

PENDING EPA REGULATIONS OF INTEREST TO COUNTIES

NAME	STATUS OF RULE	RIN #	BACKGROUND	LOCAL GOVERNMENT IMPACT
Withdrawal of 2015 “Waters of the U.S.” (WOTUS) Rule and Re-codifying of Preexisting Rules	Supplemental Notice of Proposed Rulemaking: May 2018 Final rule: Spring 2019	RIN: 2040-AF74	In 2015, the Obama Administration finalized a new definition for WOTUS that was immediately challenged in the courts. The rule would have expanded the definition of “WOTUS,” impacting county-owned and maintained infrastructure. This proposed rule would withdraw the 2015 WOTUS rule and reinstitute the 1986 WOTUS regulations that were in place prior to the 2015 rule.	Under the 2015 rule, more county-owned and maintained infrastructure such as roads and roadside ditches, bridges and stormwater, floodwater and drainage ditches would have triggered federal WOTUS determinations. To read NACo’s comments on the 2015 rule, click here . To read NACo’s comments on the withdrawal and recodification proposal, click here .
Rewrite the “Waters of the U.S.” (WOTUS) Definition	Proposed rule is currently open for public comment until April 15, 2019 Final Rule: September 2019	RIN: 2040-AF75	WOTUS is a term used in the Clean Water Act (CWA) to differentiate between waters that are federally protected vs. state protected. The Trump Administration is currently conducting a substantive re-evaluation and revision of the current WOTUS definition. They published a proposed rule on February 14 and are taking public comments on the proposal until April 15.	Waters and their conveyances deemed to be a WOTUS fall under federal permitting requirements. If determined to be a WOTUS, ditches and other conveyances must meet specific federal requirements for construction, operation and maintenance activities. NACo will work with the administration to ensure any new WOTUS definitions are workable for counties.
Extending Applicability Date to 2015 WOTUS Rule	NPRM, ended December 2017 Final rule: February 2018 (currently I	RIN: 2040-AF80	EPA and Army Corps extended the implementation date of the 2015 WOTUS rule for two years to 2020. Soon after the rule was finalized, two lawsuits were filed challenging the agencies’ authority to change the implementation date of a final rule without going through a robust public comment period. The rule continues to be litigated in the courts. As a result, this has created a patchwork of WOTUS requirements. In 28 states, implementation of the 2015 rule is delayed for one year, and in 22 states, the 2015 rule is in effect. To see if your state is impacted, click here .	Extending the implementation date of the 2015 rule will give the agencies more time to work through the rulemaking process to repeal and replace the 2015 rule. This, in turn, will give counties more certainty in their CWA Section 404 permitted projects.

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Peak Flows Management (at wastewater treatment facilities)	Information request: Closed October 31, 2018 NPRM: July 2019 Final Rule: July 2020	RIN: 2040-AF81	<p>During rain events, stormwater runoff is meant to enter sewer systems for treatment. However, treatment facilities can get overwhelmed during heavy rain events. In these cases, the facilities are designed to divert “overflow” to a second facility for treatment before “blending” with the treated water from the primary plant. This process can be controversial, since the secondary treatment process is not as stringent as the primary.</p> <p>In 2012, EPA attempted to ban blending through guidance documents, rather than going through a public comment period, at an estimated cost of \$150 billion nationwide to implement. In 2013, the ban was struck down in the 8th circuit court, which ruled the ban went beyond EPA’s statutory authority.</p> <p>After the 2013 ruling in the 8th Circuit Court, EPA stated that the decision was only binding within the jurisdiction of the court(which includes parts of Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota and South Dakota). Outside of the Eighth Circuit, EPA has attempted to ban blending on a case-by-case basis. The current Administration has announced plans to revisit this determination and has undertaken a series of listening sessions around the nation.</p>	<p>The lack of a uniformly applied standard for blending has caused tremendous delay and confusion for local governments and has greatly increased local costs. By EPA’s own estimates, a blending ban would cost communities and the residents they serve over \$150 billion nationwide to implement. This cost would be born by local governments that own and manage Publicly Owned Treatment Works (POTWs), which may or may not be able to pass on additional costs to their residents and businesses.</p> <p>In October 2018, NACo, along with the National League of Cities and U.S. Conference of Mayors, sent a letter in response to EPA’s information request. To view the letter, click here.</p>

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Drinking Water Regulations: Regulation of Lead and Copper	NPRM, early spring 2019 Final Rule: Undetermined	RIN: 2040- AF15	<p>On January 8, EPA held an Executive Order 13132 (EO 13132) Federalism consultation with state and local governments to discuss options on how to address lead and copper contaminants in public drinking water, especially since many of the nation's 68,000 drinking water systems rely heavily on lead and copper pipes in their current system.</p> <p>Under the yet-to-be proposed rule, EPA is looking at several possible revisions to LCR within the following areas: lead service line replacement, corrosion control treatment, tap sampling, public education and copper requirements.</p>	<p>This rule is expected to be “economically significant” for local governments that own or operate drinking water facilities and/or water utilities.</p> <p>In March 2018, NACo sent a letter to EPA including recommendations from local governments to ensure that any potential revisions to the LCR are effective, implementable, offer local flexibility and avoid a “one size fits all” approach.</p>
National Primary Drinking Water Regulations: Regulation of Perchlorate	Final rule: December 2019	RIN: 2040-AF28	<p>EPA has begun the process for developing a National Primary Drinking Water Regulation (NPDWR) for perchlorate. Perchlorates are chemical compounds often found in propellants, such as in fireworks, bleaching agents, and herbicides, which may have negative impacts on human health.</p> <p>This rule is due to a lawsuit out of the U.S. District Court for the Southern District of New York. Under the consent decree, EPA must finalize a new standard by December 2019.</p>	This will impact any county that owns and/or operates a drinking water system who may be required to install new equipment to meet new standards.
Compensatory Mitigation for Losses of Aquatic Resources--Review and Approval of Mitigation Banks and In-Lieu Fee Programs	Status: NPRM early spring 2019	2040-AF90	In 2008, the Army Corps and EPA issued a final rule governing compensatory mitigation for losses of aquatic resources. This regulation requires a review and approval process for the establishment and management of mitigation bands and in-lieu fee programs. The Corps is reviewing the process to approve new mitigation banks and in-lieu fees.	This is relevant to counties who use mitigation banks and/or in lieu fees for construction and/or infrastructure projects.

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Management Standards for Hazardous Waste Pharmaceuticals	Final Rule: Imminent	RIN: 2050-AG39	When discarded or disposed, some pharmaceuticals are regulated as hazardous waste under the Resource Conservation and Recovery Act. Health care (and associated) facilities that have excess hazardous waste pharmaceuticals have reported difficulties complying with the existing manufacturing-oriented framework of the hazardous waste regulations.	Counties own and operate nursing homes and hospitals that may be impacted. Also uncertain is the impact on local pharmaceutical give-back programs.
Modernization of the Accidental Release Prevention Regulations (Risk Management Program, RMP)	NPRM, May 2018 Final Rule: early spring 2019	RIN: 2050-AG82	In September 2018, the courts ordered EPA to immediately implement the 2017 RMP program rule instituted under the Obama Administration, which aimed to improve emergency response planning in and around facilities that use hazardous chemicals. Originally issued during the final days of the Obama Administration, the rule was scheduled to go into effect in March 2017. At the beginning of the new administration, former EPA Administrator Scott Pruitt delayed the implementation of the rule for 20 months to February 19, 2019 to review the rule. As a result of the D.C. Circuit's September 21 court decision, the 2017 RMP amendments are now in effect nationally. In the meantime, EPA is working to rewrite the 2017 standard.	Under the 2017 RMP rule, over 11,000 facilities would be impacted, including 1,746 local government-owned water and wastewater systems, power plants, swimming pool facilities and emergency management activities. Specifically, it would potential impact counties in two ways. First, as owners of water/wastewater facilities, they would be subject to tighter reporting and emergency protocol requirements. Second, each individual facility within a local jurisdiction would be required to run notification exercises, tabletop and field exercises with local emergency personnel on an annual basis. To read a NACo blog post on the 2017 rule, click here . To read NACo's comment letter on the 2017 rule, click here .
Municipal Solid Waste Landfill Liquids Management Regulations Under RCRA Subtitle D	Status: Public comment period open until March 26, 2019. To read the proposal or to comment, click here .	RIN: 2050-AG86	EPA is considering whether to create new national standards for the operations of "wet" landfills and bioreactor landfills. EPA plans to request information and data on the performance of wet landfills and bioreactors and request comments on whether new national standards are appropriate.	This proposal may be relevant for local governments that operate "wet" and bioreactor landfills. Wet and bioreactor landfills use water to speed up the decomposition of materials. This process creates more methane gas, as well as creates more space at existing landfills.

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Increasing Recycling: Adding Aerosol Cans to Universal Waste Regulations	Final Rule: August 2019	RIN: 2050-AG92	EPA is considering a proposal to add hazardous waste aerosol cans to the “universal wastes” definition regulated by EPA.	The proposal may be relevant for counties that manage solid waste streams.
Clean Water Act Hazardous Substances Spill Prevention	Status: NPRM, June 2018; Final Rule, September 2019	RIN: 2050-AG87	As a result of a consent decree, EPA is establishing procedures, methods and other requirements to govern hazardous substance discharges from facilities. This rule will likely apply broadly to a wide variety of facilities that use hazardous substances.	This rule may be relevant to local governments who are responsible for emergency response activities at and around facilities that use hazardous substances.
Lead: Renovation, Repair, and Painting for Public and Commercial Buildings	Status: It is uncertain when or if the administration will release a NPRM	RIN:2070-AJ56	In 2008, EPA established a final rule to address lead-based paint (LBP) activities in housing and child care facilities. However, EPA was sued for not addressing LBP hazards in public and commercial buildings. In a settlement agreement, EPA agreed to determine whether activities that impact LBP in public buildings must be federally regulated.	This proposal will impact any county that owns a public building with lead-based paint.
Polychlorinated Biphenyls (PCB): Reassessment of Use Authorizations for PCBs in Small Capacitors in Fluorescent Light Ballasts in Schools and Daycares	Status: It is uncertain when or if the administration will release a NPRM	RIN: 2070-AK12	Due to a lawsuit, EPA is considering whether to require all building operators who may still use ballast light fixtures (common in buildings older than 1978 and have not been subject to energy efficiency upgrades) to replace them. These fixtures are common in older schools, hospitals, government centers, etc.	<p>If EPA required an immediate replacement for all PCB fixtures, this would create a substantial unfunded mandate on local governments.</p> <p>NACo, along with other local government, school board and superintendent groups sent a letter under the auspices of Executive Order 13132 as a result of a federalism consultation meeting held with state and local governments on the yet-to-be-proposed rule. To read the joint letter, click here.</p>

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Implementation of the 2015 National Ambient Air Quality Standards for Ozone	Status: Final	RIN: 2060-AS82	<p>On May 1, EPA released its final list of county designations under the new National Ambient Air Quality Standards (NAAQS) for Ozone. The new ozone NAAQS was approved in 2015 and tightened the standard of 75 parts per billion (ppb), last set in 2008, to 70 ppb. EPA designated 209 counties as in nonattainment under the new 70 ppb standard.</p> <p>States are required to submit infrastructure and transportation state implementation plans (SIPs) for nonattainment counties by late 2018. Barring any lawsuits, the 2015 ozone rule should be implemented nationally soon afterwards.</p>	<p>New air quality regulations have a direct impact on counties who must implement and enforce new regulations at the local level; counties may also be regulated entities under federal air quality rules.</p> <p>To read NACo's fact sheet on Ozone, click here. To read NACo's comment letter on the Ozone rule, click here.</p>
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