



October 24, 2022

Sarah Bradbury
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

TRANSMITTED ELECTRONICALLY (OGWDWCCRrevisions@epa.gov)

RE: Response to August 25, 2022 Federalism Consultation topics "Consumer Confidence Report Rule Revisions" and "Annual Collection of Compliance Monitoring Data"

Dear Ms. Bradbury,

On behalf of the nation's mayors, cities, counties, and water systems, we appreciate the opportunity to provide information to the U.S. Environmental Protection Agency (EPA) through the federalism consultation process as the agency considers updates to the Consumer Confidence Report (CCR) Rule. 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. We have several key concerns, presented below under the following topics:

- EPA should ensure that the National Drinking Water Advisory Council (NDWAC) recommendations are reviewed for impacts to local governments.
- EPA should ensure that changes impacting readability, clarity, understandability, and accuracy use a meaningful tool to improve these attributes and minimize burdens on local and state governments.
- EPA should modernize and transform the CCR for the public's benefit and streamline local and state government requirements through increased flexibility, including electronic delivery.

- The biannual delivery requirement for larger systems best meets local and state needs through two deliveries of an annual report.
- Language requirements should utilize existing tools and EPA should provide required standardized language to local and state governments.
- The CCR should reinforce the role of customers as stewards of water quality at the tap and the source.
- Annual submittal of state compliance monitoring data is premature.

The comments below reflect both opportunities and concerns that we have heard from our organizations' members, emphasizing those that may have the greatest impact on local and state governments. These comments also contain feedback on the "Annual Collection of Compliance Monitoring Data" which was presented during the same Federalism consultation as the CCR rule revisions.

Our organizations and members look forward to additional engagement opportunities as the rule development process proceeds for CCRs and additional information becomes available on compliance data reporting.

EPA should ensure that the National Drinking Water Advisory Council (NDWAC) recommendations are reviewed for impacts to local governments.

The NDWAC recommendations [1] were informed by the consumer confidence report rule revision working group (CCR3 working group). At this moment, it is not clear among the NDWAC recommendations, which ones EPA is considering for the CCR rule revisions. We appreciate the challenges that the CCR3 working group, and subsequently NDWAC, faced in developing the recommendations, and their hard work should be commended.

However, the group's very rapid schedule and remote, short meeting format left little opportunity for a data-driven discussion or meaningful collaboration among workgroup members and stakeholders.

The working group met for only 35 hours over two months. This work was accomplished through a series of conference calls, which lacked the benefit of in-person meetings where working group participants would have been able to effectively collaborate. Further, there is no information available to the public that suggests that EPA provided a body of data or scientific information to help inform the compactly scheduled working group discussion. Additionally, a substantial number of working group recommendations were based primarily on opinion rather than specific evidence and was not evaluated for feasibility, benefits, or costs.

Consequently, the NDWAC recommendations should be viewed by EPA only as informed professional opinions without substantiation. Further consideration of each recommendation would require EPA to explore statutory limitations, feasibility, benefits, and costs using generally accepted regulatory principles.

While some of the recommendations will likely be of net benefit, others may cause new challenges, pose considerable burdens, or not deliver the intended benefits in ways not

considered during the NDWAC working group discussions. Many of these challenges will fall to local governments, along with state governments overseeing implementation. The American Water Works Association (AWWA) has previously provided detailed input on the NDWAC recommendations for EPA's review [2].

EPA should ensure that changes impacting readability, clarity, understandability, and accuracy use a meaningful tool to improve these attributes and minimize burdens on local and state governments.

CCRs have poor readability scores. Improving the readability, understandability, clarity, and accuracy of the reports would be beneficial to the public. However, these improvements must balance the need to provide accurate and transparent information while also not causing unnecessary panic.

In addressing these issues, it is essential EPA address the root cause of poor readability scores of the CCR by using the Center for Disease Control's Clear Communication Index [3] (CCI) as a guide, as well as using the CCI as a model for future guidance and templates.

EPA must also address readability issues within their own materials (required and recommended language), as well as those of CWSs (including those operated by local governments). Continuing to require water systems to use outdated, unreadable language will neither benefit the public nor allow for efficient implementation by states or CWS. It is critical that while EPA works to incorporate clear and coherent language into these reports, it is done so in a manner which does not also generate unnecessary public alarm.

EPA should modernize and transform the CCR for the public's benefit and streamline local and state government requirements through increased flexibility, including electronic delivery.

During engagement with the NDWAC and at other opportunities, our organizations have noted that this rulemaking marks the first time a major change has been made to the CCR since being finalized in 1998. The 2013 electronic delivery memo provides useful guidance on implementing electronic delivery but falls short of allowing for new and innovative ways to better reach and inform customers.

The 2013 memo incentivizes making an electronic CCR an exact or near-duplicate of paper copies, and, as a result, emphasizes electronic delivery exclusively as a means of providing the CCR, rather than an opportunity to transform the user experience into one that is modern and more effective. At present, it is difficult to comply with the CCR rule and provide an interactive experience. EPA should consider how digital information in 2022 is markedly different from the paper-centric world of information in 1998. The Agency should take full advantage of current technology to ensure full transparency, while also recognizing future technology may further change customer's expectations. This can be accomplished by allowing purposeful navigation within the electronic version of the CCR, where customers can readily access all the CCR

elements with full transparency, while also allowing an interactive experience that is now expected for most electronic interactions.

Although many water systems will be able to accomplish this, others may lack the necessary resources to do so. As such, flexibility should be allowed, but not required. Allowing local and state governments increased flexibility to deliver the CCR will provide them with the ability to take advantage of existing government resources (as examples, many governments have developed GIS expertise able to better present spatial information and some may already employ translation tools) to best communicate with customers and remove any unnecessary obstacles in delivering information.

The biannual delivery requirement for larger systems best meets local and state needs through two deliveries of an annual report.

The CCR provides an annual accounting of water quality data and other important information regarding a community water system. The standard monitoring framework [4] specifies the monitoring periods for each major National Primary Drinking Water Regulation (NPDWR). Many contaminants have an annual monitoring period (with one or several samples during the year), whereas other contaminants are sampled less frequently, depending on past results. Therefore, most items reported in the contaminant table of the CCR will unlikely change within a typical six-month period (a mixture of monitoring periods could make the results confusing or misleading).

EPA recognized this in Slide Ten of its federalism consultation presentation, noting that approximately 85% of the number of monitored contaminants have a “most likely monitoring schedule” of “annual” or “less frequent than annual.” Those contaminants that are monitored more frequently than once a year are generally covered by the Public Notification rule in instances when the public needs to be notified about a health-based violation or other concern. Thus, the benefits of a separately generated second CCR are minimal.

In contrast, the complexity of developing a second, separate CCR will increase twofold the time and resources required to gather the necessary information, develop the draft CCR, review the CCR to assure quality, and finalize the report. Ultimately, the water system’s ratepayers bear these costs, which greatly outweigh the benefits. For those water systems operated by cities or counties, this is a considerable challenge for those local governments. Additionally, two separate CCRs will also double the expense for the state agency overseeing compliance with minimal or no increased benefit.

Instead of requiring a second CCR, there is more benefit in utilizing limited resources to provide the annual CCR a second time. The rule should recognize that it can be difficult to reach some customers, that some customers will move into the service area after the first CCR is delivered, in addition to other complications.

There is a compelling need for the public to know about urgent situations and major changes in a water system. When an urgent situation exists, the Public Notification rule [5] is triggered, requiring notifications to the public. However, the Public Notification rule is outside the scope of

the proposed changes to the CCR rule. Yet, it is important that EPA seek to minimize duplication between these rules to not only to reduce unnecessary burden but also to reduce confusion on the part of customers and the public at large.

Further adding to the challenge of the biannual requirement is communication between wholesale consecutive systems. Under the current structure, the time between delivery of information from the wholesale to the consecutive system provides very limited time for the development of the final CCR. The need for a second, separate CCR would only exacerbate these challenges while providing limited benefit.

Language requirements should utilize existing tools and EPA should provide required standardized language to local and state governments.

The NDWAC working group discussed potential translation requirements or recommendations at length and provided several recommendations to EPA. The need for a translation depends on the characteristics of a community—information that EPA is unlikely to have or likely to fit into any type of formula. Therefore, requirements for translations are best kept as a discussion between the CWS and its primacy agency.

Additionally, a significant amount of a typical CCR is derived from language required by the rule, which is often incorporated into the report verbatim or with only minimal modifications. Even the contaminant table is likely to contain mostly material prescribed by EPA or the primacy agency, with the values added in. Further, much of the required language is technical, making translation more difficult compared to most types of communication. Because of these challenges, it would be extraordinarily inefficient and burdensome for EPA to require thousands of water systems to translate the required language of CCRs independently. EPA could begin with translations into the most used non-English languages and provide translations as requested for other languages.

In addition to EPA providing translations of required language, water systems should be able to make use of existing tools to provide translations. There are many automated translation tools offered for free or at low cost, which could help facilitate rapid translation into many different languages without utilizing additional resources. In many cases, these tools are designed to interface most effectively with websites, meaning that addressing concerns around electronic delivery (discussed previously) is essential to providing the best customer experience. Requiring the use of a professional translator would likely cause considerable burden especially on small water systems, who may have difficulty finding a translator as well as challenges with the costs of their services. As the CCR is a regulatory requirement that must be met on a recurring basis and done correctly or risk both noncompliance consequences and loss of public trust, water systems will likely require the services and cost of a professional translator if automated tools cannot be used.

Requirements should reflect reasonable and feasible objectives for the CCR.

Throughout the NDWAC process, many working group members encouraged the inclusion of a wide variety of additional items into the CCR, including financial information. It is not appropriate for EPA to require elements unrelated to the basic information about the water, water system, or water quality, such as sources and contact information.

There are other governance processes related to the financial status of water systems and those are best shared via financial disclosure rather than a report focused on water quality. The CCR should be viewed as one component of an overall communications strategy, and not as the only opportunity to provide information to customers.

The CCR should reinforce the role of customers as stewards of water quality at the tap and the source.

There are methods that customers can use to improve water quality, both at the tap and at the source. The CCR should be considered for messaging that encourages customers to run their water for a few minutes (or use it to water plants) when it has not been used for long periods of time to reduce water age and improve home water quality. Additionally, customers can be encouraged to help protect their drinking water sources through actions such as limiting fertilizer and pesticide use. Proactive customer actions can play a significant role in improving and protecting water quality, and EPA should provide in guidance examples of messages that support these activities.

Annual submittal of state compliance monitoring data is premature.

Our organizations support the concept of a centralized warehouse for properly curated compliance data. During the recent federalism consultation, EPA correctly recognized the utility of a centralized compliance monitoring data set at EPA. However, EPA has worked to collect the simplest fraction of that data for more than a decade unsuccessfully. Importantly, EPA has not meaningfully engaged the drinking water community in a dialogue as to how to productively move forward.

EPA, states, cities, counties, and water systems are not yet prepared for EPA to institute such a requirement, nor are these entities likely to be prepared by the time the CCR revisions are finalized. EPA is citing:

1. An ongoing data system development process that has missed multiple deadlines and re-started with fundamental restructuring several times over the last decade.
2. The ongoing Six-Year Review Information Collection Request (ICR), which currently does not produce comparable data across states and does not garner responses from all states. Moreover, AWWA is currently conducting quality control on data EPA released publicly from the most recent ICR and has found fundamental flaws in the dataset, including duplicative data.

3. Use of the Compliance Monitoring Data Portal (CMDP), which is not organized to collect all compliance monitoring data and EPA does not have a clear plan in place for developing a fully functional CMDP that allows for (1) adequate quality control by water systems submitting data and (2) collection of all compliance data water systems are required to submit.

There are numerous direct and indirect benefits of a centralized warehouse of compliance data, but those benefits do not occur if EPA is not prepared to effectively implement that warehouse. If EPA creates a regulatory construct that it cannot implement, then it will be opening itself to assertions and investigations regarding the drinking water program's competence. EPA is still responding to the Government Accountability Office findings published in 2011 on the failings of the Safe Drinking Water Act (SDWA) data system.

A failure to implement a state reporting requirement by the date certain in the rulemaking would set the stage for litigation. The cost of the SDWA data management system is already a tremendous weight on the program office budget. Such a lawsuit could easily further strain the budget with a legally enforceable compliance schedule. This vulnerability will not simply be due to EPA's budget limitations, but also that of all the states, territories, and tribal lands that must participate in the program for it to be implemented successfully.

A failure by EPA to effectively implement an annual data collection process poses not just a challenge to EPA but also to states, local governments and water systems. EPA indicated that it intends to collect this data to (1) improve rule oversight, (2) improve rule development and (3) provide data to the public. A flawed data collection effort:

1. Creates a centralized repository of data of uncertain quality that can be subjected to records requests and misrepresented;
2. Misplaces federal oversight and enforcement efforts; and
3. Increases unproductive second-guessing of state primacy agencies.

EPA must have a working data system in place before it sets regulatory requirements. Under SDWA, the agency is not allowed to require use of technology that is not proven at field-scale. EPA should apply a similar approach here. Moreover, a solid data management system would be a boon to both states and systems and would not necessitate such a requirement.

Conclusion

On behalf of the American Water Works Association, the U.S. Conference of Mayors, National League of Cities, and the National Association of Counties we appreciate the opportunity to comment on this important notice and look forward to opportunities to engage throughout the regulatory process.

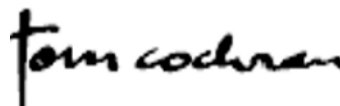
AWWA also provided considerable feedback and documentation during the NDWAC process, which per our understanding will be posted to this docket. We encourage EPA to review that material in detail. If you have any questions regarding this correspondence or if we can be of assistance in some other way, please contact our staff: Judy Sheahan (USCM) at 202-861-6775

or jsheahan@usmayors.org; Carolyn Berndt (NLC) at 202-626-3101 or Berndt@nlc.org; Sarah Gimont (NACo) at 202-942-4254 or sgimont@naco.org; or Adam Carpenter (AWWA) at (202) 326-6126 or acarpenter@awwa.org.


Sincerely,



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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.

National Association of Counties

The National Association of Counties (NACo) strengthens America's counties, serving nearly 40,000 county elected officials and 3.6 million county employees. NACo works to strengthen America's counties through our vision of healthy, safe, and vibrant counties across the country.

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.

[1] National Drinking Water Advisory Council. 14 December 2021. NDWAC Letter to the Administration on Consumer Confidence Report Rule Revision. <https://www.epa.gov/system/files/documents/2022-02/ndwac-consumer-confidence-report-rule-revision-letter-december-2021.pdf>

[2] May 23, 2022 comments from AWWA titled “response to EPA-HQ-OW-2022-0260 titled ‘Meetings: Consumer Confidence Report Rule Revision; Virtual Listening Session’” <https://www.regulations.gov/comment/EPA-HQ-OW-2022-0260-0013>

[3] The CDC Clear Communication Index. <https://www.cdc.gov/ccindex/index.html>.

[4] Example: USEPA. 2020 May. The Standardized Monitoring Framework: A Quick Reference Guide. https://www.epa.gov/sites/default/files/2020-05/documents/smf_2020_final_508.pdf.

[5] 87 FR 25982. 2000 May 4. National Primary Drinking Water Regulations: Public Notification Rule. <https://www.govinfo.gov/content/pkg/FR-2000-05-04/pdf/00-9534.pdf>.