriately enforce Title VI of the Civil Right Act where it is not being followed. However, in all administrative law, guidance is nonbinding and subject to periodic change, and thus all regulatory requirements must originate from the Title VI statute and not from guidance, just as how requirements under SDWA must stem from authorities provided by the statute and not from guidance.

Conflicts regarding “communicating numbers and standards” should be resolved.

88 FR 20100 states “Some of these recommendations from NDWAC, such as communicating numbers and standards, may be better addressed through implementation than through rulemaking because of the need for flexibility to address specific circumstances.” We agree with this statement as an overly prescriptive CCR rule would potentially lock CWSs into communicating information about numbers and standards inappropriately. However, a great deal of information about communicating numbers and standards is included in the existing rule or in changes in the proposed rule. Future guidance will not be able to change what is contained within the rule, and thus if EPA’s intent is to provide non-binding guidance for these concepts, they should not be described in detail in the rule.

TRANSLATION AND ACCOMMODATION REQUIREMENTS ARE UNCLEAR AND HIGH BURDEN

The relationship among the various requirements is unclear and the EIA does not align to them.

Proposed §141.153(h)(3), described in 88 FR 20112, requires that CWS provide a notice that a report is important as well as contact information “in communities with a large proportion of consumers with limited English proficiency.” This provision is nearly identical to the current requirements of §141.153(h)(3) just with the term “non-English speaking residents” instead of “consumers with limited English proficiency.” Thus, this requirement is not new or significantly updated other than terminology. However, the proposed rule adds two subsections §141.153(h)(3)(i) which ties providing meaningful access to the CWS or primacy agency being the recipient of federal assistance as well as §141.153(h)(3)(ii) which requires primacy agencies to provide translation support on behalf of “systems update to provide translation support.”

The relationship amongst these three provisions is confusing and unclear. §141.153(h)(3) itself applies only to “communities with a large proportion of consumers with limited English proficiency.” There is no specific threshold associated with “large proportion.” Thus, the subsection §141.153(h)(3)(i) would logically only apply to those same communities as well. However, it is not clear what new requirement subsection (i) adds on top of the requirements already required in §141.153(h)(3). Likewise, §141.153(h)(3)(ii) would only apply to those communities meeting the criteria of §141.153(h)(3), but this differs considerably from the discussion about the rule, which implies these meaningful access requirements would apply to all recipients of federal assistance (including primacy agencies) regardless of whether §141.153(h)(3) itself applies.

EPA's analysis of economic impacts (EIA)¹⁸ describes the costs of translations and meaningful access to limited English proficiency customers. Table 15 of the EIA describes the number of CWS that will need to translate the CCR, and is based upon American Community Survey areas with at least 5% of the population reporting limited English Proficiency. Because the EIA only covers new requirements, either §141.153(h)(3)(i) or §141.153(h)(3)(ii) must impose new requirements not already captured in §141.153(h)(3), but based upon the information provided by EPA it is not clear how they came to that conclusion.

Additionally, EPA's economic assessment assumes that each CWS that translates a CCR will do so into only one other language. This incorrectly assumes that "communities with a large proportion of consumers with limited English proficiency" in each community all speak the same language other than English. EPA provides no justification for this assumption, and it undermines EPA's concepts of providing meaningful access in all necessary languages.

There is also misalignment of the rule requirements (which set no specific threshold for providing translations or other assistance) and the EIA (which uses a 5% threshold) appears to stem at least in part from an assumption that "meaningful access" to a CCR for customers in other languages can occur through brief telephone conversations (15 to 30 minutes) with customers requesting support (see EIA , Table 16) and that many CWS will choose to provide support this way, or primacy agencies will provide this support on behalf of CWS, instead of providing a translated copy. As detailed technical documents containing extensive technical material required by EPA, translating a CCR in real-time is likely to be not feasible even by a skilled translator unless the translator has been briefed on and become familiarized with the nature of the CCR, the types of information contained within the CCR, and key terms and phrases and their closest equivalents in the target language in advance. There does not appear to be any consideration for the cost, time, and complexity of setting up and maintaining such a system. Additionally, EPA has elsewhere explicitly stated that CCRs cannot be provided by phone "because the entire content of the CCR cannot be provided in the telephone call" (88 FR 20102).

EPA must rethink its requirements and the relationships among them and accurately assess the costs and lay out the requirements clearly so that proper resources can be allocated, and appropriate programs prepared to address them.

EPA must provide pre-approved translations of required language.

In order for the translation requirements to be successful, achieving compliance must be attainable in a reasonable manner. To make the best use of limited translation services, EPA should establish and maintain pre-approved translations of required language in as many languages as a CWS could be expected to need to translate a CCR into. Given that EPA's required language tends to be technical and complex, culturally-appropriate translations will be difficult at best, and this is most effectively and equitably accomplished using federal resources rather than through the independent efforts of thousands of individual water systems, the more than fifty state, territorial, and tribal primacy agencies, and ten EPA regions.

¹⁸ Environmental Protection Agency. 2023 March. Analysis of the Economic Impacts of the Proposed Consumer Confidence Reports Rule Revisions. 810-P-23-001. Accessed 2023 May 19. <https://www.regulations.gov/document/EPA-HQ-OW-2022-0260-0030>.

As seen in

Table 1, there are several key advantages to having required text pre-translated by EPA, which include accuracy, equity, and cost.

Table 1. Comparison of pre-translated versus locally translated mandatory CCR language

Attribute	EPA Pre-approved translation	Local Translations
Number of translations needed (per language) of identical text	1	100's to 1,000's
Accuracy of translation	High (if performed well)	Likely variable
Equity	High (if performed well)	Likely variable
Relative cost	Low	Very high
Regulatory Compliance	Yes	Likely variable
State resources needed to validate	Little to none	Considerable
Time needed for CWS or state to translate	Little to none	Days to weeks

EPA must clarify what is an acceptable translation as well as how translations will be validated.

The proposed rule provides little information on what constitutes an acceptable translation as well as little information on how primacy agencies are to validate the accuracy of translations. An overly-prescriptive rule could lead to additional costs and, potentially, a shortage of translation services (see page 19). However, with no details at all, it is unclear what does and does not qualify and thus makes it unclear how to be in compliance. High quality automated translation services are available at a fraction of the cost of human translation¹⁹. Automated translations also can generally be performed quickly, whereas contracting a manual translation may take weeks. Manual translations may be extremely high quality or may be low quality. CWS with fewer resources may rely upon an employee, a relative of an employee, an acquaintance or some other person who is not a professional translator. Likewise, even a professional translation service, if not specialized in translating technical information, may struggle to complete the translation.

Even amongst the highest quality professional translation services with technical backgrounds, complex technical concepts (such as those required to be presented in the CCR) often do not have exact equivalents in other languages and thus two equally competent translators may develop different translations of the same material. EPA has not laid out any process by which CWS can assure their efforts result in compliance with the requirements, which could easily be called into question by anyone disagreeing with the way a translation is performed, regardless of the type or professionalism of said translation.

¹⁹ Chatzikoumi, E. 2020 Mar. How to evaluate machine translation: A review of automated and human metrics. *Natural Language Engineering*, Vol 26, Issue 2. <https://doi.org/10.1017/S1351324919000469>.

There are tradeoffs among different types of translation services, yet EPA has provided no analysis of this important issue or even acknowledged its existence. This issue was discussed at length during the NDWAC working group discussions.

On a closely related topic, EPA also has not discussed how primacy agencies will validate translations – although validating the existence of a translation may be relatively straightforward, validating the quality of the translation is likely to be very difficult.

EPA must analyze the availability of sufficient translation services to meet the demand.

Given that EPA has not clearly committed to providing pre-approved translations for mandatory language, it is likely that thousands of CWS and/or states on their behalf will be seeking translation services at roughly the same time of the year. Given the technical nature of the CCR and that for any type of translation other than fully automated ones it is likely that a specialized technical translator will be required, it is possible that there may not be sufficient available translation capacity and/or that the price of translations will be considerably higher than the amounts anticipated by EPA due to substantial concurrent demand. To assure that this requirement is feasible, EPA needs to assess the availability of sufficient specialized translation services.

EPA’s requirements for accommodations are unclear and likely unreasonable, ignoring digital assistive technologies.

The proposed rule discusses accessibility / accommodations on 88 FR 20100. However, as written it is unclear what CWS need to do in order to remain in compliance. This section mentions meeting “unique needs” and provides one example. That example provided, large font copies of the CCR, is a poor example due to (a) the prevalence of electronic delivery and the availability of digital assistive technologies that can readily address this challenge (see above) and (b) because changing font size in a printed CCR may represent an unreasonable accommodation request. Due in large part to the technical requirements of the CCR required by EPA, a typical CCR is carefully formatted to provide information in a certain way, and increasing the font size may place considerable and unreasonable burden on the CWS because it would then require considerable work to reformat and reprepare the CCR. EPA should instead place emphasis on assistive technologies that can meet the public’s needs that do not represent an unreasonable burden to CWS to help meet customer needs. The American Foundation for the Blind has an extensive discussion on its website²⁰ of screen readers and other digital assistive technologies available to assist low vision and blind individuals with accessing digital information. At present, EPA appears to not have contemplated this.

Additionally, in 88 FR 20113, the requirement is described as “systems must make a reasonable effort to provide the reports in an accessible format to anyone who requests an accommodation.” However, there is no further explanation as to what constitutes a “reasonable effort” nor any discussion as to what is a reasonable request or how that is balanced against potentially causing an undue hardship on the CWS. In order to effectively implement these requirements, EPA must conduct this analysis and

²⁰ American Foundation for the Blind. N.D. Screen Readers. Accessed 2023 May 19.
<https://www.afb.org/blindness-and-low-vision/using-technology/assistive-technology-products/screen-readers>.

provide sufficient information for CWSs, primacy agencies, and EPA regions to effectively implement them.

COMPLIANCE TIMELINES ARE NOT FEASIBLE GIVEN RULE REQUIREMENTS

Compliance with this rule will require considerable time and resources.

Some provisions of the revised CCR rule (if finalized in a way similar to the proposal) may be relatively straightforward to implement, such as substituting definitions if the new EPA definitions are mandated in the final rule. However, there are many provisions that will require considerable time, effort, and cost to implement, making the proposed compliance dates in 2025 unrealistic. Examples include, but are not limited to:

- For those proposing to use alternate language for definitions and other required information (noted specifically in 88 FR 20110 and other places throughout the proposal), it will take time for primacy agencies to set up a process to review and approve alternate language, and then to review and approve alternate language once it is written by water systems. Because of the issues with readability, understandability, and clarity with existing and proposed EPA language, we expect many CWS will desire to develop alternate language.
- The compliance monitoring data provisions (e.g., 88 FR 20106) will require both primacy agencies to prepare over 120 elements of data and reports (compliance data) in a format and in a quality to be transmitted to EPA, and for EPA to demonstrate the ability to appropriately accept and process that information. Because of ongoing challenges with EPA's systems around compliance monitoring data and systems (see EPA should separate the compliance monitoring data reporting rule into a separate regulatory action with the appropriate procedures" beginning on page 8), it is not currently feasible for primacy agencies or EPA to accomplish these goals effectively.
- Setting up translation services at both the state level and within CWS will be a considerable undertaking. As very few CWS or states will have this capability currently set up to the standards EPA is proposing, those systems must be developed and done so well in advance of the first time the translated documents are required. Since states and CWS will not have a clear understanding of what is required until there is a final rule, they will not be able to meaningfully begin this process until the rule is final.

Primacy requirements do not align with timing for rule compliance.

Section 142.16 of the proposed rule (see 88 FR 20115) requires that "each state that has primacy enforcement responsibility must adopt the revised requirement ... no later than [DATE TWO YEARS AFTER DATE OF FINAL RULE IN FEDERAL REGISTER]." Momentarily setting aside whether two years after publication of the final rule is the appropriate length of time for this process, it is misaligned with the requirements placed upon CWS, many of which occur approximately one year after publication if EPA sticks to its current timeline, or less if EPA publishes the final rule later than currently planned.

It is unclear how CWSs are to comply with these regulations if the final state-level rules associated with complying with them are not yet created. To try to enforce compliance prior to the entire regulatory structure being in place will certainly result in duplication of efforts, poor performance, and confusion amongst all parties, to the public's detriment. Instead, EPA should set timelines that allow states to

finalize their rules, conduct appropriate training, and otherwise prepare for the rule before they are asked to enforce requirements upon CWSs.

EPA should utilize the standard SDWA compliance timeframe.

Due to the complexity of the rule's requirements as described above, EPA should utilize the standard three-year compliance timeframe afforded drinking water standards in SDWA in order to allow for meaningful implementation by states and CWSs.

SOME PROPOSED DEFINITIONS ARE NOT CLEAR, READABLE, OR UNDERSTANDABLE

The proposed definition for "corrosion control efforts" should be eliminated.

On 88 FR 20098, EPA proposes the following definition for "corrosion control efforts" to be included in the CCR:

"Treatment (including pH adjustment, alkalinity adjustment, or corrosion inhibitor addition) or other efforts contributing to the control of the corrosivity of water, e.g., monitoring to assess the corrosivity of water"

This definition is not readable, clear, or understandable to many in the public. Entering this definition into a simple and freely accessible readability calculator²¹ points out that this definition is 30 words, with an average of 2.3 syllables per word, a Flesch-Kincaid Grade level of 22, and a Flesch reading ease of *negative* 15.4 (with a good score being *positive* 60 or higher). These readability measures are established metrics and not proprietary to any particular tool. Additionally, it is unlikely it can be accurately translated because nearly every word is technical and virtually none of it is plain language. Multiple issues exist with this definition:

- The circular use of terms. Because corrosion is not separately defined and may not be understood by much of the public, it should not be included anywhere in the definition.
- The inclusion of "e.g." in the definition. The Latin *exempli gratia* (meaning, "for example") is commonly used in scientific writing but should not be used in material designed to be accessible to all reading levels. Instead, "for example" or something similar can be used instead.
- The public may not be familiar with the concepts of pH, alkalinity, or corrosivity and thus these technical terms should be avoided.

Morning Consult, a major polling firm with extensive expertise on public opinions and sentiment, conducted a survey on AWWA's behalf between May 9-11, 2023 to explore, among other issues, public perceptions this definition²². This survey polled 2,022 adults served by a public water supply, with a margin of error of plus or minus 2 percentage points. The survey provided respondents with EPA's definition of corrosion control efforts verbatim and asked a series of prompts about it. Key findings include that:

²¹ Added Bytes Ltd. N.D. Readable. Accessed 2023 May 19. <https://app.readable.com/>.

²² Morning Consult. 2023 May. American Water Works Association Polling Presentation. Data summary and presentation with copyright waiver are included as an attachment to these comments.

- 29% of respondents disagreed with the statements “this definition is clear” and “this definition is understandable.”
- 53% of respondents agreed that “this definition causes me to feel concerned about my water supply” This concern was especially pronounced for persons aged 35-44, urban residents, and persons who identify as Black or Hispanic, with each of those categories having at least 60% concerned because of the definition.

Rather than informing the public (as this is just a definition, not an actual description of said efforts), the proposed definition alone generates concern for more of the public than not. We believe EPA could do much better than this in addressing readability, understandability, and clarity. Due to a combination of these issues and the applicability of other means to adequately describe corrosion control, EPA should eliminate having a fixed definition of “corrosion control efforts” completely, and instead address the concept of providing information about corrosion control more holistically. See our comments in the later section “EPA Definition of Corrosion Control” on page 27 of these comments.

The proposed definitions for “parts per million,” “parts per billion,” and “parts per trillion” are circular and do not provide any insight on what they are defining.

EPA’s proposed definitions for ppm, ppb, and ppt (82 FR 20110) are circular and do not provide context on what they are defining and would likely confuse the reader. The definition of “a concentration of one ppm means that there is one part of that substance for every one million parts of water” violates several principles of defining a term. First, it uses the term “part” twice in the definition in addition to being in the term being defined. Also, it is likely to be unclear to most readers what a “part of ... substance” or “part of water” is as there is no measurement associated.

Many CWS have successfully used analogies to help provide context to the size of a ppm, ppb, or ppt. While the use of an analogy (such as a ppm being one penny out of \$10,000) accurately identifies a ppm as being very small concentration, there are legitimate concerns that these analogies could be misinterpreted as dismissing the importance of measurements in these small concentrations. A factual analogy cannot itself be misleading. It would be misleading only if it was used to suggest that these very small concentrations were unimportant.

More productive than creating a definition that will not be informative and be potentially confusing would be to continue to allow analogies, but to allow combining them with context that the size of the measurement itself is a separate issue than potential for concern about the presence and amount of any given contaminant. Public polling data conducted by AWWA (summarized below) supports this conclusion.

Morning Consult, a major polling firm with extensive expertise on public opinions and sentiment, conducted a survey on AWWA’s behalf between May 9-11, 2023 to explore, among other issues, public perceptions this definition²³. This survey polled 2,022 adults served by a public water supply, with a margin of error of plus or minus 2 percentage points. The survey provided respondents with EPA’s definition of parts per million verbatim and asked a series of prompts about it. Key findings include:

²³ Morning Consult. 2023 May. American Water Works Association Polling Presentation. Data summary and presentation with copyright waiver are included as an attachment to these comments.

- 77% of respondents felt the definition was understandable
- 48% of respondents feel concern about their water supply because of this definition.

Although this was not polled, we believe that the reasons stated above likely drive at least part of this concern. Due to space limitations only the definition of ppm was surveyed, but there is no reason to think that perceptions of a definition of ppb or ppt would be appreciably different.

In an additional question in the same survey, respondents were given an example of the analogy discussed above and asked about their opinion on a series of statements (details in attachment). Key findings include:

1. 68% agree that an analogy is helpful for understanding units of measurement (only 15% disagreed, plus 16% don't know / no opinion).
2. The finding above is paired against a corollary statement that "an analogy to define parts per million (ppm) or a smaller unit makes it sound like anything measured in this increment is without risk" had 58% agree (21% disagree and 21% don't know/ no opinion).
3. 72% agreed (and only 11% disagreed) that "if an analogy is used to help define a unit of measure, a statement should be added that even at a small concentration, certain contaminants can be a health concern."

EPA has failed to meet its goal of "simplifying overly technical and confusing language," because its own requirements are the primary cause of the problem.

As described in the proposed rule preamble (88 FR 20098), EPA is required by AWIA:

"to revise the 1998 Consumer Confidence Report regulations to increase the readability, clarity, and understandability of the information presented in the CCRs; increase the accuracy of information presented and risk communication in the CCRs..."

EPA goes on to say:

"EPA interprets this statutory directive as setting a goal to make CCRs easier for every American to understand so that they may make informed decisions about their health and any risks associated with their drinking water."

The proposed revisions to the CCR rule fail to improve the readability, clarity, understandability, or risk communication in the overwhelming majority a typical CCR. This failure is occurring against the backdrop of repeated observations by practitioners and peer-reviewed science on effective clear communication, as described throughout the record. Despite Congress's clear charge, the proposed rule does not make changes to considerable portions of CCR text that EPA requires systems use in their CCRs.

EPA began developing this revision of the CCR rule five years ago and has had ample time to evaluate the current required language, conduct research to test alternative content, and propose revisions. The public record for the National Drinking Water Advisory Council Work Group on CCR Revisions included reports and published papers that demonstrated the need for such a review. That workgroup recommended review of the CCR language using CDC's Clear Communication Index (recommendation 4.a.). EPA had more than a year prior to the CCR Rule proposal to follow this recommendation to evaluate required and recommended language. Despite this record, EPA proposed the CCR rule revisions without mention of the agency's role in creating the language that currently limits the readability,

clarity, and understandability of CCRs, nor does the record reflect any attempt to evaluate or simplify required or recommended CCR language so that it is comprehensible by more customers.

Effective risk communication begins with respecting the ability of the person receiving the information and then delivering readable and understandable content. EPA has not given serious consideration to the direction Congress provided the agency when it amended SDWA 1414(c)(4) nor has it taken the most immediate step available to it to achieve its own goal under SDWA 1414(c)(4).

EPA should use the Centers for Disease Control and Prevention’s Clear Communication Index to revise all required language.

The CDC maintains the Clear Communication Index (CCI)²⁴, a set of public health communications tools designed to assist in assuring that messaging is readable, understandable, and clear. The CCI was discussed at length during the NDWAC working group process and appears in the recommendations from NDWAC to EPA. Yet, there is no mention of the CCI anywhere in the proposed rule, and it does not appear that EPA has utilized the tool in updating mandatory CCR language.

The CCI has a solid reputation for addressing underlying communications issues and its use clearly meets Congressional intent to improve the clarity, readability, and understandability of public health related messaging.

EPA has the opportunity to use the CCR to strengthen public trust in drinking water by improving the clarity, understandability, and readability of the CCR. If EPA is serious in achieving these goals, it will re-evaluate *all* required language using the Clear Communications Index. AWWA has previously provided examples of how to perform this methodology along with focus group data demonstrating its effectiveness.²⁵

EPA should retain and expand its proposed flexibility to write alternative statements and definitions in consultation with the primacy agency.

In several places, EPA emphasizes flexibility afforded by offering the ability for CWS to write alternative educational statements health statements, and definitions There are several places through the proposed rule that note CWSs can work with their state primacy agencies to add flexibility to the CCR. Examples include:

1. Providing contaminant data in alternate formats (88 FR 20099)
2. Writing alternate wording for definitions (88 FR 20110)
3. Writing alternate educational statements (88 FR 20111)

²⁴ The Centers for Disease Control and Prevention. 2023 Apr 18. The CDC Clear Communication Index. Accessed 2023 May 19. <https://www.cdc.gov/ccindex/index.html> (note that the date is the “last reviewed” date, the docket clearly establishes that the CCI has existed since before the beginning of this regulatory action).

²⁵ Corona Environmental Consulting. 2019 Dec 2. Addressing America’s Water Infrastructure Act Consumer Confidence Report Provisions (WITAF 040), prepared for the American Water Works Association. https://downloads.regulations.gov/EPA-HQ-OW-2022-0260-0042/attachment_9.pdf. (Note that although the docket entry is dated April 2023, this material has been provided to EPA and to the NDWAC working group multiple times since early 2020).

The flexibility afforded in these and other sections should hopefully allow for some innovation in the preparation of CCRs.

EPA should expand upon these provisions to allow for CWS to propose alternates to all mandatory language, in consultation with and upon approval of the primacy agency. This would allow for CWSs to propose holistic changes that will increase the readability, clarity, understandability, and accuracy of the reports.

Challenges nevertheless remain. As discussed elsewhere in this comment, we encourage EPA to address issues with mandatory language throughout the CCR. Doing so would reduce the burden on CWSs to write more understandable definitions and educational statements and on primacy agencies to review and approve them.

SOME CCR CONTENT CHANGES ARE UNCLEAR OR POTENTIALLY COUNTERPRODUCTIVE

The UCMR proposed educational statement fails to address the primary concerns.

The proposed UCMR educational statement (88 FR 20111), which is “unregulated contaminant monitoring helps EPA to determine where certain contaminants occur and whether the Agency should consider regulating those contaminants in the future” is both accurate and fairly clear and concise. However, this educational statement does not address the primary concern that CWSs hear about UCMR data, which is not why the monitoring is being done, but rather the significance of a detection above a non-regulatory reference level or at any level when no such reference level exists. A suggested statement should address this issue by adding that EPA collects this data using certain health reference levels designed to help determine whether regulation may be needed, and at the stage of UCMR collection, EPA has not yet determined what limit, if any, will be applied for a potential future regulation.

EPA must clearly define “prominently display.”

Although AWWA in several materials provided to EPA (e.g., “Addressing America’s Water Infrastructure Act Consumer Confidence Report Provisions”²⁶) have supported the concept of prominently displaying information, the way EPA has used the concept in the proposed rule is in a completely different context. Within the provided documents, the concept of “prominently displayed” is used to provide a way to perform electronic delivery more efficiently while fully informing customers by allowing the flexibility to send customers to a CCR page with a clear and conspicuous link to the full CCR information, rather than directly to a specific CCR, which often necessitates creating a different link each year rather than the same link every year. Addressing this would also help increase visibility of the 3-years’ worth of CCRs required to be retained as a separate requirement of the proposed rule. For example, page 10 of the above-mentioned document defines “prominently displayed navigation” as “a clearly worded link such as “Annual Water Quality Report” located in a top-level menu and standing out as to be conspicuous and easily located.”

The proposed rule uses the phrase “Prominently display” three times, in the following contexts, all in 88 FR 20113:

²⁶ Corona Environmental Consulting. 2019 Dec 2. Addressing America’s Water Infrastructure Act Consumer Confidence Report Provisions (WITAF 040), prepared for the American Water Works Association. https://downloads.regulations.gov/EPA-HQ-OW-2022-0260-0042/attachment_9.pdf.

1. To discuss displaying certain health information
2. To discuss displaying directions to request a paper copy of a CCR
3. To discuss displaying a link within an email

In none of these contexts or anywhere else in the proposal is the concept of prominently displaying information defined or explained. Thus, it is not clear what would be necessary in order to comply with these requirements.

The addition of a summary section is redundant and likely counterproductive.

The proposed addition of § 141.156 requiring a summary section within the CCR (described at 88 FR 20098) we agree is a well-intended suggestion. By bringing certain information to the beginning of the report, it is not difficult to find. However, the requirement to add a summary is both redundant with the existing requirements and has significant potential to be counterproductive to the overall goals for the CCR. First, it results in a requirement to include many pieces of information twice, which will lengthen the reports, exacerbating the issue that the summary is intended to fix. Second, although the nature of the summary is not well described in the proposed rule, if it is meant to be specially called out or highlighted to stand out from the rest of the report, it may result in readers assuming the summary is the only important part of the report and the rest is unimportant “fine print,” rather than all being equally important information.

EPA should remove reference to the Safe Drinking Water Act Hotline’s phone number because it is essentially defunct and nether meets a “direct URL” requirement nor provides translations or accommodations.

The current CCR rule requires a statement that points the public to the Safe Drinking Water Hotline.

Although EPA’s hotlines website²⁷ states that the hotline (800-426-4791) operates from 9am to 4pm EST Monday-Friday, based upon multiple calls placed on different days and various times of the day (both inside and outside those times), it appears this “hotline” goes directly to a voicemail message at all times. It does not allow the caller to leave a message or request a call-back or any form of assistance through the hotline, but rather requests that the user use “EPA.gov/safewater” to gain assistance from the hotline by email.

Nowhere on “EPA.gov/safewater” is the contact form or a direct link to the contact form listed. Instead, this is the homepage for EPA’s drinking water program. The actual direct link to the comment form is <https://www.epa.gov/ground-water-and-drinking-water/forms/online-form-epas-office-ground-water-and-drinking-water>, but this information is not provided by the hotline and is likely too long to read over the phone or to require to be provided in written form on the CCR or elsewhere.

The voicemail neither provides a means to request accommodations for those unable to access the hotline by computer nor any means to request information for low English proficiency callers.

Instead of required CCR language pointing people to the defunct hotline, EPA should require only what it can actually support. Unless EPA intends to immediately reinstitute the hotline as a functional service, EPA should instead create a direct and simplified URL (for example, something like

²⁷ Environmental Protection Agency. 2022 October 20. EPA Hotlines. Accessed 2023 May 19. <https://www.epa.gov/aboutepa/epa-hotlines>.

“epa.gov/safewaterhotline” or “epa.gov/safewaterquestions” and require that link be provided in the CCR. EPA should offer, at a minimum, the same level of accommodation and low English proficiency translation assistance with the hotline as it is requiring CWS and primacy agencies to provide for the CCR.

RESPONSE TO EPA REQUESTS FOR COMMENT NOT ADDRESSED ELSEWHERE

EPA Definition of Corrosion Control.

EPA asks if the CCR Rule should require inclusion of a specific definition of corrosion control. Defining “corrosion control efforts” comprehensively, in a manner consistent with the Lead and Copper Rule Revisions, and doing so in a brief statement is not possible. EPA should not include either (1) a requirement for a definition of “corrosion control efforts” in 40 CFR 141.153(c)(3) nor (2) draft a generic description / definition of “corrosion control efforts” for use in any portion of the CCR. Rather, as the agency implies in the preamble, the CCR should include a requirement that systems provide a description in plain language that addresses the unique measures that each individual CWS is taking to reduce the release of lead and copper into drinking water. Such a requirement would be consistent with 42 U.S.C. 300g-3(c)(4)(B)(iv) requirements set forth in AWIA. EPA should note that in AWIA, Congress deliberately chose not to amend 42 U.S.C. 300g-3(c)(4)(B)(ii), where Congress lists those items requiring inclusion of definitions in the CCR.

The final rule preamble and subsequent guidance should recognize that corrosion control efforts are multi-faceted and system-specific, beginning with water supply selection, involving monitoring, and encompassing water treatment to change water chemistry. The agency should recognize that corrosion control efforts might be described as:

- Example 1. “ABC Water utilizes ground water that is not corrosive. We monitor lead and copper levels to ensure that unanticipated release of lead or copper from plumbing materials is not occurring.”
- Example 2. “DEF Water’s treats water from the Great River. As part of the treatment process water treatment chemistry is adjusted to limit the release of lead and copper from plumbing materials in household plumbing. We monitor lead and copper levels as well as water chemistry to assure reliable corrosion control implementation.”
- Example 3. “GHI Water’s treats water from the Lake Amazing. As part of the treatment process water treatment chemistry is adjusted and a corrosion inhibitor, orthophosphate, is added to limit the release of lead and copper from plumbing materials in household plumbing. We monitor lead and copper levels as well as water chemistry to assure reliable corrosion control implementation.”

Template Language for Action Level Exceedances.

As with “corrosion control efforts” the explanation of an action level exceedance (ALE) is site and situation specific. An additional aspect is that the rule does not require explanation of other violations, yet EPA is contemplating a description of an ALE.

A lead ALE is subject to Tier 1 public notice (Section 40 CFR 141.202(a)). There is guidance for the content of associated communication that is more extensive than can be reflected in a brief summary in the CCR. A lead ALE also triggers public education (40 CFR 141.85(a)) again with specific communication

expectations and associated guidance. EPA should not create a separate communication requirement under the CCR rule separate from the existing Lead and Copper Rule requirements. Instead, the CCR can serve as a method to remind customers of the separate notice and educational brochure.

Other EPA questions.

There are several questions posed in the proposed rule not otherwise addressed in our comments. Please find responses to those questions below. These questions all are listed on 88 FR 20103.

“EPA is requesting comment on the feasibility of lowering the threshold for systems that are required to post their CCR on the internet in 40 CFR 141.155(f). Currently community water systems that serve 100,000 customers or more are required to post their CCR on the internet. EPA is considering lowering that threshold to include systems that serve 75,000 or more customers, 50,000 or more customers, or a different threshold”

We are not familiar with specific challenges for either of the alternate thresholds proposed in this question. The most recent data published by AWWA on this subject was collected in 2011, with 199 of 227 (87.7%) of respondents at the time posting their CCRs on their website²⁸, collected and discussed in the context of readiness to implement electronic delivery. The critical piece of information would be the website availability for systems serving fewer than 100,000 (as larger systems already have this requirement) and greater than the new proposed threshold. The published data does not support this analysis. We have not been able to identify any information in the docket more recent than this study or more specific to the critical need to support the potential requirement, and thus EPA will need to develop and provide this information in order to support this potential change if it moves forward with it.

“Would requiring water systems to certify delivery of the CCR at the same time the CCR is distributed create any benefits or challenges? Would requiring public water systems to certify delivery of the CCR within 10 days or 30 days of delivery create any benefits or challenges?”

It is not feasible to certify delivery at the same time as the delivery is performed unless the requirements of the certification are changed. The certification to the state requires certification that delivery has been completed. No CWS can confirm delivery has been completed at the same time delivery is ongoing.

The certification deadline should remain as a fixed date to allow for proper planning by CWS and by assist states in clearly identifying which systems have and have not completed the certification on time. Completing the certification requires time and resources which, if the deadline is too close to the time of delivery requirements, could pull resources away from preparing for and executing the delivery itself. The current §141.155(c) states “no later than the date the system is required to distribute the report to its customers, each community water system must mail a copy of the report to the primacy agency, followed within 3 months by a certification that the report has been distributed to the customers...” The current requirement bases the required date of certification upon the deadline for delivery, not the actual date of delivery (the question appears to suggest the requirement would be based upon an actual date of delivery). Basing the certification deadline on an actual date of delivery would be highly

²⁸ Carpenter and Roberson. 2013. Journal – American Water Works Association 105.25:E127-136. https://downloads.regulations.gov/EPA-HQ-OW-2022-0260-0042/attachment_3.pdf

problematic because not all customers may receive notification on the same date, and thus it would be unclear when the timeline would begin. For example, some CWS distribute their CCRs alongside quarterly bills, meaning that some customers receive notification several months earlier than others, even though all receive notification prior to the deadline. Any deadline based upon a specific number of days after delivery (as opposed to the delivery deadline) would make the date of this requirement unclear.

Additionally, §141.155(c) should be updated to allow CWSs to comply by providing the state with a copy electronically, as the current requirement allows CWSs to comply only by mailing a copy to the primacy agency.

“What revisions could EPA incorporate into the Consumer Confidence Report Rule Revisions that could make it easier for consumers to understand what contaminants may reasonably be expected to be present in drinking water, including bottled water, and what the health effects of those contaminants might be?”

§ 141.153 already requires the following statement:

“Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the Environmental Protection Agency’s Safe Drinking Water Hotline (800–426–4791).” As addressed elsewhere in this comment, reference to the Safe Drinking Water Hotline phone number should be removed because EPA does not support this phone number and it simply refers to a home page and not directly to the hotline’s website, and thus EPA should update this to refer to a simple, direct URL for the “hotline.” Also as discussed elsewhere, this is part of the mandatory language that EPA should review and rewrite using the Clear Communication Index.

CONCLUSION

In AWIA, Congress provided EPA specific instructions for the review and revision of the CCR. EPA’s proposed rule did not address the most significant shortcomings of current CCRs, which Congress directed EPA to address. Moreover, the proposal focuses on tangential items for which the agency does not provide a record adequate to support its proposed requirements. AWWA, NLC, and USCM all urge EPA to make significant changes as outlined above in finalizing the CCR rule and initiating a separate rulemaking process to address state primacy agencies reporting compliance monitoring data.