



THE UNITED STATES
CONFERENCE OF MAYORS



February 3, 2025

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

RE: Potential Revisions to the Microbial and Disinfection Byproduct National Primary Drinking Water Regulations, Docket ID Number: EPA-HQ-OW-2020-0486

Dear Dr. McLain,

On behalf of the nation's mayors, cities and counties, we appreciate the opportunity to submit comments on the U.S. Environmental Protection Agency's (EPA) forthcoming proposed revisions to the National Primary Drinking Water Regulations for Microbial and Disinfection Byproducts (MDBP). We appreciate the Federalism Consultation EPA held for state and local government organizations on December 5, 2024 and provide these comments pursuant to Executive Order 13132: Federalism and the Unfunded Mandates Reform Act.

Collectively, our organizations represent the nation's 3,069 counties and 19,000 cities, towns and villages and the mayors of the 1,400 largest cities throughout the United States. The health, well-being and safety of our residents and communities are top priorities for us. Local governments serve as co-regulators in implementing and enforcing many federal laws with states, including Safe Drinking Water Act (SDWA) programs, and our members take these responsibilities seriously.

In general, our organizations support the provisions in the 1996 Amendments to the Safe Drinking Water Act that require that drinking water standards be based on sound science, public health protection and occurrence of contaminants in drinking water supplies at levels of public health concern to reduce risk to the public while also balancing costs. Any federal mandate on local governments should be accompanied by additional federal financial resources and also offer municipal water systems flexibility in implementation and compliance options. It is important that federal, state and local governments work together to craft reasonable and practicable rules and regulations. As partners in protecting our residents' public health, it is essential that local governments have a clear understanding regarding our responsibilities in implementing this rule.

Local leaders are supportive of the Agency's efforts to address pathogen risks and protect public health. Any new requirements made by revisions to MDBP rules should meet the dual goals of delivering safe and affordable drinking water services and protecting public health. New compliance

measures should result in tangible risk reduction benefits that do not interfere with a system's overall ability to meet the needs of its customers.

As EPA moves forward with its proposal, we look forward to providing additional comments and feedback. In summary and outlined in more detail below, **we recommend EPA provides direct and additional funding options for local governments to meet MDBP requirements to avoid creating an additional unfunded mandate, holistically consider compliance timelines and affordability, and ensures that any national disinfectant residual minimum for free and total chlorine is based on sound science and lived experience.**

Additionally, we strongly urge the Agency to conduct a cost-benefit analysis assessing the rulemaking's impact, both individually and in combination of concurrent SDWA regulations, on low-income ratepayers.

At this time, we offer the following pre-proposal comments to be considered by the Agency:

Cost Concerns

A. Affordability

Local governments fund 98 percent of all capital, operations and maintenance investment in drinking water and wastewater infrastructure, primarily through user fees, loans and bonds. The most recent U.S. Census data shows that local governments spent over \$150.9 billion on water and wastewater in 2022 alone, and since 2000 has spent over \$2.46 trillion on these utilities, including \$892 billion in capital investment. Even with this significant investment by local governments, many communities struggle to maintain and upgrade their drinking water systems and simultaneously raise rates in order to comply with a continuous stream of new federal mandates.

EPA's own Water Affordability Needs Assessment Report, released December 2024, noted unaffordable water bills in the United States as a "widespread and growing issue," with up to 19.2 million households lacking access to affordable water services and a national annual needs gap ranging between \$5.1 and \$8.8 billion. Notably, these estimates do not consider the Agency's recent finalizations for a host of new drinking water and wastewater regulations impacting local governments, including new PFAS drinking water standards (2024), new Lead and Copper Rule Improvements (2024), and new designations for PFOS and PFOA as hazardous substances (2024). On top of these rules, new regulatory proposals targeting water system restructuring, long term control plans for combined sewer systems, and new drinking water perchlorate standards, are also underway.

As such, we strongly urge EPA to conduct a cost-benefit analysis assessing the annualized cumulative impact for compliance and implementation of this rulemaking, along with concurrent drinking water and wastewater regulations, will have on low-income ratepayers. The Agency should report on these findings and take appropriate measures to reduce the financial burden on customer ratepayers. We further reiterate our long-standing recommendation that the Financial Capability Assessment Guidance include

both wastewater *and* drinking water considerations, the latter of which has not been considered by the Agency.

B. Funding

Public water systems will be required to make monitoring, treatment, and operational changes to meet any new revisions to the MDBP rules. Ultimately, these costs will be passed on to community ratepayers in the form of higher water bills. This may include costs associated with meeting new disinfect residual criteria (increasing dose or changing type of disinfectant), evaluation of residual monitoring sites, equipment and installation of new sampling infrastructure, inspecting and cleaning of storage tanks, and overall, the necessary upgrade or replacement of treatment facilities.

It is difficult to estimate the total costs local governments will be responsible for, even with only minor revisions to the MDBP rules. However, it can be reasonably assumed that systems forced to make any technical or operational changes will likely face a host of challenges. At a time when local ratepayers are continually being put in the unsustainable position of financing public operations, we urge **EPA to consider including additional and direct funding to support any unfunded mandates created by this rulemaking.**

Finally, the Agency notes the Drinking Water State Revolving Loan Fund as a potential funding source for compliance activities associated with the MDBP rules. While local leaders appreciate the historic investments made into the state revolving loan funds through the Infrastructure Investment and Jobs Act, local governments are also using this same pool of money for financial assistance in meeting all the other rules mentioned above. Because many of the compliance timelines for these rules overlap, the overall costs of these rules will be staggering and simultaneous. As such, we urge the Agency to take a holistic and integrated approach and consider the cumulative impacts that the rules and regulations will have on local governments in terms of cost and compliance.

Rule Compliance and Implementation

As EPA is aware, water systems are concurrently working to comply with other SDWA regulations, including the recently finalized Lead and Copper Rule Improvements. In developing this proposal, the Agency should carefully consider the potential conflicts between new requirements under the MDBP rules and the ongoing efforts of local governments to comply with other water regulations.

We urge the Agency to allow for maximum flexibility for local governments and public water systems in the form of extended compliance deadlines and additional financial assistance for systems who will need to make technical or operational changes to meet new requirements. Additionally, EPA should explicitly allow for regional solutions, such as wholesale water purchases.

Finally, we caution EPA in over-sized reliance on this forthcoming rule and the Safe Drinking Water Act in general in reducing the risk of Legionnaires' disease, which research has shown is best controlled by building owners/operators. EPA should consider the best risk management tool for this

public health concern to ensure any forthcoming rule is both implementable, cost-effective and practicable at the local level.

Consider Impact on Small Systems

While all water systems regulated by the Surface Water Treatment Rules and Disinfection Byproduct Rules will be impacted by this rulemaking, it is public water systems, especially small water systems, that will incur the most substantial costs.

We urge EPA to consider how necessary technical and operational changes associated with this rulemaking will impact smaller systems, especially in terms of challenges associated with staffing limits, funding, capital improvements and technical expertise. As the Agency moves forward in developing this proposal, we urge EPA to provide local governments, particularly small communities, with maximum flexibility for compliance options to reduce the cost burden and achieve maximum risk reduction benefits.

Setting a National Numeric Disinfection Residual Requirement

One of the stated revisions EPA is considering to the MDBP rules is setting a national numeric disinfection residual requirement to be maintained in the distribution system. The disinfectant residual is the amount of disinfectant remaining after the initial dose, and the presence of the residual is an important measure of water quality.

A majority of U.S. states that have set a minimum numeric standard have set this number at 0.2 mg/L, and based on demonstrated experience, this number *could* meet the objective of establishing a standard that is realistic for systems to achieve and maintain. This would also need to be supported by sampling, monitoring, and response plans that encourage water systems to take proactive steps to address residual levels when compliance monitoring finds levels below the numeric standard. Therefore, if EPA moves forward on this proposal, of the options presented in the Federalism Consultation briefing to our organizations, **we recommend EPA set a national minimum of 0.2 mg/L for free and total chlorine.**

Additionally, we support the American Water Works Association's comments in stating there is currently insufficient scientific data that supports the notion that a higher numeric minimum would result in a reduced occurrence of pathogens in the water. Alternatively, a higher residual minimum might result in outcomes that are more consequential than the perceived benefit of increased disinfectant, such as increased byproducts in the water harmful to human health. As such, **we further caution the Agency against proposing any higher standard greater than 0.2 mg/L for free and total chlorine.**

Inspection and Maintenance of Storage Tanks

In this forthcoming proposal, the Agency is considering adding new requirements for storage tanks targeting inspections and maintenance that would help reduce the occurrence of pathogens in the water. We are supportive of the Agency taking these measures as these requirements would help improve overall storage tank conditions and water quality.

In developing this proposal, the EPA should work with appropriate stakeholders to ensure new requirements for routine inspection, cleaning, and maintenance would not interfere with the system's ability to deliver safe and affordable water services for the customers they serve.

Continue meaningful, timely and frequent engagement with local governments

As EPA moves forward with potential revisions to the Microbial and Disinfection Byproducts Rules, we urge EPA to continue to adhere to Executive Order 13132: Federalism, as well as EPA's own implementing guidance. Specifically, we request EPA continue to engage with state and local government organizations to provide opportunities for input into the development process to ensure that the rule is effective, implementable and cost efficient.

On behalf of the nation's mayors, cities and counties, thank you for considering the local government perspective on this important issue. If you have any questions, please contact us: Judy Sheahan (USCM) at 202-355-8540 or jsheahan@usmayors.org; Carolyn Berndt (NLC) at 202-626-3101 or Berndt@nlc.org; or Charlotte Mitchell Duyshart (NACo) at 202-661-8826 or cmitchell@naco.org.

Sincerely,



Tom Cochran
CEO and Executive Director
The U.S. Conference of Mayors



Clarence E. Anthony
CEO and Executive Director
National League of Cities



Matthew D. Chase
CEO/Executive Director
National Association of Counties