

Since there is a chance for this single sample to exceed an MCL, today's proposal requires systems that exceed an MCL on an annual or less frequent sample to begin increased (quarterly) monitoring rather than immediately being in violation of the MCL. The system must comply with the MCL as an LRAA once it has collected four quarterly samples. This allows small systems to generally monitor less frequently (to reduce their monitoring burden) during the period when the highest DBP levels are expected (to protect public health) without penalizing them (by requiring them to meet an MCL that would effectively be based on a single highest value if the systems were immediately in violation after a single sample exceeds an MCL). This compliance determination is consistent with requirements for systems that monitor quarterly for whom compliance is based on the compliance monitoring results of the previous four quarters.

It is important to note that based on the IDSE results, some small systems will have a high TTHM site that is different from the high HAA5 site. These systems will need to monitor at two sites under the Stage 2 DBPR. EPA believes that an approach based on compliance with 0.080 mg/L TTHM and 0.060 mg/L HAA5 LRAs is an effective way of addressing concerns regarding locational variability.

In addressing seasonal variability, the Panel was concerned about a regulatory alternative requiring compliance with 0.080 mg/L TTHM and 0.060 mg/L HAA5 single highest value MCL (Alternative 2), because it would impose significant additional cost on some small systems. The Panel recommended that EPA instead explore an approach under which individual high values might trigger additional assessment and/or notification requirements, rather than an MCL violation.

EPA agrees with the panel recommendations on a single highest value MCL. Under today's proposal, public water systems are required to maintain a record of TTHM and HAA5 concentrations detected at each sample location. As part of the sanitary survey process, systems are required to conduct an evaluation and consult with their State regarding significant excursions in TTHM and HAA5 occurrence that have occurred. EPA is developing guidance for public water systems and States on how to identify significant excursions and conduct significant excursion evaluations, and how to reduce DBP levels through actions such as distribution system operational changes (USEPA 2003n) (Section V.E.).

The Panel noted the strong concerns expressed by some SERs about the uncertainty in the current scientific evidence regarding health effects from exposure to DBPs, particularly regarding short term exposure. A Panel member recommended that EPA give further serious consideration to making a determination that the currently available scientific evidence does not warrant imposing additional regulatory requirements beyond those in the Stage 1 DBPR at this time. This Panel member recommended that EPA instead continue to vigorously fund ongoing research in health effects, occurrence, and appropriate treatment techniques for DBPs, and reconsider whether additional requirements are appropriate during its next SDWA required six-year review of the standard. This panel member also recommended that EPA separately explore whether adequate data exist to warrant regulation of NTNCWSs at a national level at this time.

EPA has considered these recommendations and believes the Stage 2 DBPR is needed at this time to protect public health. EPA's main mission is the protection of human health and the environment. When carrying out this mission, EPA must often make regulatory decisions with less than complete information and with uncertainties in the available information. EPA believes it is appropriate and prudent to err on the side of public health protection when there are indications that exposure to a contaminant may present risks to public health, rather than take no action until risks are unequivocally proven. Therefore, while recognizing the uncertainties in the available information, EPA believes that the weight of evidence represented by the available epidemiology and toxicology studies on chlorinated water and DBPs supports a hazard concern and a protective public health approach to regulation. In addition, EPA has an ongoing research program to study DBP health effects, occurrence, and treatment.

EPA continues to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under UMRA section 202, EPA

generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local and Tribal governments, in the aggregate, or the private sector in any one year. Based on total estimated nominal costs incurred by year, costs for public or private systems are not expected to exceed \$100 million in any one year. In addition, total estimated annualized costs of this rule are \$59 to \$65 million for all systems, including labor burdens that States would face, such as training employees on the requirements of the Stage 2 DBPR, responding to PWS reports, and record keeping. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that the Stage 2 DBPR contains no regulatory requirements that might significantly or uniquely affect small governments (see Tables VIII-1 and VIII-2). Since the Stage 2 DBPR affects all size systems