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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 142

[EPA-HQ-OW-2022-0678; FRL 7487-02-OW]

RIN 2040-AF96

Water System Restructuring Assessment Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA or the agency) is proposing a regulatory framework for states and public water systems (PWSs) to identify and assess restructuring alternatives to ensure that every community receives safe, affordable, and reliable drinking water. The proposed regulations would: establish a new mandatory restructuring assessment authority for states; require states with primary enforcement authority (primacy) to develop mandatory restructuring assessment programs and submit primacy revisions for EPA review and approval; establish requirements for states and PWSs that implement system-specific mandatory

restructuring assessments; and establish eligibility requirements and limitations for restructuring incentives under state-approved restructuring plans. This proposed rulemaking is required under amendments to the Safe Drinking Water Act (SDWA). By taking this action, the EPA intends to strengthen the ongoing efforts of states and PWSs to protect public health.

DATES: Comments must be received on or before [**INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**]. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OW-2022-0678, by any of the following methods:

- *Federal eRulemaking Portal*: *https://www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments.
- *E-mail: ow-docket@epa.gov*. Include Docket ID No. EPA-HQ-OW-2022-0678 in the subject line of the message.
- *Mail*: U.S. Environmental Protection Agency, EPA Docket Center, Office of Water Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery / Courier* (by scheduled appointment only): EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. to 4:30 p.m.,

Monday through Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov*, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Will Bowman, Drinking Water Capacity & Compliance Assistance Division, Office of Ground Water and Drinking Water (MC-4606M) Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone number: (202) 564-3782; e-mail address: bowman.will@epa.gov.

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. Throughout this document the use of "we," "us," or "our" is intended to refer to EPA. We use acronyms in this preamble. For reference purposes, EPA defines the following acronyms here:

AMWA	Association of Metropolitan Water Agencies
ASDWA	Association of State Drinking Water Administrators
AWWA	American Water Works Association
CBI	Confidential Business Information
CFR	Code of Federal Regulations
DWSRF	Drinking Water State Revolving Fund
EO	Executive Order

EPA	United States Environmental Protection Agency
FR	Federal Register
ICR	Information Collection Request
NPDWR	National Primary Drinking Water Regulations
NRWA	National Rural Water Association
OMB	Office of Management and Budget
PRA	Paperwork Reduction Act
PWS	Public Water System
PWSS	Public Water System Supervision
RCAP	Rural Community Assistance Partnership
RFA	Regulatory Flexibility Act
RTCR	Revised Total Coliform Rule
SBREFA	Small Business Regulatory Enforcement Fairness Act
SDWA	Safe Drinking Water Act
SDWIS	Safe Drinking Water Information System
TMF	Technical, Managerial and Financial
UMRA	Unfunded Mandates Reform Act
USC	United States Code
WSRAR	Water System Restructuring Assessment Rule

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I. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA-HQ-OW-2022-0678 at

https://www.regulations.gov (our preferred method), or the other methods identified in the **ADDRESSES** section of this document. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA generally will not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). Please visit *https://www.epa.gov/dockets/commenting-epa-dockets* for additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments.

II. General Information

A. Applicability of this Action

This proposed rulemaking would apply to all states with primary enforcement responsibility, to a PWS that is the subject of a mandatory restructuring assessment where the state has mandated such assessment, and to a PWS that submits a restructuring plan to the state for purposes of enforcement relief or liability protection. Consistent with the SDWA, a PWS is subject to a mandatory assessment if the state finds that: (1) the PWS has repeatedly violated one or more National Primary Drinking Water Regulations (NPDWRs) and such violations are likely to adversely affect human health; (2) the PWS is unable or unwilling to implement restructuring activities, or already has attempted to implement such activities but has not achieved compliance; (3) restructuring of the PWS,

including a form of consolidation or a transfer of ownership, is feasible; and (4) restructuring of the PWS could result in greater compliance with drinking water standards. Although the mandatory assessment requirements would not apply to a PWS that does not meet these four SDWA criteria, such PWSs may develop and submit restructuring plans eligible for restructuring incentives. This description of the applicability of this proposed regulation is not intended to be exhaustive, but rather provides a guide for readers regarding entities intended to be regulated by this action. To determine whether a particular entity or state would be regulated by this action, the reader should carefully examine the definitions of "primary enforcement responsibility," "public water system" or "PWS," "supplier of water," and "state" found in the Code of Federal Regulations (CFR) at 40 CFR 142.2 entitled "Definitions" and in 40 CFR 142.3 entitled "Scope." The reader also should review the paragraph entitled "Applicability" in the proposed 40 CFR 142.90 of this document. For any questions regarding the applicability of this action to a particular entity, the reader should consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

B. Summary of Proposed Action

The proposed Water System Restructuring Assessment Rule (WSRAR) would create a framework for states and PWSs to evaluate and implement restructuring alternatives for systems in chronic noncompliance. Assessments may identify a broad array of alternatives that may include sharing resources (e.g., operators or equipment), debt restructuring, operational changes, upgrades, or replacement of components of water system infrastructure (treatment technology, transmission, distribution, or storage), interconnection with another PWS, consolidation, or transfer of ownership to achieve the

capacity to provide safe drinking water. Restructuring alternatives for an assessed water system depend on system-specific physical and socio-economic factors (Green, et al. 2018). Therefore, the proposed rule would provide states the authority to mandate assessments and to approve restructuring plans eligible for incentives but would not limit the restructuring alternatives that the assessment could identify.

In some cases, consolidation or transfer of ownership could be the most feasible alternative to ensure a community receives safe drinking water in a sustainable manner, particularly if a PWS already has attempted to build technical or managerial capacity, to invest in infrastructure improvements, or to implement other restructuring actions, yet public health remains at risk due to persistent noncompliance with drinking water standards. For example, consolidation can reduce costs per household by spreading the cost of service across a larger customer base (US Water Alliance and UNC Environmental Finance Center 2019). As described in section IV of this preamble, the proposed rule distinguishes consolidation from privatization, which can occur under a transfer of PWS ownership from a public entity to a private entity. A common form of consolidation by small water utilities is referred to as regionalization, in which neighboring water utilities facing similar challenges choose to consolidate administratively or physically. The EPA recognizes that forms of consolidation or transfers of ownership, particularly those that would result in privatization, might raise community concerns. These concerns include affordable water rates, the need for transparency and community involvement in decision making, and ensuring accountability for utility management and operations (Zhang, et. al, 2022). A recently published case study on privatization provides an example that highlights these concerns.

The case study found that, due to lack of consumer protections and utility mismanagement under private control, residents and community organizers demanded public ownership and management of the water system, more equitable water rates, and greater accountability and transparency in governance (Rivas and Schroering, 2021). To address these concerns, the proposed rule would establish several "tailoring" requirements to ensure that the assessment identifies feasible restructuring alternatives based on the physical and socio-economic characteristics of the water system, which can limit its capacity to restructure without technical and financial assistance. These characteristics include not only those cited in the SDWA (population served, water system type), but also the following: source water type; the technical, managerial, and financial (TMF) capacity of the water system; whether the community it serves is disadvantaged or underserved; as well as other characteristics. In addition, the proposed rule would require the mandatory assessment to describe how restructuring would ensure that the service community would sustainably receive safe, affordable drinking water. To ensure that the local community can raise concerns, ask questions, and provide input to the state and to the water utility, the proposed rule also would require the state to hold a public meeting before approving either a mandatory assessment or a restructuring plan that would result in consolidation or transfer of ownership. Finally, the proposed rule would require the state to make electronic and physical copies of state-approved assessment reports or restructuring plans available to the public. In addition to the assessment report, the EPA strongly encourages states to make publicly available a written summary of its responses to comments received during the public meeting. Section III.C of this preamble describes guiding principles of water system restructuring

to help states, drinking water utilities, and local communities navigate the challenges of identifying feasible alternatives to ensure safe drinking water.

The SDWA also establishes enforcement relief and liability protection incentives for state-approved restructuring plans. The enforcement relief incentive would prohibit enforcement action for up to two years for specific violations identified in the plan. The liability protection incentive would protect a compliant water system from liability for violations at an assessed water system until it has acquired an assessed water system through transfer of ownership or has completed physical or administrative consolidation with the assessed water system. The SDWA limits these incentives to plans for managerial or physical consolidation, transfer of ownership, or contracts for managing or administering the water system to resolve violations. As described in sections IV.E and IV.F of this preamble, the proposed rule also would establish additional eligibility requirements and limitations for both incentives, which would apply only to violations that the PWS identified in a state-approved plan.

Finally, the proposed rule would revise existing primacy regulations to require states to develop programs with the authority to mandate restructuring assessments and to review and approve restructuring plans. To obtain this authority, states would submit primacy revision applications for the EPA's approval. To assist the agency with oversight of state mandatory assessment programs, the revised primacy regulations would establish new reporting and recordkeeping requirements for states.

C. Agency Authority for this Action

The EPA proposes this regulation as mandated by SDWA section 1414(h)(6), 42 U.S.C. 300g-3(h)(6) and pursuant to SDWA sections 1413, 42 U.S.C. 300(g)-2 and

1450(a), 42 U.S.C. 300j-9.

D. Incremental Costs and Benefits of this Action

The proposed rule, if finalized, would impose direct costs on states that are required under the SDWA to establish mandatory assessment programs, and, when a state mandates an assessment, would impose indirect costs on both states and assessed PWSs to ensure that the proposed assessment requirements are satisfied. The EPA estimated that the annualized direct costs to states of implementing the requirements of this proposed WSRAR, if finalized, would be within $0.8 million to $1.0 million at a 2 percent discount rate. The estimated benefits of this proposed rulemaking would be reduced risks to public health at assessed water systems that return to compliance through restructuring, and reduced enforcement costs for states.

E. Stakeholder Engagement

In 2019, the EPA met with the Association of State Drinking Water Administrators (ASDWA) on the restructuring-related amendments to SDWA sections 1413 and 1414(h). The purpose of the consultations was to determine how the EPA should communicate with states regarding each set of amendments and their implications for states, especially the mandatory primacy revisions. Following these initial conversations, in August 2019, the EPA participated in a national webinar on water system consolidation hosted by ASDWA. During the webinar, the EPA presented a detailed summary of the America's Water Infrastructure Act (AWIA) amendments to SDWA sections 1413 and 1414(h), described several policy issues that the agency might consider as part of WSRAR development, and explained the likely effects of the amendments on state programs.

Consistent with Paperwork Reduction Act (PRA) requirements, following the national webinar, from September through November 2019, the EPA conducted telephone interviews with drinking water program staff and managers in the States of California, Connecticut, Indiana, Nebraska, Nevada, Pennsylvania, Virginia, and Washington. The EPA selected these eight states as representative of state Public Water System Supervision (PWSS) programs based on total population served, sizes of PWS inventory, geographic region, and features of their capacity development programs as documented in the EPA's 2017 compendium of state partnership programs (EPA 2017). The interviews allowed the EPA to develop a clearer understanding of states' perspectives on how these new SDWA primacy requirements and the proposed mandatory assessment authority could affect their PWSS programs. In addition, the interviews helped the EPA understand how these states currently conduct four types of water system assessments: sanitary surveys; Revised Total Coliform Rule (RTCR) Level 1 and 2 assessments; technical, managerial, and financial (TMF) capacity assessments; and feasibility studies. Collectively, these four types of assessment, which include the identification of system vulnerabilities, evaluations of water system performance, or financial capacity assessments, are closely related to the proposed elements of mandatory restructuring assessments under the WSRAR. As a result of the state interviews, the EPA obtained, for each of the assessment types, state costs of establishing an assessment program, including training staff, developing training materials for water systems, preparing databases, and conducting assessment activities. The interviews also yielded data from each state that the EPA used to calculate the cost estimates for the proposed WSRAR discussed in section VI of this preamble.

In 2019 and 2020, the EPA conducted webinars and held informational meetings with national associations that represent large and small drinking water utilities, or that provide direct technical assistance to PWSs, to discuss water system partnerships, including forms of consolidation, transfers of ownership, and other types of restructuring. These organizations included: The Rural Community Assistance Partnership (RCAP), the Rural Community Assistance Corporation (RCAC), the Association of Metropolitan Water Agencies (AMWA), the National Rural Water Association (NRWA), and the American Water Works Association (AWWA). During these meetings, the EPA provided stakeholders with an overview of the AWIA amendments to SDWA sections 1413 and 1414(h), and described potential provisions of interest, including those that require the EPA to establish implementing regulations in the WSRAR. For large water utilities, the discussion centered on the statutory requirements for liability protection as an incentive to consolidate with assessed water systems. Small water utilities focused on the SDWA tailoring provision that requires assessment of restructuring options to be based on the characteristics of each water system, and on enforcement relief as a restructuring incentive. The EPA outlined these SDWA requirements to ensure that stakeholders were aware of how these provisions might affect them. During these discussions, utility stakeholders also identified restructuring barriers and incentives and provided case studies for the EPA to consider when developing the proposed WSRAR. This feedback informed our rulemaking process. The EPA is requesting public comment on the resulting tailoring and liability provisions.

In October 2022, the EPA conducted an informational meeting with the Natural Resources Defense Council (NRDC) and community-based organizations from Michigan

and California. The meeting provided the agency an opportunity to listen to concerns about: the importance of community involvement in restructuring decisions; community impacts when restructuring alternatives are evaluated and implemented; and the potential impacts of consolidation or transfer of ownership on community access to safe, affordable drinking water. Of particular concern were the potential impacts of water system privatization that could result in unaffordable water rate increases or water shut offs, particularly in disadvantaged or underserved communities. This feedback also informed the agency's rulemaking process.

III. Background

A. Purpose of the Proposed Rule

Congress has long been concerned about PWSs that struggle to comply with drinking water standards, particularly small PWSs.[1] In 1996, Congress added section 1414(h) to the SDWA. This provision allows a water system to receive enforcement relief if a state approves a restructuring plan for consolidation or ownership transfer. In 2018, Congress added section 1414(h)(3) to authorize a state or the EPA to require a PWS in chronic noncompliance (among other factors) to perform an assessment of restructuring alternatives that are expected to help the PWS achieve compliance. Congress also added section 1414(h)(5) to provide liability protection for a "non-responsible" PWS that consolidates with, or acquires, an assessed water system. In section 1414(h)(6), Congress mandated that the EPA promulgate regulations to implement these new SDWA 1414(h) provisions. This rule would, consistent with SDWA mandates in sections 1413 and 1414(h), enable states and PWSs to identify and to implement feasible water system

[1] See e.g., House Report 104-632 (104th Cong. 2d Sess.) at 9-10 for discussion of small system noncompliance in report accompanying the 1996 SDWA amendments.

restructuring alternatives, including consolidation or transfer of ownership, that support compliance with drinking water standards and help ensure communities receive safe, affordable drinking water. Under the proposed rulemaking, a PWS could be subject to a mandatory restructuring assessment if the state were to find that: (1) the PWS has repeatedly violated one or more NPDWRs and such violations are likely to adversely affect human health; (2) the PWS is unable or unwilling to take feasible and affordable restructuring actions, or already has attempted such actions without achieving compliance with NPDWRs; (3) restructuring, including a form of consolidation or a transfer of ownership, is feasible; and (4) restructuring of the PWS could result in greater compliance with drinking water standards. A PWS that meets these four criteria has consistently failed to demonstrate it has the capacity to comply with drinking water standards that are established to protect public health. As a result, the proposed WSRAR, if finalized, would establish a regulatory framework and requirements for states and PWSs to conduct water system-specific assessments to identify feasible restructuring options for such PWSs, and to implement SDWA incentives for PWSs to develop and implement restructuring plans that can increase sustainable access to safe, affordable drinking water. These incentives include enforcement relief for a persistently noncompliant water system that restructures, and liability protection for a non-responsible water system from any violations committed by an assessed water system. By establishing enforcement relief and liability protection incentives, the SDWA encourages an assessed water system to consider forms of consolidation or transfer of ownership as permanent, long-term solutions to noncompliance. Therefore, if consolidation or transformation of ownership were determined to be infeasible, the proposed rule would

require the mandatory assessment to include an explanation of how consolidation or transfer of ownership is infeasible for the assessed PWS.

B. Scope of the Proposed Rule

There are three regulatory components of the proposed rule: (1) requirements for state primacy revisions to establish a mandatory assessment program with the authority to mandate assessments and to approve assessors; (2) requirements for mandatory assessments to evaluate restructuring alternatives based on water system characteristics, content requirements for assessment reports, and an assessment schedule that includes holding a public meeting prior to state approval of an assessment that identifies ownership transfer or consolidation as a feasible restructuring option; and, (3) requirements for restructuring plans, including content requirements to determine eligibility for enforcement relief or liability protection, and public meeting requirements. These regulatory components are based on the America's Water Infrastructure Act of 2018 (AWIA) amendments to SDWA sections 1413 (Primary Enforcement Responsibility) and 1414(h) (Consolidation Incentive). Through this action, the EPA proposes implementing regulations for both the section 1413 amendments that modify 40 CFR part 142 subpart B and the section 1414(h) amendments under new 40 CFR part 142 subpart J. The proposed WSRAR would give states the authority, as part of their approved SDWA primacy programs, to mandate restructuring assessments and to approve restructuring plans eligible for enforcement relief or liability protection. The implementing framework for the three regulatory components, and the guiding principles of water system restructuring, are summarized in the following section.

1. State Primacy Revisions

SDWA section 1413 describes requirements for states with primary enforcement responsibility (primacy). The proposed revisions would require states to establish procedures to identify and notify PWSs that meet the statutory preconditions for a mandatory assessment; review and approve eligible assessors; review and approve mandatory assessments; review restructuring plans to determine water system eligibility for enforcement relief or liability protection; and enforce mandatory assessment requirements. The WSRAR would establish implementing regulations for these new primacy requirements under revised 40 CFR 142.10 and 142.11. To support the EPA's oversight of state mandatory assessment programs, the proposed WSRAR would establish new reporting and recordkeeping requirements, codified under revised 40 CFR 142.14 and 142.15.

2. Mandatory Restructuring Assessments

The primary objective of a mandatory restructuring assessment under SDWA section 1414(h) is to identify feasible restructuring activities expected to help the assessed water system comply with NPDWRs. Consistent with the SDWA, the proposed rule requires a state to find that a PWS meets the following conditions before mandating an assessment: the PWS has repeatedly violated NPDWRs; the PWS is unwilling or unable to implement feasible and affordable restructuring activities to comply, or already has attempted to take such actions but not achieved compliance; that restructuring at the PWS is feasible; and that restructuring could result in greater compliance. Then the EPA, a state, the assessed water system or a state-approved third party could perform the mandatory assessment. Given the knowledge, expertise, and resources required, the EPA expects that states, or third-party assessors on behalf of states, would perform most mandatory assessments.

A mandatory restructuring assessment process would include:

a. Notifying the public water system that it is the subject of a mandatory restructuring assessment;

b. Performing an evaluation to identify feasible restructuring alternatives for a water system based on its geographical, managerial, financial, socio-economic, and physical characteristics;

c. Preparing an assessment report that: identifies the unresolved violations at the assessed PWS and their underlying causes; identifies at least one feasible alternative to return the PWS to compliance while ensuring its long-term TMF capacity based on its socio-economic, physical and other characteristics; describes how feasible alternatives were identified, including an explanation if consolidation or ownership transfer are infeasible, based on documented procedures, data and data sources; and, describes how any alternative would ensure that the community achieves access to safe, affordable drinking water;

d. Holding a public meeting with community leaders, e.g., mayors, town council members, community activists, and residents served by the PWS, to share the assessment results if the report identified a form of consolidation or transfer of ownership as a feasible alternative, and to provide an opportunity for community input and dialogue with the state and the assessed PWS;

e. Making physical and electronic copies of the assessment report publicly available; and,

f. Consulting with the assessed PWS and community leaders during the assessment and any next steps, which might include applying for Federal or

state funding to voluntarily carry out restructuring activities that the PWS and community decide to implement.

3. Restructuring Plans and Eligibility Requirements for Incentives.

SDWA section 1414(h) establishes enforcement relief and liability protection incentives for struggling water systems to restructure. Under SDWA section 1414(h)(2), if a state approves a restructuring plan for administrative or managerial consolidation, physical consolidation, or transfer of ownership, then for a period of no more than two years from the date of state approval, the PWS that submitted the plan would be eligible for enforcement relief (as discussed further in section IV of this preamble). During this enforcement relief period, the state could not take further enforcement action for a specific violation identified in the approved plan, although the PWS that received enforcement relief would remain subject to existing enforcement orders to ensure it takes short-term corrective actions to protect public health.

Under SDWA section 1414(h)(5), a non-responsible PWS that either has assumed ownership of, or has completed administrative or physical consolidation with, an assessed PWS would not be liable for the specific violations identified in the plan. However, the non-responsible PWS must use any liquid assets of the assessed PWS to pay any outstanding fines or penalties for those violations. The proposed rule clarifies that a non-responsible PWS would not be liable for violations not identified in the approved plan, such as those that occur during restructuring, until the non-responsible system became the owner of the restructured water system. As described in more detail in section IV of this preamble, under the proposed rule a state may determine eligibility for either enforcement relief or liability protection, or for both incentives under the same

restructuring plan. The proposed WSRAR also would establish implementing regulations for this statutory provision, with clarifications regarding eligibility requirements, as described in section IV of this preamble.

C. *Guiding Principles for Water System Restructuring*

The proposed WSRAR, if finalized, would establish implementing regulations for statutory provisions that give states the authority to mandate restructuring assessments and to approve restructuring plans that are eligible for enforcement relief or liability protection. These new authorities complement other Federal and state programs and policies that are collectively intended to increase sustainable access to safe and affordable drinking water supplies in all communities served by PWSs. To achieve these goals, in addition to regulatory requirements, the EPA proposes three guiding principles of restructuring to help ensure that mandatory assessments and restructuring plans are the result of collaborative efforts between states, local authorities, water utilities and community leaders (US Water Alliance 2022; 2019a, 2019b). These guiding principles are applicable not only to assessed water systems, but also to compliant water systems that are considering restructuring to ensure a sustainable capacity to provide access to safe, affordable drinking water.

1. Evaluate Restructuring Alternatives Based on the Needs of the Community

States should consider restructuring alternatives that take into consideration community culture, needs and interests to ensure that the planned restructuring leads to access to safe, affordable drinking water for all consumers served by the PWS. This principle is consistent with the EPA's Water Technical Assistance (WaterTA) initiative, which focuses directly on the status and needs of recipients and on developing locally

driven approaches to identifying and implementing public health solutions to ensure equitable access to water infrastructure funding (EPA Office of Water 2023). For example, when a large water utility consolidates with a smaller utility that serves a disadvantaged community, the restructuring could result in less affordable drinking water. As a result, the proposed WSRAR would require any identified restructuring alternative, including consolidation, to describe how it will ensure that the community served by the assessed PWS will achieve access to safe, affordable drinking water. Feasible alternatives for PWSs struggling with long-term compliance challenges should reflect the socio-economic conditions of the communities they serve, including disadvantaged or underserved status, or other barriers to water equity such as historical disinvestment in water infrastructure. Therefore, when identifying solutions for a restructuring water system, the assessor must consider not only geographical and technical factors, but also water affordability and socio-economic conditions of the community. States should proactively engage with local governments and community leaders that would be affected by restructuring to fully understand the range of technical, managerial, financial, and socio-economic factors that create long-term compliance challenges. Public water systems that might have attempted to restructure but remain persistently noncompliant have demonstrated they do not have the sustainable capacity to provide safe, affordable drinking water. To address the significant public health risks to the communities they serve, community leaders and drinking water utilities should work closely with states to evaluate all forms of restructuring, including whether a form of consolidation or transfer of ownership is the right solution.

2. Engage Affected Communities Directly in Restructuring Decision Making

States and water utilities should directly engage with community leaders when making restructuring decisions. This approach is essential to ensure successful collaboration between state and local authorities, community leaders, and drinking water utilities. Direct engagement is particularly important if the water system is considering consolidation or transfer of ownership, which can raise community concerns about the affordability of safe drinking water and which involve complicated technical and financial terms and concepts. States should work with utilities, trained facilitators, and technical assistance providers to clearly communicate the costs and benefits of restructuring alternatives to community leaders and consumers and should ensure frequent opportunities for public input. In addition, the management structure determines the authority to establish water rates and rate structures, to apply for state and Federal funding, and to operate the water system. Therefore, states should provide comprehensive information that describes alternative management structures and water system ownership types to the affected communities. Providing information to support community involvement in decision making includes, for example, access to state data, and to mapping and planning tools. The EPA can assist in this process by providing guidance and tools to support community-level engagements in workshops, public meetings, and information sharing, including the agency's partnerships implementation tools and resources. More information about these implementation tools and resources is available at the agency's website for water system partnerships.[2]

3. Ensure the Community has Capacity to Make Affordable Investments in Safe Drinking Water

[2] *https://www.epa.gov/dwcapacity/water-system-partnerships-implementation-tools-and-resources.*

Under SDWA section 1414(h), a water system may be a candidate for a mandatory assessment even if it has attempted to obtain technical or financial assistance through the Drinking Water State Revolving Fund (DWSRF). Under the proposed WSRAR, states and drinking water utilities would benefit from the availability of an unprecedented level of Federal investment in grant programs that focus on small, disadvantaged, and underserved communities. These programs can help PWSs achieve and maintain the long-term capacity to provide safe drinking water through the implementation of a wide range of eligible restructuring activities, including consolidation or transfer of ownership. The 2021 Infrastructure Investment and Jobs Act, also known as the Bipartisan Infrastructure Law (BIL), is set to provide $16.6 billion in additional investment in the DWSRF over the next three years. A key priority of the BIL is to increase investment in disadvantaged communities, including those with environmental justice concerns. Nearly half (49 percent) of this investment is designated for disadvantaged communities either as loan forgiveness or as grants to water systems that meet a state's disadvantaged community criteria as described in SDWA section 1452(d). These resources may be used to: identify restructuring alternatives that address the underlying causes of noncompliance; provide technical support for communities applying for funding; design and implement restructuring plans; and build and maintain water systems with the long-term capacity to provide affordable access to safe drinking water. The EPA will continue to work with states to implement program administration flexibilities under the DWSRF that are designed to help disadvantaged communities overcome barriers in applying for and receiving DWSRF funds. In addition, the EPA's Small, Underserved and Disadvantaged Community (SUDC) grant program can help communities establish and

maintain access to safe, affordable drinking water by funding eligible restructuring activities. These activities include physical infrastructure improvements related to treatment, distribution, and storage; development of new sources; and assistance to increase technical, managerial, and financial (TMF) capacity, physical interconnection, water system consolidation or purchase of a water system. For more information on how SUDC grants may be used to support water system restructuring, please refer to the EPA's website.[3] The EPA will continue to collaborate with states, technical assistance providers and community leaders to implement the EPA's WaterTA programs to ensure that small, disadvantaged, or underserved communities can successfully identify water challenges, develop plans, apply for, and effectively utilize, BIL, SUDC and other funding to build their capacity and address compliance challenges. In addition, states, water utilities, and local communities should explore customer-assistance programs that can help ensure affordability of water rates and allow the water utility to make the infrastructure investments necessary to provide sustainable access to safe, reliable drinking water services (UNC EFC 2017, EPA 2016).

IV. Proposed Water System Restructuring Assessment Rule

The three regulatory components previously described - state primacy revisions, mandatory assessment requirements, and restructuring plan eligibility requirements and limitations for enforcement relief and liability protection - comprise the framework of the proposed rule. This section of the preamble describes the proposed rule sections that govern mandatory restructuring assessments and restructuring plans.

The agency seeks public comment on whether the rule appropriately balances

[3] *https://www.epa.gov/dwcapacity/wiin-grant-small-underserved-and-disadvantaged-communities-grant-program-0*.

meeting the statutory requirements of the SDWA while considering the impacts of the proposed requirements on our state and Tribal co-regulators, large and small water utilities, and the communities they serve. The EPA also has identified in this preamble specific topics for which the agency seeks public comment.

A. General

1. Authority

SDWA section 1413 and its implementing regulations under 40 CFR part 142 subpart B set forth the requirements for a state to obtain primacy for EPA regulations under 40 CFR parts 141 and 142, and for EPA review and approval of state applications for primacy or for revisions to primacy. Because AWIA directly amended the criteria for primacy under SDWA section 1413(a), every state with primacy for the PWSS program must submit to the EPA an application for a primacy revision that demonstrates that the state has adopted, and is prepared to implement, the requirements of the proposed WSRAR. The proposed WSRAR, if finalized, would amend 40 CFR 142.10 and 142.11 to describe the basis on which the EPA would determine whether to authorize state primacy for the WSRAR, and the content of a state application that is required for the agency's approval of a primacy revision. The proposed WSRAR also contains state recordkeeping requirements under amended 40 CFR 142.14, and state reporting requirements under amended 40 CFR 142.15. These proposed reporting and recordkeeping requirements, if finalized, would support the EPA's oversight of state implementation of the WSRAR and ensure consistent compliance with the proposed requirements.

2. Direct Implementation by the EPA

Where an EPA Region has primacy for the WSRAR, the Regional Administrator would have the authority, fully equivalent to that of a state, to mandate restructuring assessments, to perform assessments, to review and approve restructuring plans, and to determine PWS eligibility for restructuring incentives. This equivalent authority also would include EPA enforcement actions for noncompliance with the WSRAR and use of its independent enforcement authority under SDWA section 1414. Accordingly, the term "state" as it appears throughout this preamble, also refers to the EPA exercising its authority to implement the WSRAR. In addition, states with primacy for the WSRAR could, at their discretion, request that the EPA Region mandate an assessment of a PWS or assist the state with the implementation and enforcement of WSRAR requirements.

3. Applicability

The proposed requirements of the WSRAR would apply to all states for which the EPA has approved primacy for the WSRAR, and to PWSs for which an approved state has mandated a restructuring assessment. Additional proposed WSRAR requirements would apply to PWSs that submit plans to states seeking enforcement relief or liability protection.

B. Definitions

The EPA proposes the following terms and definitions for the WSRAR:

1. Assessed water system.

The EPA proposes this term to refer to a PWS that meets all four preconditions for a state to use its mandatory assessment authority described in SDWA section 1414(h)(3)(A), and that is the subject of a mandatory restructuring assessment as required by the state pursuant to proposed 40 CFR 142.92.

2. Enforcement relief

The EPA proposes this term to refer to the incentive described in SDWA section 1414(h)(2). Enforcement relief would apply to an eligible PWS as specified in proposed sections 40 CFR 142.93 and 142.94. A PWS would be eligible for enforcement relief if the state approved a restructuring plan that met the proposed requirements and that would result in physical or administrative consolidation; transfer of ownership to improve water quality; or a contractual agreement to carry out the administrative or managerial functions of a water system. Enforcement relief would mean that if a state approved a restructuring plan, the state could not take enforcement action under SDWA for specific violations identified in the plan for up to two years from the date of state approval. If the eligible water system were to complete its planned restructuring earlier, the enforcement relief period would end on the date of completion.

3. Liability protection

The EPA proposes this term to refer to the incentive described in SDWA section 1414(h)(5). This incentive applies to a non-responsible (compliant) water system that seeks liability protection when it restructures with an assessed (non-compliant) water system. Under the proposed rule, a non-responsible water system would be eligible for liability protection once restructuring has been completed under a state-approved restructuring plan for physical or administrative consolidation; transfer of ownership to improve water quality; or a contractual agreement to carry out the administrative or managerial functions of a water system. Liability protection would mean that, after using available assets of the assessed water system to pay any liabilities for specific violations identified in the approved plan, the non-responsible water system would have no

remaining liability under SDWA for those specific violations. Liability protection would continue for SDWA violations at the assessed system that occur during restructuring, but that protection would end after the state determined that the non-responsible system had become the owner of the newly restructured water system.

4. Mandatory restructuring assessment

The EPA proposes this term to refer to a mandatory evaluation of restructuring alternatives at an assessed water system as described in SDWA section 1414(h)(3) and that is performed consistent with the requirements of proposed 40 CFR 142.92. For rule implementation purposes, the term "restructuring" means any planned change in water system operations, management, or infrastructure.

5. Non-responsible system

The EPA proposes this term to refer to a compliant PWS that restructures with an assessed water system under a state-approved plan that is based on a completed mandatory restructuring assessment. The non-responsible system is the PWS that intends to benefit from liability protection because it did not commit the violations identified in the approved restructuring plan. Under the proposed rule, if the state determined that all requirements for liability protection in proposed 40 CFR 142.95 had been met, then the non-responsible system would not be liable for assessed water system violations identified in the plan, but it would be required to use any acquired liquid assets of the assessed water system to compensate the state for any fines or penalties associated with the identified violations. Under the proposed rule, a non-responsible system would continue to receive liability protection for violations at the assessed system that occurred during restructuring but would become liable for violations after it became the owner of

the newly restructured water system.

6. Restructuring plan

The EPA proposes this term to refer to the four restructuring plan types cited in SDWA section 1414(h)(1): physical consolidation of a water system with one or more other water systems; the consolidation of significant management or administrative functions of a water system with one or more other water systems; the transfer of ownership of a water system to another water system for purposes of improving drinking water quality; and a contractual agreement for significant management or administrative functions of a water system. Although other restructuring plan types are possible, they are outside the scope of this proposed rulemaking. A PWS that voluntarily develops and submits a plan to potentially benefit from the SDWA incentives should only incur burden when there is an incentive to do so. Unlike a mandatory restructuring assessment, a restructuring plan would be optional for a water system to submit. Consistent with SDWA, under the proposed 40 CFR 142.93, a submitted restructuring plan must include a schedule for restructuring activities and measures of progress. In addition, to be eligible for enforcement relief or liability protection, the restructuring plan must identify the specific violations to which the restructuring incentives would apply.

C. Mandatory Restructuring Assessments

The proposed WSRAR, if finalized, would establish requirements for the EPA, the state, or a state-approved assessor to implement a mandatory restructuring assessment according to an established schedule, and to produce an assessment report that satisfies the proposed content and tailoring requirements of the WSRAR. The specific elements of the proposed mandatory assessment requirements are outlined in the following sections.

1. When a state may mandate an assessment:

SDWA section 1414(h)(3)(A) describes four preconditions that a state would be required to find are applicable to a PWS before it could mandate a restructuring assessment. The proposed WSRAR restates these four preconditions to provide additional clarifications. A state with primacy for the proposed WSRAR may mandate a restructuring assessment if it finds that: (1) the PWS has repeatedly violated one or more NPDWRs and such violations are likely to adversely affect human health; (2) the PWS is unable or unwilling to implement restructuring activities, or already has attempted to implement such activities but has not achieved compliance; (3) restructuring of the water system, including a form of consolidation or a transfer of ownership, is feasible; and (4) restructuring of the water system could result in greater compliance with drinking water standards. Consistent with the SDWA, under the proposed rule each state has the discretion to determine whether a PWS meets all four preconditions and, if so, whether to mandate a restructuring assessment as a result. When exercising its mandatory assessment authority, a state would be required to provide written notification to the assessed system. This "state notification date" would determine the milestones and dates in the required assessment schedule.

Recurring monitoring violations might conceal repeated health-based violations at PWSs. Although recurring monitoring violations are not a regulatory precondition for a mandatory assessment, states should ensure there are no underlying health-based violations by investigating possible causes of the monitoring violations.

2. State notification.

If a state finds that a public water system meets the four preconditions and mandates a restructuring assessment, the state would be required to notify the assessed system in writing.

3. Minimum assessment tailoring criteria.

SDWA section 1414(h)(3)(A) requires a mandatory assessment to identify restructuring options that are expected to help the water system achieve compliance and that are feasible for the water system to implement. A wide range of water system restructuring alternatives are possible. These alternatives range from temporary, informal agreements between neighboring water systems to permanent, formal types of restructuring, such as physical consolidation. The EPA expects that an assessor would evaluate and compare restructuring alternatives from within this range, such as changes in rate structure and associated impacts, installation of treatment technology, operator training, or access to alternative water supplies. SDWA section 1414(h)(3)(B) states that the requirements of a mandatory restructuring assessment must be tailored to the size, type, and other characteristics of the assessed water system. Therefore, consistent with these two SDWA provisions, and with the proposed principles of restructuring, the proposed rule requires the assessor to "tailor" the feasibility of restructuring options based on the following geographical, socio-economic, and physical criteria. The information would ensure that a feasible restructuring alternative is technically, managerially, and financially feasible in the long term for the assessed PWS to implement.

a. System size.

The population served by the assessed water system. This criterion is required by the SDWA.

b. System type.

The classification of the assessed system as a community water system or a noncommunity water system. This criterion is required by the SDWA.

c. Source.

The extent to which the assessed system uses ground water, surface water, or both ground and surface water as a drinking water supply, and the extent to which the drinking water supply is purchased from another supplier of water.

d. TMF Capacity.

The technical, financial, and managerial capacity of the assessed system, using the state definition of each term as part of its capacity development strategy under SDWA section 1420(c).

e. Disadvantaged or Underserved Community Status.

A determination whether the service area of an assessed water system meets the state definition of a disadvantaged community pursuant to the requirements of SDWA section 1452(d) or SDWA section 1459A(c)(2), or whether a community is underserved pursuant to SDWA section 1459A(a)(2). Disadvantaged or underserved status is a critical socio-economic factor that determines feasibility of the restructuring options both in terms of the affordability of the restructuring and the impacts of the restructuring on the community served by the assessed water system.

f. Geographic factors.

The extent to which proximity to neighboring water systems, changes in elevation, or other geographic factors affect the available restructuring alternatives.

g. Hydrogeologic or geologic factors.

The potential or known interactions between surface activities, such as agriculture, and the ground water or surface water sources of water used by the assessed system. This criterion includes naturally occurring levels of contaminants in the geologic formation surrounding a ground water source.

h. State or local statutory or regulatory requirements.

State or local laws or regulations can determine the permissible legal authorities and types of restructuring at assessed water systems.

Request for public comment: The EPA requests public comment on all aspects of the proposed rulemaking, but in particular on the proposed minimum Federal tailoring criteria, including other water system characteristics or socio-economic factors that could affect restructuring alternatives.

4. Minimum assessment report content requirements.

Under the proposed WSRAR, a mandatory restructuring assessment would identify feasible restructuring alternatives that must be documented in a report that meets five minimum content requirements. These requirements would establish a minimum standard that requires a focus on identifying underlying causes of non-compliance, protecting public health from ongoing violations, and a long-term plan to develop a sustainable capacity to provide safe, affordable drinking water. The content requirements also include a description of the potential community impacts of restructuring alternatives.

First, to address immediate health risks, the proposed rule would require the assessment report to describe all unresolved violations, their underlying causes, their enforcement status, and how restructuring would return the system to compliance as soon as practicable. Underlying causes can be technical, such as inadequate treatment technologies, or financial or managerial issues such as those related to being a disadvantaged or underserved community.

Second, to achieve a sustainable capacity to provide safe drinking water, the proposed rule would require the assessment report to identify at least one feasible restructuring alternative for the assessed water system that will return the PWS to compliance as soon as possible, while also improving its technical, managerial, and financial (TMF) capacity. For purposes of implementing these proposed requirements, the term "TMF capacity" generally means the capability of a public water system to achieve and maintain compliance with NPDWRs, including ensuring sufficient resources for sustainable fiscal planning and management. Technical capacity improvements may include greater access to higher quality source water; sharing, upgrading, or building new infrastructure; or implementing more effective treatment technologies. Managerial capacity improvements may include increasing expertise in water system planning and operations, or enhancing systems' financial, accounting, and asset management practices. Financial capacity improvements may include reducing costs, achieving greater economies of scale through shared services, or increasing a system's sustainable access to funding through new partnerships (EPA Office of Water 2017).

Third, the assessment report would be required to describe how the assessor has used the tailoring criteria to take a holistic approach to identifying feasible and affordable

alternatives based on a broad range of technical, managerial, financial, and socio-economic factors. The report also must describe how the proposed alternatives ensure that the communities served by the assessed water system sustainably achieve or maintain access to safe, affordable drinking water. As part of its primacy revision for the rule, a state may propose using affordability criteria in addition to those already identified by the state as required under SDWA section 1452(d)(3). This requirement helps to ensure that the assessment considers the long-term affordability impacts of restructuring alternatives, particularly at water systems that serve disadvantaged or underserved communities.

Fourth, because SDWA section 1414(h) establishes incentives for consolidation or transfer of ownership at struggling water systems, the proposed rule would require the mandatory assessment report to provide an explanation if these alternatives are considered infeasible.

Finally, to help the state or EPA ensure the assessment is valid, the proposed rule would require that the assessment report include a description of the data, data sources, information, procedures, and techniques used to identify the feasible restructuring alternatives for the assessed water system. This documentation requirement helps ensure that the state or EPA could independently determine the quality of the evidence used as the basis for an evaluation of alternatives.

5. Burden of assessments

SDWA section 1414(h)(3)(D) describes a sense of Congress that a mandatory restructuring assessment should not be "overly burdensome" on the assessed system. Under the proposed WSRAR, the mandatory assessment would involve collecting data; identifying and evaluating feasible alternatives using the tailoring criteria; and preparing

an assessment report. Although the EPA expects that the assessment burden would vary by individual water system, the WSRAR's minimum content and tailoring requirements have been designed to minimize the burden. In addition, as described in the economic impact analysis of the proposed WSRAR, due to the technical expertise necessary to meet the WSRAR's proposed requirements and the proposed principles of restructuring, the EPA anticipates that states would perform nearly all mandatory restructuring assessments (EPA Office of Water 2022). Therefore, a mandatory assessment conducted according to the proposed requirements would not be overly burdensome on the assessed system.

6. Eligible assessors.

Consistent with the meaning and intent of the statute, the EPA's proposed rule restates SDWA section 1414(h)(3)(C) while providing additional clarifications. The assessor would be responsible for ensuring that the assessment report aligns with the proposed restructuring principles, meets all content requirements, is submitted on time, and that the restructuring alternatives identified during the assessment are feasible in the long term based on the tailoring requirements. A state or a third-party assessor may perform the assessment. A third-party assessor could be a technical assistance provider or another individual whom the state deems to be qualified to perform the mandatory assessment on behalf of either the water system or the state. A third-party assessor that performed an assessment on behalf of the state would be acting as "the state" for purposes of performing the evaluation of alternatives and preparing the assessment report. Alternatively, the assessed water system could conduct a self-assessment if approved by the state. To ensure that an assessor is qualified, as part of its primacy

revision each state would be required to establish and implement procedures and qualifications for reviewing and approving eligible assessors.

7. Assessment schedule.

The following proposed assessment schedule requirements apply to a state, to a PWS performing a self-assessment, and to a third-party assessor retained by the assessed water system. These requirements would begin as of the date the state notifies the water system in writing. Within 30 days of the state notification date, the water system could request in writing that the state approve either a self-assessment or a third-party assessor retained by the water system. The state would have 30 days from receipt of the system's request to approve or reject the request. If the state rejected the request, or if the system did not request a self- assessment within 30 days, the state could decide to perform the assessment instead. In such cases, the system also would be required to provide relevant information requested by the state, such as an asset inventory, accounting records to demonstrate financial capacity, or monitoring results, to help the state perform the assessment.

If the state approved the request for a self-assessment or third-party assessor, the assessment report would be due on the submittal date established by the state. The EPA expects that the submittal date would be based on the anticipated complexity of the mandatory assessment. During the assessment, either the assessed system or the state could propose a different submittal date. In such cases, the state ultimately would decide, based on information or other documentation that the state deemed acceptable, whether to change the submittal date. When submitting the assessment report to the state, the assessed water system or an approved third-party assessor would be required to include a

certification statement. The certification statement would attest that: the assessor has the authority to verify the assessment results; the report content is true, accurate, and complete; and the assessor understands the penalties for submitting false information to the state.

8. Public meeting.

If the mandatory restructuring assessment identified a form of consolidation or transfer of ownership as a feasible alternative for the immediate and long-term needs of the community, the state would be required to notify the community that it will hold a public meeting. The state would hold this meeting as soon as practicable after receiving the assessment report from the assessed water system. If the state performed the assessment, it would be required to hold the meeting before approving the mandatory assessment report.

Consistent with the principles of restructuring, the required public meeting would allow community-based organizations and residents served by the system to be directly involved in decision-making to ensure that the proposed consolidation or transfer of ownership would meet immediate and long-term community needs. The state and the water utility would provide specific details from the assessment report to the local community, including the anticipated costs and benefits, to ensure transparency into how the assessment was based on a holistic approach to identify consolidation or transfer of ownership as a sustainable, feasible and affordable alternative. To ensure meaningful opportunity for community participation, the public meeting would be required to comply with the EPA's notice, location, and time requirements under 40 CFR 25.6, as well as any state-specific-regulations for public meetings. The EPA expects that the state would

consider community feedback received during the public meeting, and the potential impacts of restructuring on the community, before it determines whether to approve the report. The EPA also strongly encourages states to make publicly available a written summary of its responses to comments received during the public meeting. The public meeting requirements are intended to provide transparency into, and accountability for, the mandatory assessment decision-making process.

9. State determination.

Following the public meeting, the state would determine whether the report complied with tailoring and content requirements. Once the state determined that the submitted assessment met all requirements and was developed consistent with the proposed restructuring principles, it would approve the assessment, and notify the assessed water system in writing. If the state determined that the submitted assessment report did not meet all proposed requirements, it could choose to consult with the assessed system to determine a schedule and a method for completing a revised assessment report.

10. Public availability of approved assessment report.

Within 30 days of approval, the state would be required to make electronic copies of the report publicly available on the state website, and physical copies available in one or more public libraries within, or as near as possible to, the communities served by the assessed water system. Requiring both electronic and physical copies would help ensure that that the approved assessment is widely available to the local community, including to individuals without internet service. The EPA expects that states will take additional steps to ensure that approved assessment reports are publicly available in an alternative

format, and that translation services are provided, in communities where English is not the primary language.

11. State consultation with the assessed water system and the local community.

In addition to making the approved report publicly available, the state would be required to meet with the assessed water system to discuss the restructuring alternatives. The state consultation is intended to ensure that the assessed water system understands proposed alternatives and their potential benefits, as well as available sources of state and Federal funding for restructuring. Additionally, consistent with the principles of restructuring, the EPA strongly encourages states to either create a Citizen's Advisory Committee (CAC) or to identify an existing organization, such as the local water utility board, a town committee, or a local environmental justice group, that would serve as a community point-of-contact to perform three essential roles during the assessment. First, it would collaborate with the state and assessed PWS to ensure a shared understanding of the purpose, schedule, and objectives of the assessment. Second, it would consult with the state and assessed PWS as restructuring alternatives are identified, to help ensure that the tailoring requirements are met. Third, it would assist the state and assessed water system in the development of a restructuring plan, after the assessment is complete.

Request for public comment: The EPA requests public comment on all aspects of the proposed rulemaking, but in particular on the proposed schedule for mandatory assessments, including the reasonableness of the proposed time frames. The agency is aware of stakeholder concerns that when communities are excluded from restructuring decisions, the goal of access to safe, affordable drinking water may not be achieved. Given these concerns, a key goal of the WSRAR is to ensure that communities are

directly involved in mandatory restructuring assessments. At the same time, the EPA assumes that, due to the technical and financial resources necessary to implement the proposed requirements, states will perform nearly all mandatory restructuring assessments. As a result, another key goal of the WSRAR is to ensure that state implementation burden is minimized while meeting the requirements of SDWA section 1414(h). Therefore, the EPA requests specific comment on how best to strengthen community involvement in mandatory restructuring assessments in the final rule, while also considering the potential implementation burden of such requirements on states. The EPA considers direct community involvement to include both regular collaboration between a local community organization, the state, and the restructuring PWS, and periodic engagement with the broader community at key junctures of the assessment. Regular collaboration is important to building trust with the local community while also ensuring that restructuring decisions are locally driven, and based on community culture, needs and interests. To ensure regular collaboration with the local community, the EPA could require states to ensure a community point-of-contact for each mandatory assessment, either by creating a CAC or by identifying an existing organization for this purpose. As previously described, an existing organization would be defined broadly and could include a local water utility board, a town committee, or a local environmental justice group.

Periodic engagement with the broader community also is important because although not every member of the affected community is able to collaborate regularly with the state and assessed PWS, all members of the community should be fully informed about the purpose, objectives, and schedule of the assessment, and about the potential impacts

of restructuring on each household's ability to maintain or achieve access to safe, affordable drinking water. To ensure periodic engagement with the broader community, the EPA would require a state to describe in its mandatory primacy revisions how it would implement the WSRAR principles of restructuring at three key stages of the mandatory restructuring assessment: when the assessment is mandated, to provide information to the community about the purpose, objectives and schedule; when restructuring alternatives are identified, to explain what kinds of changes the state and water utility are considering; and, when the assessment is complete, to explain what kind of restructuring the state has approved, when it will be completed, and how community access to safe, affordable drinking water will be maintained or achieved.

In addition, the EPA seeks public comment on how best to ensure transparency into restructuring decisions, and accountability for the impacts of restructuring, in communities where English is not the primary language.

D. Restructuring Plans

1. Plan types eligible for restructuring incentives.

SDWA section 1414(h)(1) identifies four types of restructuring plans that are eligible for enforcement relief under SDWA section 1414(h)(2) or for liability protection under section 1414(h)(5): physical consolidation between water systems; management or administrative consolidation; transfer of ownership to improve drinking water quality; and a contractual agreement for significant management or administrative functions of a water system to correct violations identified in the plan. In addition, SDWA section 1414 (h)(1) requires a restructuring plan to identify the violations at the restructuring water system(s) and include an implementation schedule and measures of restructuring

progress. Consistent with the meaning and intent of the SDWA, the proposed WSRAR reaffirms and clarifies these SDWA section 1414(h)(1) requirements while providing additional clarifications.

In preparing this proposed rulemaking, the EPA conducted a literature review that identified several published reports and case studies on public water system restructuring (RCAP 2020; Water Research Foundation 2020; UNC Environmental Finance Center 2019b; Water Research Foundation 2018; RCAC 2016a; RCAC 2016b; AWWA 2012; AWWARF 2008). These reports and studies collectively refer to a typology of restructuring that generally defines physical consolidation as two or more water systems joining physically and managerially; administrative consolidation as the merger of decision-making and management authority of two or more water systems under one governance structure; and transfer of ownership as one water system acquiring the assets and liabilities of another water system. The reports and studies also showed that plans for physical consolidation, administrative consolidation, or transfers of ownership can vary based on several factors. These factors include extent of physical interconnection; type of governance (decision-making) structure; full or partial ownership transfer; ownership type; whether a new legal entity is created; and state laws governing restructuring (AWWARF 2008). Because of this variability, the EPA proposes to define each of the four eligible plan types in general terms, instead of through formal regulation, to assist states as they implement the rule. Further, a restructuring plan that is eligible for incentives may combine aspects of more than one type, e.g., a plan for transfer of ownership also could involve administrative consolidation while the systems remain physically independent.

The first eligible type would be a plan for administrative or managerial consolidation.[4] Under the proposed rule, the term "administrative consolidation" generally would mean combining the decision-making authority for the administrative and managerial functions of two or more water systems under a single governance structure. These functions would include, for example, asset management, capital improvement planning, operator training, sampling, reporting, recordkeeping, accounting, establishing water rates, billing, and purchases of equipment. In practice, governance under administrative consolidation varies based on the legal powers and responsibilities permitted in each state and can take different forms, including joint or balanced mergers, joint powers authorities, regional utilities, and water and sewer authorities, among others (UNC Environmental Finance Center 2019a; Water Research Foundation 2018). Although administratively consolidated water systems would operate under a single governance structure, each could maintain physically independent supplies, treatment facilities, and distribution systems. Each water system also could remain independently owned and retain some degree of decision-making authority.

The second eligible type would be a plan for full physical consolidation. The EPA's proposed rule would distinguish physical consolidation from physical interconnection because a consecutive water system can be physically interconnected to purchase water while remaining administratively and managerially independent.[5] Therefore, although a mandatory restructuring assessment might identify physical interconnection as a feasible restructuring alternative, a plan for physical interconnection by itself would not be

[4] In this preamble, the EPA uses the terms "administrative consolidation" and "managerial consolidation" synonymously.
[5] As used here, "consecutive water system" has the same meaning as "consecutive system" as defined at 40 CFR 141.2

eligible for liability protection or enforcement relief. In this case, the proposed rule would require a plan for physical consolidation to include the administrative consolidation of two or more physically interconnected water systems.

The third eligible type would be a plan for the transfer of ownership to improve drinking water quality. In a transfer of ownership, a merged water system no longer exists as an independent entity because another water system has acquired its assets and liabilities. In practice, a transfer of ownership is often, but not necessarily, combined with administrative consolidation (Water Research Foundation 2020; UNC Environmental Finance Center 2019a; RCAC 2016a). Transfers of ownership generally involve:

- Direct acquisition, in which one water system directly acquires another water system in its entirety;
- Joint merger, in which two existing water systems combine to create a new, jointly owned and jointly managed water system or water system facility; or,
- Balanced merger, in which one water system acquires another water system but the acquired water system retains some decision-making authority after the merger.

The fourth eligible plan type would be a contract for administrative or managerial functions of a PWS to correct the violations identified in the restructuring plan. Under this plan type, a technical assistance provider would contract with a water system to perform some or all administrative functions of the water system, while the water system owner would retain ownership of the PWS's assets and liabilities (AWWARF 2008). A technical assistance provider could be a non-governmental organization, a private company, or another water system. Like the other plan types, to be eligible the

restructuring plan would be required to identify the violations to be resolved and to include an implementation schedule with measures of progress. Unlike plans for permanent forms of restructuring such as consolidation or transfer of ownership, however, the schedule and duration of this plan type would be limited to the contract terms.

Consistent with SDWA, this proposed WSRAR, if finalized, would not mandate any type of restructuring plan, including plans for consolidation, transfer of ownership, or contracts for administrative or managerial functions.

2. State determination of plan eligibility for restructuring incentives.

The proposed WSRAR, if finalized, would require each state to determine plan eligibility for restructuring incentives in two steps. First, the state must determine within 60 days whether a submitted plan is an eligible type and notify the submitting water system(s) in writing. Second, after this initial determination the state would determine within 12 months whether the submitted plan is eligible for enforcement relief, or, it would determine within 18 months whether the plan is eligible for liability protection. Because under the proposed rule the eligibility requirements for liability protection incorporate the requirements for enforcement relief, a plan for liability protection may include enforcement relief for the assessed PWS. If a state determined that a plan was an eligible type that did not satisfy the minimum requirements, the state could consult with the submitting system(s) to decide when and how to submit a revised plan.

3. Plan revisions.

The EPA recognizes that due to such challenges as unforeseen project delays or increases in project costs, either the planned restructuring or the implementation schedule

could become infeasible. As a result, either revisions to an existing restructuring plan, or a new plan entirely, could be necessary to protect public health. To account for such cases, the EPA proposes to allow a restructuring water system to submit a new or revised plan to the state for approval. As with the original submitted restructuring plan, the state would be required to evaluate the new or revised plan against the same minimum eligibility requirements and any applicable requirements for enforcement relief or for liability protection as established under the proposed WSRAR.

Request for public comment: The EPA requests public comment on all aspects of the proposed rulemaking, but in particular on plan type eligibility and reasonableness of the proposed time frames.

E. Enforcement Relief Under Approved Restructuring Plans

1. Minimum plan eligibility requirements for enforcement relief.

Under the proposed WSRAR, if finalized, the state first would determine whether the submitted restructuring plan is eligible. Then the state would determine whether the plan satisfies the minimum requirements for enforcement relief. Unlike the SDWA eligibility requirements for liability protection, a plan could be eligible for enforcement relief even if it were not based on a mandatory restructuring assessment. As a result, under the proposed rule, the first minimum requirement is to identify each violation that the restructuring plan is intended to resolve. Second, because the identified violations indicate a public health risk, the restructuring plan would be required to describe how the proposed restructuring activities would return the system to compliance as soon as practicable by addressing the underlying causes of noncompliance. Third, as stated in SDWA section 1414(h)(1), the restructuring plan would be required to include an

implementation schedule and measures of progress. The schedule and measures would allow the state to monitor restructuring progress to determine that the plan is on schedule and that the proposed restructuring activities remain feasible. Fourth, the plan would be required to describe how restructuring would improve the technical, managerial, and financial capacity of the restructuring system. This requirement is intended to ensure that an approved restructuring plan focuses not only on corrective actions for the violations identified in the plan, but also on strengthening water system capacity to sustainably maintain compliance over time. Fifth, the plan would be required to ensure that all consumers served by the restructuring water system continuously achieve access to safe, affordable drinking water. This requirement is intended both to prevent communities from losing access to safe drinking water because of restructuring, and to ensure consumers who live in disadvantaged or underserved communities receive sustainable, safe, and affordable drinking water. Finally, the restructuring plan would be required to include a request for enforcement relief for the noncompliant water system(s) subject to the plan.

The restructuring plan would be required to incorporate state-approved quantitative and qualitative types of information that describe how restructuring would protect public health in the short term while also improving the long-term TMF capacity of the restructuring PWS. States would have the discretion to determine whether the submitted documentation or data are acceptable for this purpose. Although the proposed rule does not prescribe specific forms of acceptable data or documentation, examples could include engineering plans, feasibility studies, performance specifications for treatment technologies, proposed changes to water system operations, state-approved water system

operator certification, or sample results from alternative water supplies.

2. Conditional eligibility requirements for enforcement relief.

In addition to the minimum eligibility requirements for enforcement relief, the proposed WSRAR, if finalized, would require the submitted restructuring plan to meet additional requirements under three sets of conditions. First, a restructuring plan that involves a transfer of ownership to improve drinking water quality would be required to describe the date on which ownership is expected to change and to identify the new water system owner. These conditional requirements would ensure that the state could determine when the new owner becomes legally liable for compliance at the restructured water system. Second, conditional requirements would apply if the restructuring plan were to establish a new or revised governance structure. Water system governance structures can vary based on state law and on the approach to administrative or physical consolidation. In some cases, a merged public water system no longer participates in the decision making for the newly consolidated water utility. As a result, plans that featured a new or revised governance structure would be required to describe how the proposed structure would help achieve public health objectives. These additional requirements would allow the state to ensure that the proposed governance structure is consistent with state and local laws, supports resolving the underlying causes of the violations, and is likely to strengthen the capacity of the water system to provide sustainable access to affordable safe drinking water. Third, conditional requirements would apply if the submitted plan proposed to establish a temporary alternative source or supply of water. These additional requirements would apply under a wide range of site-specific conditions that include: the provision of bottled water or of water filters that are certified to remove contaminants to

safe levels; purchased water from a wholesaler; or a temporary physical interconnection to a nearby water system.[6] The EPA anticipates that temporary alternative sources or supplies would be utilized under restructuring plans that take several years to implement, such as plans for physical consolidation. Under the proposed WSRAR, if finalized, such restructuring plans would be required to include an implementation schedule and measures of progress that are specific to the provision of a temporary alternative source or supply of water. In addition, the plan would need to incorporate data and other forms of documentation that the state finds acceptable to demonstrate how the alternative source or supply will comply with Federal and state health-based drinking water standards or other requirements. Finally, such plans would be required to identify when the temporary supply or source will no longer be needed. Before approving a plan that includes a temporary alternative source or supply of water, states also should consider the simultaneous compliance implications of this restructuring activity. Taking this step would help ensure that restructuring activities intended to improve compliance with one NPDWR would not potentially result in noncompliance with another.

The EPA expects that the time frame for developing and submitting a restructuring plan would vary widely based on several factors, including the specific characteristics of the restructuring water system, the number and type of restructuring activities planned, the nature and extent of the violations to be corrected, and applicable state or local laws and regulations. As a result, states are in the best position to determine, on a case-by-case

[6] Organizations accredited by the American National standards Institute (ANSI) certify units using ANSI/NSF standards. Each ANSI/NSF standard requires verification of contaminant reduction performance claims, an evaluation of the unit, including its materials and structural integrity, and a review of the product labels and sales literature. ANSI/NSF standards are issued in two different sets, one for health concerns (such as removal of specific contaminants) and one for aesthetic concerns (such as improving taste or appearance of water).

basis, whether the proposed measures of progress and the implementation schedule are acceptable for each restructuring plan.

Request for comment: Similar to a mandatory restructuring assessment, implementation of the temporary provision of alternative water sources or supplies involves site-specific considerations for each public water system. The EPA plans to provide implementation training materials or case studies to describe examples of the temporary provision of an alternative source water or supply of water in a variety of site-specific scenarios. These materials would be designed to help states implement these proposed WSRAR requirements. Alternatively, the EPA could include in the rule language specific examples of the temporary provision of alternative water supplies; however, this approach could unnecessarily limit the applicability of the requirement. The EPA requests comment on whether adding such rule language would be appropriate for states and PWSs to understand these requirements.

3. Eligible violation types.

Consistent with SDWA section 1414(h)(2), under the proposed WSRAR a PWS would be eligible for enforcement relief from specific violations under SDWA that were identified in the submitted restructuring plan, subject to state approval. The restructuring plan should identify each violation by its identification number, type, and the date of notification.

4. Public meeting.

As soon as practicable after determining a submitted plan is eligible for enforcement or liability protection, a state would be required to notify the service community and to conduct a public meeting. Like the requirements for a mandatory restructuring

assessment, the purpose of the public meeting would be to ensure that the impacted communities are aware of how the draft restructuring plan, subject to public input and available before and during the meeting, would be implemented to ensure their sustainable access to safe, affordable drinking water. For example, a restructuring plan could include potential changes in water rates or rate structures, or terms of service. The public meeting would need to comply with the EPA's requirements in 40 CFR 25.6, as well as any state-specific-regulations. The EPA expects that state would incorporate community feedback received during the public meeting when determining whether the proposed restructuring plan is feasible in terms of the immediate and long-term needs of the community, particularly for plans that would result in consolidation or transfer of ownership.

5. State determination date.

No later than 12 months from the date it determines that a restructuring plan is an eligible type, the state would be required to determine whether a plan meets all minimum and applicable conditional eligibility requirements. If the plan meets all rule requirements, and the public meeting has been held, the plan would be considered approved, and the state would be required to notify the supplier of water in writing.[7] If the plan did not meet all requirements, the state could consult with the water system that submitted the plan regarding a time frame for submitting a corrected plan.

6. Plan availability.

Within 30 days of approving a restructuring plan, the state would be required to make electronic copies of the plan publicly available on the state website, and physical copies

[7] As used here, "supplier of water" has the same meaning as defined at 40 CFR 142.2, i.e., any person who owns or operates a public water system.

available in one or more public libraries within, or as near as possible to, the communities served by the assessed water system. Requiring both electronic and physical copies ensures that that the approved assessment is widely available to the local community, including to individuals without internet service. The EPA also expects that states will take additional steps to ensure that approved restructuring plans are publicly available in an alternative format, and that translation services are provided, in communities where English is not the primary language.

7. Extent of enforcement relief.

On the date the state determines that the submitted plan met all requirements, the plan would be approved and an enforcement relief period of up to two years would begin. During this enforcement relief period, the state could neither initiate, nor continue to take, enforcement action for any of the specific violations of the SDWA that are identified in the plan. Consistent with SDWA section 1414(h)(2), the enforcement relief period could end earlier if the state determines that all restructuring activities in the approved plan were completed sooner than two years. Additionally, the proposed WSRAR clarifies that during the enforcement relief period the EPA could exercise its SDWA section 1431 imminent and substantial endangerment authority to protect public health.

8. Limitations.

The proposed rulemaking contains limitations on enforcement relief. These limitations clarify that enforcement relief would apply only to violations identified in a restructuring plan. In addition, under the proposed rule a water system eligible for enforcement relief would be required to:

a. Implement any corrective actions that are required under existing enforcement

orders or agreements that were established prior to the state's approval of the restructuring plan. This limitation ensures that steps are taken to protect public health by resolving existing noncompliance as soon as practicable. Although the corrective actions under existing enforcement orders must be taken, the EPA recommends that states consider ways to align such orders with proposed restructuring plans. For example, the implementation schedule for corrective actions under an existing enforcement order could be incorporated within a state-approved restructuring plan as part of the SDWA-required measures and schedule of restructuring activities.

b. Comply with any applicable requirements of the SDWA or its implementing regulations, including EPA directives stemming from the use of its SDWA section 1431 authority. These requirements including monitoring, reporting sample results, and notifying and informing consumers regarding their drinking water quality.

c. Comply with any enforcement actions for new violations that occur after the date on which the state approves the plan. Only violations identified in the approved restructuring plan would be eligible for statutory enforcement relief. Therefore, new violations at the restructuring water system would be ineligible.

9. Termination of enforcement relief under approved plans.

The EPA considers the proposed measures and schedule required for each approved restructuring plan to be critical elements of state oversight of water system restructuring. The EPA expects that during the enforcement relief period, each state would use the required measures and schedules to conduct oversight and to consult with the restructuring water system as needed. As a result of its oversight, a state might determine that a noncompliant water system is unwilling or unable to restructure according to the

approved plan. In such cases, if the state determines that enforcement relief is no longer applicable to the water system, the state would be required to inform the supplier of water in writing as soon as practicable.

Request for comment: The EPA requests comment on all aspects of the proposed rulemaking, but in particular on the proposed minimum and conditional requirements for enforcement relief, and the reasonableness of the proposed time frames for state determination of plan eligibility for enforcement relief. In addition, the EPA seeks public comment on how best to ensure transparency into restructuring plans, and accountability for the impacts of restructuring, in communities where English is not the primary language.

10. Enforcement relief under revised plans.

The EPA recognizes that restructuring activities, the project schedule, or both could become infeasible due to unanticipated project delays or increases in project costs. The EPA also recognizes that a water system that would benefit from enforcement relief is likely to incur additional violations as it restructures. Because SDWA section 1414(h)(2) establishes a two-year time frame for enforcement relief under an approved restructuring plan, pursuant to the proposed 40 CFR 142.94(h), the EPA proposes that a water system would not be eligible for additional Federal enforcement relief under an approved revised restructuring plan. Under a revised plan, states could instead provide state-level enforcement relief granted through system-specific enforcement agreements. Such enforcement agreements could identify additional compliance options for a noncompliant water system, thereby providing additional relief for the duration of the restructuring beyond the initial two years.

Request for comment: Although SDWA section 1414(h)(1) establishes a two-year limit on enforcement relief for each approved plan, the SDWA does not establish a limit on the number of restructuring plans that a state may approve for an individual PWS. As a result, the EPA requests comment on the assumptions underlying the proposed limits on enforcement relief under revised plans as described in this preamble.

F. Protection of Non-responsible Water Systems Under Approved Restructuring Plans

1. Minimum requirements for liability protection.

The proposed eligibility requirements for liability protection build on the eligibility requirements for enforcement relief. Under the proposed rule the state would be required to determine whether the plan is an eligible type and meets the minimum and conditional requirements for enforcement relief. After this initial determination, the state would then determine whether the plan also satisfied the proposed requirements for liability protection.

Consistent with the language and intent of the statute, the proposed WSRAR restates the SDWA section 1414(h)(5) requirements for liability protection while providing additional clarifications. The proposed WSRAR, if finalized, would ensure that only a non-responsible system is potentially eligible for liability protection. To meet the proposed eligibility requirements, the non-responsible water system would be required to submit to the state a restructuring plan that:

a. Is based on a mandatory restructuring assessment that the state has approved. To meet this requirement, the EPA expects that the submitted plan would describe how the non-responsible water system plans to implement the feasible restructuring alternatives identified in the approved mandatory assessment report.

b. Identifies the non-responsible water system(s) and assessed water system(s) that are subject to the restructuring plan, to allow the state to determine the extent of any liability protection.

c. Identifies and describes, using data and other forms of documentation that the state finds acceptable for purposes of calculating liability, any potential and existing liability for violations that are identified in the restructuring plan. SDWA section 1414(h) does not describe or define potential or existing liability. The EPA proposes that states and suppliers of water would consider an "existing liability" to be a known obligation or responsibility for penalties and damages that the state has assessed for a violation identified in the plan. The submitted plan could identify these existing liabilities as the amounts of penalties or fines that would be cited in formal state notices of violation or enforcement orders. In addition, states and suppliers of water would consider a "potential liability" to be an expected obligation or responsibility for health-based violations that are likely to reoccur at the assessed system until the identified underlying causes of noncompliance are resolved through restructuring. Identification of potential liabilities could include references to state regulations that specify the amounts of penalties or fines associated with the violation types that the assessed water system has repeatedly incurred and that prompted the state to mandate the restructuring assessment.

d. Identifies and describes, using data and other forms of documentation acceptable to the state, the available funds or other liquid assets of the assessed water system as of the date of plan submittal. The EPA expects that as part of its submitted restructuring plan a non-responsible water system would conduct an asset inventory of the assessed

system. The asset inventory could identify and document recoverable assets that could be used to pay the liability for the identified violations.

e. Requests liability protection of the non-responsible system for the violations identified in the submitted plan.

2. Eligible violation types.

Consistent with SDWA section 1414(h)(5), a non-responsible water system would be eligible for liability protection from specific violations under the SDWA if the violations were identified in the submitted restructuring plan, subject to state approval. The restructuring plan should identify each violation by its identification number, type, and the date of notification.

3. Exclusions.

The EPA proposes that either an assessed water system, or a water system that otherwise meets the four statutory preconditions for a mandatory restructuring assessment, would be ineligible for liability protection. Under the SDWA, such water systems have repeatedly violated health-based standards and therefore cannot be considered “non-responsible” water systems.

4. Public Meeting

As under the proposed enforcement relief requirements, before approving a restructuring plan that is eligible for liability protection, the state would be required to notify the community that would be affected by the restructuring plan and to hold a public meeting. The primary purposes of the meeting are to provide the community served by the restructuring water system(s) a meaningful opportunity to understand how the restructuring would ensure their continuous access to safe, affordable drinking water,

and how the restructuring plan would be implemented, including potential changes in water rates or rate structures, or terms of service. The state would be required to hold the meeting as soon as possible after it determines that a plan is an eligible type. The public meeting would need to comply with the EPA's notice, location, and time requirements for public meetings under 40 CFR 25.6, as well as any state-specific-regulations. The EPA also expects that the state would consider the outcomes of the public meeting when determining whether the proposed restructuring plan is feasible for both the immediate and long-term needs of the community, particularly for plans that would result in consolidation or transfer of ownership.

5. State determination date.

The EPA proposes to require the state to determine that the plan meets the rule eligibility requirements for liability protection, and to notify the non-responsible water system, no more than 18 months from the date on which the state determines plan type eligibility. The proposed time frame would include the time necessary for the state to review and verify the required documentation of existing and potential liabilities and assets before making its determination. If the state determined that the submitted plan met all requirements, the submitted plan would be approved. As under the proposed requirements for enforcement relief, if the submitted plan did not meet all requirements, the state could consult with the non-responsible water system regarding a time frame for submitting a corrected plan.

6. Extent of liability protection.

Unlike the enforcement relief incentive, a non-responsible water system would not be eligible as of the date of state approval of a plan that meets eligibility requirements.

Instead, as required by SDWA section 1414(h)(5), under the proposed rule all restructuring must be completed before the non-responsible system is eligible for liability protection. As a result, the EPA expects that restructuring would begin as soon as practicable after the state determined that the plan met eligibility requirements. During restructuring, the state should consult with the non-responsible water system and apply the required measures and schedules of the restructuring plan to track progress. Once the state determined that all restructuring activities in the plan were complete, the state would be required to notify the non-responsible system in writing within 30 days.

Under the proposed rule, the state's notification must explain that, as of the date of state notification, the non-responsible water system is eligible for liability protection. To determine the extent of liability protection, the state would be required to calculate the difference between the total value of all liabilities and assets of the assessed (noncompliant) water system. To enable the state to perform this calculation, the submitted plan would be required to identify all assets and liabilities of the assessed water system. Although the non-responsible system would not be liable for penalties or fines that exceed the value of the identified liquid assets, the non-responsible water system would be required to transfer to the state any identified liquid assets or funds of the assessed system up to the amount necessary to pay the outstanding penalties or fines. The state's notification also would be required to explain that the non-responsible water system must consult with the state to determine when and how it would transfer the funds or other identified assets of the assessed system(s) to the state. Based on stakeholder consultation, the EPA acknowledges that an assessed system could have no liquid financial assets that could be used to pay liabilities. In such cases, to obtain liability

protection, the non-responsible water system would be required to submit data or other forms of documentation acceptable to the state that demonstrate that the assessed system had no liquid financial assets.

In addition, although the eligibility requirements for each SDWA restructuring incentive are separate, a state may approve a restructuring plan that provides both enforcement relief for a noncompliant system and liability protection for a compliant system. For example, under an approved plan for transfer of ownership, enforcement relief would begin on the date the state approves the plan and end up to two years later. If the transfer of ownership were completed in fewer than two years, the enforcement relief would end on the date of completion. Under the same restructuring plan, liability protection for the non-responsible system would begin on the date that the transfer of ownership is completed. Within 30 days of this date, the non-responsible water system would consult with the state to determine if there were any acquired assets that could be used to pay for fines or penalties owed by the noncompliant system. The non-responsible PWS would not be liable for any remaining amount.

7. Plan availability.

As with the proposed requirements for enforcement relief, within 30 days of approving a restructuring plan eligible for liability protection, the state would be required to make the approved plan publicly available. The state would need to provide electronic copies on the state website, and physical copies in one or more public libraries within, or as near as possible to, the communities served by the assessed water system. Requiring both electronic and physical copies would ensure that that the approved assessment is widely available to the local community, including to individuals without internet

service. The EPA also expects that states will take additional steps to ensure that approved restructuring plans are publicly available in an alternative format, and that translation services are provided in communities where English is not the primary language.

8. Limitations.

The EPA's proposal would not establish any liability protection that exceeds the extent of protection that the state calculates as required under the rule. The non-responsible water system also would be required to comply with all other applicable requirements of SDWA and its implementing regulations.

9. Determination of change in the supplier of water.

Under proposed 40 CFR 142.94(b)(1), if the non-responsible water system intended to take ownership of the restructured water system, then the restructuring plan would be required to identify the planned date of the change in ownership. This date should appear in the schedule of restructuring activities as would be required of any eligible plan. As part of its determination that all restructuring activities were completed, the state would be required to identify the date on which the non-responsible water system took ownership of the restructured water system, and to provide notice. Until this notification date, the non-responsible water system would not be liable for any violations that occurred during restructuring.

10. Liability protection under revised plans.

As with plans seeking enforcement relief, the EPA recognizes that there could be circumstances under which an approved restructuring plan should be revised. The proposed WSRAR, if finalized, would allow a non-responsible water system to remain

eligible for liability protection under a revised restructuring plan under three conditions. First, the non-responsible water system would need to provide a justification to the state, using data and other forms of documentation that the state found acceptable, that a revised plan is necessary to ensure that the restructuring objectives are achieved as soon as practicable. Second, the state would need to confirm that any violations identified in the revised restructuring plan did not occur at the non-responsible system. Third, the state would need to approve the revised restructuring plan consistent with the proposed rule's plan requirements for liability protection. As a result, the state would have 18 months from submittal of the revised plan to determine whether it met the eligibility requirements.

Request for comment: The EPA requests public comment on all aspects of the proposed rule, but in particular on the following aspects of this section of the proposed WSRAR: the liability protections proposed in this rulemaking, including the meaning of the terms "potential liability" and "existing liability"; approaches to the identification of existing and potential liabilities and assets; the calculation of liability protection for the non-responsible system; minimum requirements for liability protection; and the reasonableness of the proposed time frames for state determination of plan eligibility for liability protection. The EPA also requests comment on how best to engage communities with environmental justice concerns as part of the proposed public meeting requirements for restructuring plans. In addition, the EPA seeks public comment on how best to ensure transparency into restructuring plans, and accountability for the impacts of restructuring, in communities where English is not the primary language.

G. Financial Assistance for Restructuring Activities

As provided under SDWA section 1414(h)(4), a PWS that has completed a mandatory restructuring assessment would be eligible for a DWSRF loan to support restructuring. The EPA believes that the language of SDWA section 1414(h)(4) is consistent with statutory language regarding DWSRF loan eligibility under SDWA section 1452(a)(3). As a result, under existing regulations states and assessed water systems should consider a completed mandatory restructuring assessment to be a means of identifying restructuring activities that are eligible for DWSRF loans. As a result, the agency does not propose to amend existing DWSRF regulations in 40 CFR part 35 to implement this provision under the WSRAR.

H. Violations.

Under the proposed rule, a reporting violation would occur if the assessed water system, or an approved third party on behalf of the assessed water system:

1. Failed to submit the assessment report as mandated by the state;

2. Submitted an assessment report to the state after the submittal date that the supplier of water and the state had established through previous consultation;

3. Submitted an assessment report to the state that does not address all minimum elements; or

4. Submitted an assessment that does not include the required certification statement.

I. Effective Date.

Pursuant to the Administrative Procedure Act (APA) at 5 USC 553(d), the EPA is proposing that the WSRAR would be effective 60 days from the date of publication in the *Federal Register*. Primacy agencies would be required to update their programs to incorporate the new primacy requirements within two years from the date of

promulgation, with an optional two-year extension as provided under 40 CFR 142.12(b).

V. State Implementation

As of the date of this proposed rulemaking, the EPA has approved PWSS primacy for 49 states, Puerto Rico, American Samoa, Commonwealth of the Northern Mariana Islands, Virgin Islands, Guam, and the Navajo Nation. Primacy for the PWSS program is established under SDWA section 1413. The EPA may approve primacy for the PWSS program for states, territories, and federally recognized Tribes. To obtain initial primacy from the EPA, a state must meet the EPA's regulatory requirements under 40 CFR 142.10, including that it: has adopted drinking water regulations that are no less stringent than the NPDWRs established under SDWA section 1412; has adopted and is implementing adequate procedures for enforcement of the regulations; and, is keeping records and making reports as required by SDWA section 1413.

Under 40 CFR 142.11, a state's primacy application must contain several elements including:

- The text of the state's PWSS statutes and administrative regulations.
- Documentation of the primacy agency's procedures for enforcement of its drinking water regulations including a description of the state's procedures to maintain its PWS inventory and conduct sanitary surveys, identification of certified laboratories, a brief description of the state's program to ensure that new or substantially modified PWSs will be capable of complying with the state's drinking water regulations, copies of state statutory and regulatory provisions authorizing adoption and enforcement of state primary drinking water regulations.

- A brief description of state procedures for administrative or judicial action against noncompliant PWSs.
- A statement that the state will satisfy reporting and recordkeeping requirements.
- Text of the state's statutory and regulatory provisions concerning variances and exemptions (if allowed by the state).
- A description of the state's plan for ensuring safe drinking water under emergency conditions.
- Copies of state statutory and regulatory provisions authorizing the state executive branch to impose administrative penalties.
- An Attorney General's statement certifying that the laws and regulations were duly adopted and are enforceable.

The 2018 AWIA amended SDWA section 1413 to require, as a condition of primacy, the adoption and implementation of procedures for requiring public water systems to assess options or consolidation or transfer of ownership or other actions in accordance with regulations issued by the EPA under SDWA section 1414(h)(6). As a result, the proposed WSRAR would revise the implementing regulations under 40 CFR part 142 subpart B to include a description of the state's procedures for an assessment to be completed with respect to options for consolidation, transfer of ownership, or other restructuring actions in accordance with WSRAR requirements.

The proposed primacy requirements are intended to ensure that states would adequately describe how they would implement mandatory assessment programs and determine eligibility for enforcement relief or liability protection. The requirements would apply both to a state seeking an initial determination of primacy under 40 CFR

142.11 and to existing primacy agencies that seek a revision under 40 CFR 142.12. The EPA may not grant interim primacy for WSRAR under 40 CFR 142.12(e) because the proposed rule is not a NPDWR.

A. Revisions to Primacy Requirements

As described in proposed requirements under 40 CFR 142.10(i), the EPA would approve a state primacy application for the WSRAR if the agency were able to determine that, consistent with state legal authority, the state had adopted and is implementing procedures for conducting or approving mandatory restructuring assessments, and review of restructuring plans, as would be required under 40 CFR part 142 subpart J. To obtain primacy for the WSRAR, an applicant would be required to show that is has adopted and is implementing procedures to, among other activities: find that a PWS has satisfied the SDWA preconditions for a mandatory restructuring assessment; review and approve eligible assessors; ensure assessed water system compliance with the requirements for conducting a mandatory assessment, including public meetings; and, review restructuring plans to determine water system eligibility for enforcement relief or liability protection and the extent of liability protection, as applicable, based on rule requirements.

Pursuant to the proposed requirements under 40 CFR 142.11(a)(8), a state primacy application would be required to demonstrate to the EPA that it has adequate authority to satisfy all the proposed new WSRAR primacy requirements under 40 CFR 142.10(i), and the proposed new WSRAR reporting and recordkeeping requirements for mandatory assessments and approved restructuring plans under 40 CFR 142.14 and 142.15. The submitted application would serve as the basis for the EPA's initial primacy determinations for the WSRAR.

Pursuant to 40 CFR 142.12(c), an entity that already has primacy would be required to submit to the EPA a primacy revision application that includes: the documentation required by proposed new WSRAR primacy requirements under sections 142.10(i) and 142.11(a)(8); any primacy elements that would not change under a proposed program revision; and, a certification statement from the state's Attorney General or independent counsel, or the attorney representing the Indian Tribe, that its laws and regulations to carry out the requested program revisions were duly adopted and are enforceable.

B. State Reporting and Recordkeeping Requirements

The proposed WSRAR, if finalized, also would establish new reporting and recordkeeping requirements that are intended to ensure that mandatory assessments satisfy scheduling, content, and tailoring requirements, and that states determine water system eligibility for statutory incentives consistent with WSRAR requirements for restructuring plans.

1. Reporting Requirements

Existing regulations in 40 CFR 142.15 establish reporting requirements for states with primary enforcement responsibility. The proposed WSRAR would establish new requirements under 142.15(c)(8) for states to report to the EPA annually, using a format and on a schedule that the agency will have established, the name and identification number of each PWS for each of the following notifications or determinations, as applicable:

a. Candidates for a mandatory restructuring assessment. This proposed reporting element would refer to each PWS that the state has determined to be a candidate for a

mandatory assessment, having met the four statutory preconditions in the proposed WSRAR, including the date of determination;

b. Mandatory assessment notifications. This proposed reporting element would refer to each identified PWS that the state has notified as the subject of a mandatory assessment, including the date of notification;

c. Mandatory assessments completed. This proposed reporting element would refer to each PWS that the state has notified as the subject of a mandatory restructuring assessment and has completed the assessment as required, including the date of completion;

d. Violations of mandatory assessment requirements. This proposed reporting element would refer to each PWS that the state has determined to be in violation of the WSRAR mandatory restructuring assessment requirements, by violation type and violation date; or

e. Eligibility for restructuring incentives. This proposed reporting element would refer to each PWS that the state has determined to be eligible for either enforcement relief or liability protection based on an approved restructuring plan, including the type of eligibility and the date of plan approval.

2. Recordkeeping Requirements

Existing regulations in 40 CFR 142.14 establish recordkeeping requirements for states with primary enforcement responsibility. To enable the EPA to fulfill its oversight responsibilities, the proposed WSRAR also would establish recordkeeping requirements for primacy states under new 40 CFR 142.14(h). The proposed rule would require states to retain records of approved mandatory assessment reports for five years from the date

of approval. In addition, the EPA also proposes to require that each state retain records of restructuring plans submitted by PWSs seeking enforcement relief or liability protection, and to provide a copy of such plans to the EPA upon request, from the date of plan approval until one year from the date on which the state determines that all restructuring activities in the approved plan are complete. In such cases, the EPA also proposes that states be required to retain an approved mandatory assessment report if: the approved assessment report served as the basis for a restructuring plan that met regulatory requirements for enforcement relief, or for any restructuring plan that met regulatory requirements for liability protection. In such cases, states would be required to retain a copy of an assessment report until one year following the completion of restructuring under an approved restructuring plan.

VI. Economic Impact Analysis

The following section summarizes the EPA's analysis to estimate the economic impact of the proposed WSRAR on states with primacy, including the Navajo Nation and U.S. territories, and EPA Regions, to develop and maintain mandatory assessment programs. Because the EPA is required to propose the WSRAR pursuant to 42 U.S.C. 300g-3(h)(6), and the scope of the proposed WSRAR is defined by 42 U.S.C. 300g-3(h), the agency did not consider regulatory alternatives. In addition, because the proposed WSRAR does not mandate restructuring plans, the EPA also did not estimate the costs to PWSs of developing restructuring plans, or the costs to states of reviewing restructuring plans to make eligibility determinations. The full economic impact analysis (EIA) *Analysis of the Economic Impacts of the Proposed Water System Restructuring*

Assessment Rule is available in the docket for this action. See the **ADDRESSES** section of this document for instructions on accessing the docket.

A. Annualized and Present Value Cost Estimates

SDWA section 1413 requires states to develop mandatory assessment programs as a condition of primacy. In addition, consistent with SDWA section 1414(h)each state would have discretion to decide whether a PWS meets the statutory preconditions and whether to mandate a restructuring assessment. As a result, states would incur direct costs of the mandatory primacy revision under the proposed WSRAR, even if they elected not to use their mandatory assessment authority. To estimate the indirect costs of the proposed rule requirements on states and PWSs where a state chooses to exercise its mandatory assessment authority, the EPA also conducted a supplementary analysis, which is provided in Appendix A of the EIA for the proposed rule.

The direct costs of the proposed rule requirements would comprise both program development costs and program administration costs. States would incur program development costs to establish state programs to implement the proposed WSRAR. These costs would include reading and understanding the WSRAR, developing policies and procedures, preparing a primacy revision package, updating data systems, preliminary data analysis, outreach to PWS, and the education and training of staff. States would incur program administration costs to maintain established mandatory assessment programs. These costs would include maintaining program staffing and funding, collecting, and reviewing data to identify PWSs that meet the assessment preconditions, and reporting and recordkeeping.

Because the proposed rule would impose direct costs only on states, the EIA focused primarily on the program development and program administration costs of the mandatory primacy revision. Additionally, the EPA expects that to protect public health, states with primacy for the WSRAR would exercise their mandatory assessment authority. As a result, the EPA also conducted a supplementary analysis of the indirect costs of the proposed rule requirements on states and PWSs. The indirect cost estimates were based on different approaches to estimating the number of mandatory restructuring assessments that would be conducted over a 25-year period after promulgation of the rule. The indirect costs of the proposed WSRAR would include performing mandatory restructuring assessments; reviewing assessment reports to ensure they satisfy the content and tailoring requirements; and enforcement of assessment reporting violations. Details of the supplementary analysis are available in Appendix A of the EIA for the proposed WSRAR.

For each direct cost, the EPA developed high and low estimates. The EPA derived the high estimates from a cost model that assumed no prior experience conducting water system assessments. The EPA derived the low estimates based on available information about each primacy agency's baseline capacity to implement the WSRAR. The primary source of data for these estimates was interviews conducted with staff and managers from eight state PWSS programs. The EPA used data from these interviews to estimate the level-of-effort (LOE, in hours) to develop, administer and implement a mandatory assessment program. Following the interviews, states provided assessment forms, report examples, procedural documents, and spreadsheets showing the LOE for various assessments. The EPA used this information to better characterize the LOE estimates

provided during the interviews. The EPA supplemented the interview information with details available on primacy agency websites, as well as documents provided by interview states that included assessment forms, report examples, state procedures and spreadsheets. The agency also used published EPA and state reports on state programs and state resource needs.

1. Program Development Burden Estimation

Based on these assumptions and data sources, the EPA estimated the costs of program development using two approaches. Under the first approach, the EPA assumed a constant uniform distribution between the high and low burden estimate. This approach permitted the EPA to estimate a theoretical upper bound program development burden of the proposed rule. The EPA refers to estimates based on this approach as "full program development" burden. The "full program development" burden is designed to show that, even under the constraint that prior experience conducting similar activities would not lower the burden of developing a mandatory assessment program, the estimated costs of the proposed WSRAR would not exceed any statutory or executive order thresholds (see section VII of this preamble).

Under the second approach, while the EPA assumed that all states need experience and technical expertise to implement mandatory assessment programs, each will start from a different baseline. Using the interview data, publicly available information on state websites, and published reports, the EPA established three categories of state baseline capacity, based on the assumed experience of each state in establishing and implementing programs to conduct assessment activities like those that would be conducted under the proposed rule. Similar activities include Level 2 assessments under

the Revised Total Coliform Rule (RTCR), sanitary surveys, TMF capacity assessments, and feasibility studies. The EPA assigned all states to one of the three baseline categories, from those with the lowest baseline capacity that conduct mostly technical capacity assessments (i.e., sanitary surveys), to those with the greatest baseline capacity that already evaluate the feasibility of restructuring options. Under the "differential program development" approach, the EPA assumed that for the most experienced states program development costs would be 50 percent less than the full cost estimate, while for the least experienced states these costs would be equivalent to the "full program development" model values. For states that conduct assessment activities that include in-depth evaluation of technical and managerial capacity or routine site visits focused on TMF capacity, program development costs would be 25 percent less than the full cost estimate.

Of the two approaches, the EPA assumes the differential program development estimates, shown in Table VI-1 of this preamble, more accurately represent the cost of the EPA's proposal if finalized. Estimates in Table VI-1 of this preamble represent aggregate average development costs for primacy agencies during the three years after promulgation of the final rule, because the EPA assumes the LOE will vary by state based on factors other than program experience, such as program efficiencies in implementing procedures or policies, etc. As a result, some primacy agencies costs would exceed the highest estimate while others would be below the lowest estimate.

Table VI-1: Estimated Burden and Cost for Program Development Activities (Differential Program Development Cost Approach, Cost in 2023 Dollars)

Cost Component	Average Hours per Primacy Agency	Multiplier	Total Hours [a]
Read and Understand the Rule	38	56 primacy agencies [c]	2,100
Regulation Adoption, Development of Primacy Agency Program / Primacy Revision Package [b]	623	56 primacy agencies [c]	34,905
Update Data System	76	56 primacy agencies [c]	4,229
Preliminary Data Analysis	32	56 primacy agencies [c]	1,790
PWS Outreach and Education	212	56 primacy agencies [c]	11,863
Staff Training	272	56 primacy agencies [c]	15,215
Total Hours			70,102
Labor Rate			$70.63
Estimated Total Cost			$4,951,212

a. Totals may not add due to rounding.

b. Although the cost of revising primacy packages does not apply to EPA Regions with primacy, the costs were included in the model because the costs could not be split out from the other regulation adoption costs.

c. Entities with primacy include EPA (which has primacy for Wyoming and American Indian systems), 49 states (all except Wyoming), Puerto Rico, American Samoa, Commonwealth of the Northern Mariana Islands, Virgin Islands, Guam, and Navajo Nation.

2. Program Administration Costs

After adopting a new rule, states incur direct costs on an ongoing basis to administer the rule. For the proposed WSRAR, each state would incur direct program administration costs related to updating mandatory assessment guidance, forms, resources, and materials; training inexperienced staff; collecting and reviewing data to identify candidates for a mandatory assessment; and maintaining required records. Unlike the program development cost estimates, the EPA assumed that program administration costs would not vary based on past program experience conducting similar activities. Based on the results of state interviews, the EPA assumed that to identify candidates for

mandatory assessments, states would collect and review data annually using one-third the amount of time required to conduct the preliminary data analysis. Like the program development cost estimates, the EPA also assumed that some primacy agencies would incur a higher level of effort (LOE) and some primacy agencies would incur a lower LOE to maintain their programs based on factors other than experience, such as program efficiencies in implementing procedures or policies. Therefore, the EPA calculated the average per primacy agency of the high and low estimates to develop the estimate for each program administration activity as shown in Table VI-2.

Table VI-2: Estimated Average Burden and Cost for Program Administration (Cost in 2023 Dollars)

Cost Component	Average Hours per Primacy Agency	Multiplier	Total Hours [a]
Maintain Program	189	56 primacy agencies [b]	10,584
Collect and Review Data	13	56 primacy agencies [b]	728
Total Hours			11,312
Labor Rate			$70.63
Estimated Total Cost			$798,950

a. Totals may not add due to rounding.

b. Entities with primacy include EPA (which has primacy for Wyoming and American Indian systems), 49 states (all except Wyoming), Puerto Rico, American Samoa, Commonwealth of the Northern Mariana Islands, Virgin Islands, Guam, and Navajo Nation.

3. Total Direct Costs

As a result of its analysis, the EPA estimated that the annualized total direct (development and administrative) costs to states of implementing the requirements of this proposed WSRAR, if finalized, would lie within a 95 percent confidence interval of $0.8 to $1.0 million at the 2 percent discount rate. As shown in Table VI-3 of this preamble, in

either the differential or full implementation burden scenarios, the estimated annualized total direct cost over a 25-year period is not more than $1 million. For more information about how the EPA estimated the annualized direct costs, please refer to section VI of the EIA.

Table VI-3: Annualized Direct Costs to Primacy Agencies of the Proposed WSRAR Using a 2% Discount Rate (Millions of 2023 Dollars)

Cost Component		Differential Program Development Burden[b]	Full Program Development Burden[c]
Read/Understand Rule	Est. 95% CI	* * – *	* * – *
Other Program Development	Est. 95% CI	$0.2 $0.2 – $0.2	$0.3 $0.3 – $0.3
Direct On-Going Program Administration	Est. 95% CI	$0.6 $0.6 – $0.7	$0.6 $0.6 – $0.7
Total Direct Costs[a]	Est. 95% CI	$0.9 $0.8 – $0.9	$0.9 $0.9 – $1.0

** Costs are positive but less than $50,000, so would round to $0.0 in millions of dollars.*

a. Totals may not add due to rounding.

b. Assumes that some primacy agencies will incur lower program development costs than others.

c. Assumes all primacy agencies will incur the full program development costs.

B. Accounting for Uncertainty in the Cost Estimates

When preparing the EIA, the EPA also accounted for uncertainty in estimating the differences in the states' baseline capacity to conduct mandatory restructuring assessments, and in the estimated level of effort needed to complete program development and administrative tasks. The uncertainty in the estimates stems from the limited amount of data that could be used to estimate direct costs for all state programs and is inherent to the data sources available to populate the cost model. Therefore, the EPA used a three-pronged approach to address uncertainty in its estimate of the total (direct and indirect) cost of the proposed rule, including estimating the cost under four

different cost scenarios based on two sets of assumptions about the number of assessments that primacy agencies could mandate and the cost of program development. Each scenario reflects a combination of one of two alternative assumptions about the number of assessments primacy agencies will mandate and one of two approaches for estimating primacy agencies' program development costs.

Scenario 1a assumes primacy agencies will mandate a low number of assessments and have a differential program development burden. Scenario 2a assumes primacy agencies will mandate a low number of assessments and have a full program development burden. Scenario 1b assumes primacy agencies will mandate a high number of assessments and have a differential program development burden. Scenario 2b assumes primacy agencies will mandate a high number of assessments and a have a full program development burden. Table VI-4 summarizes the four scenarios for which the EPA evaluated total costs of the proposed rule.

Table VI-4 – Results of Scenario Analysis (Cost in 2023 Dollars)

	Number of Assessments Mandated by Primacy Agencies	
Program Development Costs	Low estimate based on violation duration approach: 352 Initial Assessments; 2,015 Assessments over 2028-2048	High estimate based on violation frequency approach: 575 Initial Assessments; 4,457 Assessments over 2028-2048
Primacy Agencies in Categories B and C Face Differential Program Development Burden	Scenario 1a (Low cost): Low number of assessments, differential Program Development burden Annualized cost: $1.6 million Maximum annual cost in a single year: $2.4 million	Scenario 1b (Moderate-high cost): High number of assessments, differential Program Development burden Annualized cost: $2.3 million Maximum annual cost: $4.1 million
All Primacy Agencies Face Full Program Development Burden as in Category A	Scenario 2a (Moderate-low cost): Low number of assessments, full Program Development burden Annualized cost: $1.7 million Maximum annual cost: $2.4 million	Scenario 2b (High cost): High number of assessments, full Program Development burden Annualized cost: $2.4 million Maximum annual cost: $4.1 million

Present value of costs and annualized costs calculated using a 2 percent discount rate.

C. Non-quantified Benefits of the Proposed WSRAR

Consistent with the provisions of SDWA section 1414(h), states have the discretion to mandate restructuring assessments that require assessed PWSs to undertake the restructuring alternatives identified in mandatory restructuring assessments, including forms of consolidation or transfer of ownership. To quantify the potential costs of these activities, the EPA estimated the number of restructuring assessments that states would mandate under different scenarios. For the potential benefits of the proposed WSRAR, the EPA conducted qualitative analysis that included the types of benefits likely to result from implementation of the proposed rule, as there is no reasonable basis for quantifying the effects of future restructuring activities on compliance rates. The EPA could not quantitatively estimate how the proposed WSRAR would affect water system capacity to comply with health-based standards, or what reductions in morbidity or mortality could result from water systems that return to compliance. The primary nonquantifiable benefit of mandatory restructuring assessments under the proposed WSRAR would be returning assessed PWSs to compliance. The EPA also estimates that the proposed WSRAR would generate two potential long-term benefits. First, the enforcement relief and liability protection incentives increase the likelihood that assessed public water systems will restructure and return to compliance with health-based standards. As a result, public health risks would be reduced in communities where the assessed water system restructures. Second, states that utilize the mandatory assessment authority will be able reduce the administrative costs of enforcement against water systems that otherwise would remain persistently noncompliant.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review, as amended by Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 14094, and was therefore not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rulemaking have been submitted for approval to the OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2736.01. You can find a copy of the ICR in the docket for this rulemaking, and it is briefly summarized here.

Because the AWIA directly revised primacy requirements under SDWA section 1413, all primacy agencies must submit to the EPA a primacy revision application for the proposed WSRAR. Primacy agencies include each of the 49 states (all U.S. states except Wyoming), Puerto Rico, American Samoa, Commonwealth of the Northern Mariana Islands, Guam, Virgin Islands, and Navajo Nation, for a total of 56 primacy agencies. The ICR for the proposed WSRAR describes costs and burden for all 56 primacy agencies to conduct the following activities: adopt the proposed WSRAR by developing primacy agency programs and submitting primacy revision packages to the EPA for review and approval; update data systems; analyze data on water systems that are potential candidates for a mandatory restructuring assessment; develop PWS outreach and education materials about the WSRAR; and train staff for adoption and implementation of the WSRAR (USEPA 2024b).

The burden estimate is derived from the economic impact analysis of the proposed WSRAR (USEPA 2024a). The EPA estimated the potential cost of the proposed WSRAR under alternative scenarios to account for uncertainty regarding how primacy agencies will develop their programs and implement the WSRAR. For the proposed ICR, the EPA used the estimated burden hours and costs from the highest cost scenario. Under this scenario, the EPA assumed the full program development cost for every primacy agency, regardless of existing program capacity to implement the proposed WSRAR requirements. This approach established an upper bound on the estimated burden and cost of the proposed WSRAR.

The ICR for the proposed WSRAR presents the total time, effort, and financial resources required of primacy agencies to generate, maintain, retain, disclose, and/or provide information to the EPA during the first three years following WSRAR promulgation. Existing regulations under 40 CFR 142.12(b), promulgated pursuant to 42 U.S.C. 300g-2(b)(1), allow primacy agencies up to two years to request approval of primacy revisions to adopt regulations that are no less stringent than those that the EPA promulgates, with an extension of up to two years if the EPA Administrator determines the extension is necessary and justified. Once approved, primacy agencies may exercise this authority to require a PWS to assess options for system restructuring, including forms of consolidation or the transfer of ownership to improve drinking water quality. The proposed WSRAR imposes no direct reporting requirements on PWSs.

The EPA will use the information collected during the first three years after promulgation of the WSRAR to review each submitting primacy agency’s application

and to determine whether the submitting primacy agency has met the proposed revised requirements under 40 CFR 142.10 and 142.11.

***Respondents/affected entities*:** Primacy agencies.

***Respondent's obligation to respond*:** Mandatory pursuant to 42 U.S.C. 300g-2(a)(6) and the agency's authority in the implementing regulations for revisions to state programs under 40 CFR 142.12.

***Estimated number of respondents*:** 56.

***Frequency of response*:** Once for each respondent to read and understand the rule; develop a program; submit a primacy application to the EPA; update data systems; conduct preliminary data analysis; educate PWSs in rule requirements; and conduct staff training.

Total estimated burden: 29,088 hours per year across all 56 primacy agencies. Burden is defined at 5 CFR 1320.3(b).

Total estimated costs: $1,889,497 per year across all 56 primacy agencies, including $0 in annualized capital or operation and maintenance costs. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. Submit your comments on the agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. The EPA will respond to any ICR-related comments in the final rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at

www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under Review - Open for Public Comments" or by using the search function. OMB must receive comments no later than [**INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The proposed WSRAR mandate applies only to state or Tribal government agencies with primary enforcement responsibility (primacy). The EPA expects states that elect to exercise their mandatory assessment authority will conduct nearly all mandatory restructuring assessments. Finally, this action does not require small entities to implement any restructuring activities identified in a mandatory assessment (USEPA 2024a). Small entities may voluntarily submit restructuring plans that must meet the eligibility requirements established by SDWA and any additional requirements of the proposed WSRAR.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The proposed WSRAR requirements to establish a mandatory assessment program and to submit a primacy revision to the EPA apply only to state or Tribal government agencies with primary enforcement authority under 42 U.S.C. 300(g)-2 and not to small governments as defined by UMRA.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The proposed WSRAR, if finalized, mandates primacy agencies to adopt and develop mandatory assessment programs, including new recordkeeping requirements, and to submit primacy applications to the EPA for review. The *Analysis of the Economic Impacts of the Proposed Water System Restructuring Assessment WSRAR*, which can be found in the docket, estimated the annualized direct cost for state, local, and tribal governments in the aggregate to be $0.8 to $1.0 million annualized at a 2 percent discount rate. In addition, because the proposed WSRAR also does not impose any requirements on small governments, it has no impact on small government revenues. As a result, the proposed WSRAR does not have substantial compliance costs and Executive Order 13132 does not apply to this action. Pursuant to SDWA 1413(a)(6), the proposed WSRAR would establish implementing regulations for states to adopt mandatory assessment programs and establish reporting and recordkeeping requirements but would not preempt state or local law. Therefore, the preemption threshold under Executive Order 13132 also does not apply to this action.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have Tribal implications as specified in Executive Order 13175. The proposed WSRAR does not uniquely affect the communities of Tribal governments, nor does it impose substantial direct compliance costs on those communities. The direct compliance costs of the primacy requirements of the proposed WSRAR would apply

uniformly to primacy agencies. Thus, Executive Order 13175 does not apply to this action. Consistent with the EPA's *Policy on Consultation and Coordination with Indian Tribes,* the EPA consulted with Tribal officials during the development of this action from October 4 through November 15, 2019, including two national webinars conducted for all federally recognized Tribes. The EPA conducted the first webinar on October 16 and the second webinar on October 30, for a total of 47 participants. The EPA provided an overview of the AWIA restructuring-related amendments to the SDWA and sought Tribal input on the potential effects of the amendments on Tribal governments and Tribal PWSs.

During the webinars, the EPA requested input from Tribal governments on three aspects of WSRAR development: first, factors that EPA should consider for mandatory assessments of Tribal PWSs; second, whether and how the amended SDWA provisions to obtain enforcement relief from primacy agencies might affect the number of restructuring plans submitted by Tribal PWSs; and third, whether and how the amended SDWA provisions to obtain liability protection for compliant (non-responsible) water systems that are consolidating with, or acquiring, assessed PWSs might affect the number of restructuring plans submitted by Tribal PWSs. In addition, on October 9, 2019, the EPA participated in informational meetings upon request with the Region 1 Tribal Operations Committee (RTOC) and National Tribal Water Council (NTWC) to discuss the AWIA amendments to SDWA. During these informational meetings, the EPA encouraged broad participation in both national webinars to ensure that the agency could explain the policy implications of the SDWA-required provisions of the WSRAR to Tribal PWSs and could hear Tribal perspectives before drafting this proposal. Tribes did not provide written

comments or further requests for consultation or outreach by the end of the consultation period. This discussion under Executive Order 13175 serves as a summary of EPA's Tribal consultation efforts for this proposed rulemaking.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive Order. Therefore, this action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. Since this action does not concern human health, EPA's Policy on Children's Health also does not apply.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

The EPA believes that the human health or environmental conditions that exist prior to this action may result in or have the potential to result in disproportionate and adverse human health or environmental effects on communities with environmental justice

concerns. The EPA has identified several recent studies that support this Executive Order review which indicate disparities in access to safe drinking water based on racial or socioeconomic status in the United States (Zhang, et al. 2022; Martinez-Morata et al. 2022; Rockowitz et al. 2018; London, et. al. 2018; Mack and Wrase 2017; Gasteyer, et al. 2016).

The EPA believes that it is not practicable to assess whether this action is likely to change existing disproportionate and adverse effects on communities with environmental justice concerns. Consistent with SDWA 1414(h), the proposed rule requires states to establish mandatory assessment programs and provides states with the discretion to use the mandatory assessment authority for persistently noncompliant PWSs, including those that serve communities with environmental justice concerns. The rule does not require a PWS or a community to implement any restructuring actions identified in a mandatory restructuring assessment. Instead, the rule establishes eligibility criteria for SDWA incentives under which PWSs would voluntarily submit restructuring plans. As a result, it is difficult to quantify the potential impacts of this rulemaking on communities with environmental justice concerns.

The EPA proposes in this rule several requirements that are intended to ensure that mandatory assessments and restructuring plans are carried out in a transparent manner with the direct involvement of, and engagement with, impacted communities:

- States would be required to hold a public meeting before approving an assessment report or proposed restructuring plan. The public meeting would be subject to notice, location, and time requirements to ensure it is well publicized and accessible to all interested and affected parties.

- States would be required to make drafts of mandatory assessment reports available before and during public meetings, and physical and electronic copies of state-approved mandatory assessment reports and restructuring plans publicly available within 30 days of approval. This requirement increases transparency of drinking water utility decision making for potentially impacted communities.
- Assessments would be required to meet minimum tailoring requirements that expressly require the assessor to determine whether the assessed water system meets the state definition of a disadvantaged community pursuant to the requirements of SDWA section 1452(d) or to 42 U.S.C 300j-19(c)(2)(B), or whether the consumers served by assessed system are underserved pursuant to 42 U.S.C. 300j-19a. This requirement would benefit underserved or disadvantaged populations because it ensures that the assessment identifies affordable restructuring options in the communities served by the assessed water system.
- Assessments and restructuring plans would be required to describe how restructuring would ensure that the community served by the assessed water system would achieve access to safe, affordable drinking water.
- States would be required to consult with the assessed water system to discuss the results of the assessment. This consultation is intended to ensure that the assessed water system understands the restructuring options, the potential benefits of restructuring, and available funding sources.

In addition to these proposed requirements, in section IV of this preamble the agency specifically requests public comment on additional requirements to ensure that communities are directly involved and engaged in mandatory restructuring assessments.

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List of Subjects

40 CFR Part 142

Environmental protection, Administrative practice and procedure, Chemicals, Indian lands, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Michael S. Regan,

Administrator.

For the reasons set forth in the preamble, the EPA proposes to amend 40 CFR part 142 as follows**:**

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority citation for part 142 is revised to read as follows:

Authority: 42 U.S.C. 300f, 42 U.S.C. 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, and 42 U.S.C. 300j-4, 300j-9, and 300j-11.

2. Amend § 142.10 by adding paragraph (i) to read as follows:

§ 142.10 Requirements for a determination of primary enforcement responsibility.

*****

(i) Has adopted and is implementing procedures for requiring that an assessment be completed with respect to alternatives for consolidation, transfer of ownership, or other restructuring actions in accordance with 40 CFR part 142 subpart J, including procedures to:

(1) Establish that a public water system has satisfied the statutory preconditions for a mandatory restructuring assessment pursuant to § 142.92(a) and to notify the assessed public water system pursuant to § 142.92(b);

(2) Ensure that an assessment meets the minimum assessment tailoring criteria of § 142.92(c) and the minimum report content requirements of § 142.92(d);

(3) Review and approve eligible assessors pursuant to § 142.92(e);

(4) Ensure that the assessment is conducted according to a schedule pursuant to § 142.92(f);

(5) Determine whether a restructuring plan is eligible for restructuring incentives pursuant to § 142.93;

(6) Review restructuring plans pursuant to § 142.94 to determine public water system eligibility for enforcement relief;

(7) Review restructuring plans pursuant to § 142.95 to determine non-responsible public water system eligibility for liability protection, and the extent of liability protection, as applicable;

(8) Enforce mandatory assessment requirements pursuant to § 142.97; and

(9) Implement the reporting and recordkeeping requirements related to mandatory assessments and approved restructuring plans pursuant to §§ 142.14(h) and 142.15(c)(8).

3. Amend § 142.11 by adding paragraph (a)(8) to read as follows:

§ 142.11 Initial determination of primary enforcement responsibility.

(a)***

(8) A description of the State's procedures for requiring that an assessment be completed with respect to alternatives for consolidation, transfer of ownership, or other restructuring actions in accordance with 40 CFR part 142 subpart J, including procedures to:

(i) Establish that a public water system has satisfied the statutory preconditions for a mandatory restructuring assessment pursuant to § 142.92(a) and to notify the assessed public water system pursuant to § 142.92(b);

(ii) Ensure that an assessment meets the minimum assessment tailoring criteria of § 142.92(c) and the minimum report content requirements of § 142.92(d);

(iii) Review and approve eligible assessors pursuant to § 142.92(e);

(iv) Ensure that the assessment is conducted according to a schedule pursuant to § 142.92(f);

(v) Determine whether a restructuring plan is eligible for restructuring pursuant to § 142.93;

(vi) Review restructuring plans pursuant to § 142.94 to determine public water system eligibility for enforcement relief;

(vii) Review restructuring plans pursuant to § 142.95 to determine non-responsible water system eligibility for liability protection, and the extent of liability protection, as applicable;

(viii) Enforce mandatory assessment requirements pursuant to § 142.97; and

(ix) Implement the reporting and recordkeeping requirements related to mandatory assessments and to approved restructuring plans pursuant to §§ 142.14(h) and 142.15(c)(8).

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4. Amend § 142.14 by adding paragraph (h) to read as follows:

§ 142.14 Records kept by States.

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(h) Pursuant to 40 CFR part 142 subpart J, each State that has primary enforcement responsibility shall retain, and provide to the Administrator upon request, records of any plans submitted by a public water system for consolidation, transfer of ownership, or other restructuring actions, and of any mandatory assessment reports approved by the State as follows:

(1) From the date of plan approval until one year following the completion of all activities in an approved restructuring plan that meets the requirements for enforcement relief pursuant to § 142.94, a copy of the approved restructuring plan and, if conducted, a copy of the approved assessment report on which the approved plan may be based.

(2) From the date of plan approval until one year following the completion of all activities in an approved restructuring plan that meets the requirements for liability protection of a non-responsible public water system pursuant to § 142.95, a copy of the approved plan and a copy of the approved assessment report on which the plan must be based.

(3) For five years from the date of approval of a mandatory restructuring assessment pursuant to § 142.92(f), a copy of the assessment report, notwithstanding the assessment retention requirements of paragraphs (h)(1) and (2) of this section.

5. Amend § 142.15 by adding paragraph (c)(8) to read as follows:

§ 142.15 Reports by States.

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(c) ***

(8) *Water system restructuring assessment rule*. Each State that has primary enforcement responsibility shall report annually to the Administrator, in a format and on a schedule prescribed by the Administrator, the name and identification number of each public water system:

(i) That has satisfied the preconditions for a mandatory restructuring assessment as required pursuant to § 142.92(a), including the date on which the State made its finding;

(ii) That the State has identified pursuant to paragraph (c)(8)(i) of this section, and has notified as the subject of a mandatory restructuring assessment pursuant to a schedule as described in § 142.92(f) including the date of notification;

(iii) That the State has notified pursuant to paragraph (c)(8)(ii) of this section, and that has completed a mandatory restructuring assessment pursuant to § 142.92 as determined by the State, including the date of determination.

(iv) That is in violation of the mandatory restructuring assessment requirements pursuant to § 142.97, by violation type and violation date; or

(v) That the State has determined to be eligible for enforcement relief pursuant to § 142.94 or liability protection pursuant to § 142.95, including the type of eligibility and the date of plan approval.

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6. Add subpart J to read as follows

Subpart J—MANDATORY RESTRUCTURING ASSESSMENTS AND RESTRUCTURING PLANS

Sec.

Subpart J—MANDATORY RESTRUCTURING ASSESSMENTS AND RESTRUCTURING PLANS

§ 142.90 General.

(a) *Authority.* A State that meets the requirements for a determination of primary enforcement responsibility, and that has obtained such responsibility from the Administrator pursuant to 42 U.S.C 300g-2 and its implementing regulations at 40 CFR part 142, subpart B, is authorized to implement this subpart.

(b) *Implementation by the EPA.* A Regional Administrator with primary enforcement responsibility may exercise all authorities extended to States in this subpart.

(c) *Applicability*. The provisions of this subpart apply to all States with primary enforcement responsibility, to all public water systems for which a mandatory restructuring assessment is required or approved by a State pursuant to § 142.92, and to suppliers of water that have submitted a restructuring plan to the State pursuant to § 142.93.

§ 142.91 Definitions.

The following definitions apply to terms used in this subpart:

*Assessed water system***.** Refers to a public water system that satisfies the mandatory assessment preconditions under § 142.92(a) and that is the subject of a mandatory restructuring assessment required by the State under this subpart.

*Enforcement relief***.** Refers to the "consequences of approval" at 42 U.S.C. 300g-3(h)(2) and means that, except for the limitations described in § 142.94, if a primacy agency approves a restructuring plan that is eligible under § 142.93 and that satisfies the applicable requirements of § 142.94, then with respect to each specific violation identified in the approved plan, as of the date of plan approval, the State shall not take enforcement action until the earlier of:

(1) Two years from the date on which the primacy agency approves the restructuring plan; or

(2) The date on which all restructuring activities identified in the schedule of the approved plan have been completed.

*Liability protection***.** Refers to the "reservation of funds" at 42 U.S.C. 300g-3(h)(5)(B) and means that if a State approves a restructuring plan that is eligible under § 142.93 and that satisfies the applicable requirements of § 142.95 and determines that all of the activities in the approved plan have been completed, then the non-responsible water system shall not be liable for a specific violation identified in the approved plan, except to the extent to which funds or other assets identified in the plan are available to satisfy such liability.

Mandatory restructuring assessment. Refers to the "mandatory assessment" at 42 U.S.C. 300g-3(h)(3) and means an evaluation of alternatives for consolidation, transfer of ownership or other types of restructuring at the assessed water system pursuant to the applicable requirements of § 142.92.

*Non-responsible water system***.** Refers to a public water system that is not liable under the SDWA for a specific violation identified in an approved restructuring plan that meets all requirements of § 142.95.

*Restructuring plan***.** Refers to "plans" at 42 U.S.C. 300g-3(h)(1) and means a plan that is submitted to the State for purposes of enforcement relief or liability protection under this subpart, and that is intended to achieve greater compliance with national primary drinking water regulations through:

(1) Physical consolidation of the public water system with one or more other public water systems;

(2) The consolidation of significant management or administrative functions of the public water system with one or more other public water systems; the transfer of ownership of the public water system to another public water system for purposes of improving drinking water quality; or

(3) Entering into a contractual agreement for significant management or administrative functions of the public water system to correct violations identified in the plan.

§ 142.92 Mandatory restructuring assessments.

(a) *Mandatory assessment preconditions.* A State may mandate a restructuring assessment of a public water system if the State finds that:

(1) The water system has repeatedly violated one or more national primary drinking water regulations, and such repeated violations are likely to adversely affect human health;

(2) The supplier of water is unable or unwilling to take feasible and affordable actions, as determined by the State, that will result in the public water system complying with the national primary drinking water regulations, or has already undertaken such actions, including accessing technical assistance or financial assistance from the State, without achieving compliance;

(3) Physical, administrative, or managerial consolidation, transfer of ownership, or another type of restructuring is feasible for the water system; and

(4) Physical, administrative, or managerial consolidation, transfer of ownership, or another type of restructuring of the water system could result in greater compliance with national primary drinking water regulations.

(b) *State notification.* A State that mandates an assessment pursuant to this section shall notify the supplier of water in writing.

(c) *Minimum assessment tailoring criteria.* A mandatory restructuring assessment conducted pursuant to this section shall evaluate, at a minimum, the feasibility of the proposed restructuring alternatives based on the following criteria:

(1) System size based on the number of people served by the assessed water system;

(2) Whether the assessed water system is a community or noncommunity water system;

(3) The source(s) of water used by the assessed water system;

(4) The technical, managerial, and financial (TMF) capacity of the assessed water system;

(5) Whether the service area of the assessed water system is disadvantaged pursuant to the State's definition under 42 U.S.C. 300j-12(d)(3) or to 42 U.S.C 300j-19(c)(2)(B), or is underserved pursuant to 42 U.S.C. 300j-19a;

(6) Geographic factors;

(7) Hydrogeologic or geologic factors; and

(8) State or local statutory or regulatory requirements.

(d) *Minimum assessment report content requirements.* The results of the mandatory restructuring assessment must be documented in a report that, at a minimum:

(1) Identifies all unresolved violations at the assessed water system, the underlying causes of the violations, and the enforcement status of each violation;

(2) Identifies at least one feasible restructuring alternative, and describes how the alternative(s) will:

(i) Return the system to compliance as soon as practicable; and

(ii) Help ensure the technical, financial, and managerial capacity of the assessed water system to provide safe drinking water;

(3) Describes how the assessor has determined the feasibility of the identified alternative(s) pursuant to paragraph (c) of this section, including how alternative(s) will ensure that a community served by the assessed water system receives safe and affordable drinking water;

(4) Explains, if a type of consolidation or a transfer of ownership is not identified as a feasible restructuring alternative, why such alternative is not feasible; and

(5) Describes the processes, procedures, data, data sources, and other information used to identify feasible restructuring alternatives for the assessed water system.

(e) *Eligible assessors.* The supplier of water at the assessed water system or a third party approved by the State may conduct a mandatory restructuring assessment pursuant to this section; otherwise, the State may conduct the assessment.

(f) *Assessment schedule.* Mandatory restructuring assessments shall be conducted as follows:

(1) Within 30 days of the date of State notification that a mandatory restructuring assessment is required, the supplier of water may request in writing State approval of either a self-assessment or a third-party assessor on its behalf; otherwise, the State may conduct the mandatory restructuring assessment.

(2) Within 30 days of the date of request by the supplier of water pursuant to

paragraph (f)(1) of this section, the State shall determine whether to approve a third-party assessor or a self-assessment and notify the supplier of water.

(i) If the State approves a self-assessment or a third-party assessor to conduct the mandatory restructuring assessment, the supplier of water must submit an assessment report on a date that is determined by the State. At any time during the implementation of the mandatory restructuring assessment, either the supplier of water or the State may consult with the other party to determine whether to revise the assessment report submittal date. The State may determine whether to revise the submittal date based on documentation or other information acceptable to the State.

(ii) If the State does not approve a third-party assessor or a self-assessment, the State may conduct the mandatory restructuring assessment and develop the assessment report. In such cases, the supplier of water shall provide as soon as practicable any information deemed necessary by the State to complete a mandatory restructuring assessment pursuant to the requirements of this section.

(3) When submitting the assessment report to the State, the supplier of water or a third-party assessor must provide a certification statement to affirm:

(i) The authority of the assessor to verify the results of the mandatory restructuring assessment;

(ii) That the information included in the assessment report is true, accurate and complete; and

(iii) That the assessor understands that there are penalties for submitting false information to the State.

(4) If the assessment report identifies a form of consolidation or transfer of ownership during the mandatory assessment, the State shall hold at least one public meeting in the community served by the assessed water system. The public meeting shall satisfy EPA public meeting requirements under 40 CFR 25.6 and any applicable provisions of State law (as determined by the State). Otherwise, as soon as practicable following the date of submission, the State shall review the assessment pursuant to paragraph (f)(5)(i) or ((ii) of this section.

(i) If the supplier of water performs the mandatory assessment, the State shall hold the public meeting as soon as practicable from the date of submission.

(ii) If the State performs the mandatory assessment, the State shall hold the public meeting before completing its assessment report.

(5) As soon as practicable following the date of a public meeting pursuant to paragraph (f)(4) of this section, the State shall review the assessment report to determine whether it satisfies the requirements of this section.

(i) If the supplier of water has prepared the assessment report and the State determines it satisfies the requirements of this section, then the assessment is approved and the State shall notify the supplier of water in writing within 7 business days of its determination. Otherwise, the State may consult with the supplier of water to determine a schedule and a method by which a revised assessment report must be completed pursuant to the requirements of this section.

(ii) If the State has prepared the assessment report, the State shall ensure that the report satisfies the requirements of this section and is otherwise complete. Upon such

completion, the State shall notify the supplier of water in writing within 7 business days of its determination.

(6) Within 30 days of the State's approval of an assessment report submitted by the supplier of water or of the State's completion of an assessment report, the State shall make available to the public a copy of the approved assessment report in an electronic format on an appropriate State website and shall transmit physical copies of the restructuring plan to one or more public libraries in the closest possible proximity to the community served by the restructuring supplier of water.

(7) If the State has notified the supplier of water that the assessment report is approved or that the State assessment report is complete, the State shall consult with the supplier of water as soon as practicable to discuss the results of the mandatory restructuring assessment.

§ 142.93 Restructuring plans.

(a) *Plan types eligible for restructuring incentives.* A supplier of water may submit to the State, for purposes of enforcement relief or liability protection under this subpart, a restructuring plan that is intended to achieve greater compliance with national primary drinking water regulations through:

(1) Physical consolidation of the water system with one or more other water systems;

(2) The consolidation of significant management or administrative functions of the water system with one or more other water systems;

(3) The transfer of ownership of the water system to another water system for purposes of improving drinking water quality; or

(4) Entering into a contractual agreement for significant management or administrative functions of the system to correct violations identified in the plan.

(b) *State determination*. As soon as practicable, but no later than 60 days from the date it receives a restructuring plan, the State shall determine whether the plan is eligible pursuant to paragraph (a) of this section and shall notify the supplier of water in writing.

(i) If the State determines that the plan is eligible pursuant to paragraph (a) of this section, then pursuant to § 142.94 or § 142.95, the State shall determine whether the plan also satisfies the applicable requirements for enforcement relief or liability protection.

(ii) If the State determines that the plan is not eligible pursuant to paragraph (a) of this section, then the State may consult with the supplier of water that submitted the ineligible plan to determine a schedule and a method by which a corrected plan may be submitted.

(c) *Plan revisions.* If at any time during the implementation of an approved restructuring plan a supplier of water submits a revised plan to the State, the State may review the revised plan pursuant to the requirements of this section and the applicable requirements and limitations of

§§ 142.94 and 142.95.

§ 142.94 Enforcement relief under approved restructuring plans.

(a) *Minimum plan eligibility requirements for enforcement relief***.** To obtain enforcement relief under this subpart, the supplier of water must submit a restructuring plan that the State has determined is eligible for restructuring incentives pursuant to § 142.93(a) and that:

(1) Identifies each specific violation that the restructuring plan is intended to correct;

(2) Describes, using data and other forms of documentation acceptable to the State, how the activities in the restructuring plan will protect public health as soon as practicable by addressing the underlying causes of the identified violations;

(3) Proposes a schedule for implementing and completing each of the restructuring activities identified in the plan, including corrective actions to resolve identified violations and measures by which the State can assess progress for each restructuring activity;

(4) Describes, using data and other forms of documentation acceptable to the State, how the restructuring plan will improve, as applicable, the technical capacity, managerial capacity, or financial capacity of the restructuring system to achieve compliance with national primary drinking water regulations;

(5) Describes how the proposed restructuring plan will ensure that the community served by the restructured water system receives safe and affordable drinking water; and

(6) Requests enforcement relief from the violations identified in the plan for the noncompliant water system(s) subject to the plan.

(b) *Conditional plan eligibility requirements for enforcement relief.* In addition to the minimum requirements of § 142.94(a), to obtain enforcement relief under this subpart, the supplier of water must submit a restructuring plan that satisfies the following conditional requirements, as applicable:

(1) If the restructuring plan will result in a change in the supplier of water at the restructured water system, the submitted plan must identify both the date on which the change is planned to occur, and the identity of the new supplier of water at the restructured water system.;

(2) If the restructuring plan will require one or more suppliers of water to establish a new or revised governance structure, the plan must describe the new governance structure and how it will help achieve the objectives of the plan; and

(3) If the restructuring plan includes the temporary provision of an alternative source or supply of water, the plan must include an implementation schedule and measures, supported by data and other forms of documentation acceptable to the State, that describe how the water served will comply with applicable Federal or state regulations and identify when the temporary alternative source will no longer be needed.

(c) *Eligible violation types*. For purposes of enforcement relief under this subpart, specific violations of the SDWA and its implementing regulations must be identified in the restructuring plan submitted to the State.

(d) *Public meeting*. As soon as practicable after making its determination pursuant to § 142.93(b), the State shall hold at least one public meeting with the community served by a restructuring public water system regarding the proposed restructuring plan. The meeting shall be held in accordance with EPA public meeting requirements under 40 CFR 25.6 and any applicable provisions of State law (as determined by the State).

(e) *State determination date*. As soon as practicable, but no later than 12 months from the date on which it determines that a submitted restructuring plan is an eligible type pursuant to § 142.93(b), the State shall determine whether the requirements of paragraphs (a) through (d) of this section have been satisfied and shall notify the supplier of water in writing. If the State determines that the submitted plan satisfies the requirements, then the plan is approved, otherwise, the State may consult with the supplier of water that

submitted the plan to determine a schedule and a method by which a corrected plan may be submitted.

(f) *Plan availability*. Within 30 days of its determination under paragraph (e) of this section, the State shall make available to the public a copy of the approved restructuring plan in an electronic format on an appropriate State website and shall transmit physical copies of the restructuring plan to one or more public libraries in the closest possible proximity to the community served by the restructuring supplier of water.

(g) *Extent of enforcement relief*. If the State approves the plan, then with respect to the specific violations identified in the approved plan, the State shall take no enforcement action until the earlier of two years from the date on which the State approves the restructuring plan or the date on which the State determines that all restructuring activities identified in the schedule of the approved plan have been completed. Notwithstanding the enforcement relief described in this paragraph, the Agency may exercise its authority at 42 U.S.C. 300i to protect the health of persons served by the water system(s) that are subject to the plan.

(h) *Limitations*. The supplier of water of the public water system subject to enforcement relief as described in paragraph (e) of this section must:

(1) Implement any corrective actions as required under existing enforcement orders or agreements;

(2) Comply with all other applicable requirements of the SDWA and its implementing regulations, including any EPA actions pursuant to 42 U.S.C. 300i; and

(3) Comply with any enforcement actions for violations that occur after the date of plan approval.

(i) *Termination of enforcement relief under approved plans*. If during the enforcement relief period the State determines that the supplier of water at a noncompliant water system is unwilling or unable to implement the plan according to its approved measures and schedule(s), then the noncompliant water system is no longer eligible for enforcement relief under this subpart. In such cases, the State shall inform the noncompliant supplier of water in writing as soon as practicable that the water system is ineligible for enforcement relief, and that the State may take enforcement action for the identified violations.

(j) *Enforcement relief under revised plans*. A water system that is subject to enforcement relief pursuant to this subpart is ineligible under a revised restructuring plan for enforcement relief that exceeds 2 years from the date on which the State approved the original restructuring plan.

§ 142.95 Liability protection under approved restructuring plans.

(a) *Minimum plan eligibility requirements for liability protection*. To obtain liability protection under this subpart, the non-responsible water system's supplier of water must submit a restructuring plan that:

(1) Satisfies the minimum eligibility requirements for enforcement relief pursuant to § 142.94(a);

(2) Satisfies any conditional requirements pursuant to § 142.94(b), as applicable;

(3) Is based on a mandatory restructuring assessment approved or completed by the State pursuant to § 142.92;

(4) Identifies the non-responsible water system(s) and assessed water system(s) subject to the plan;

(5) Identifies and describes, using data and other forms of documentation that the State finds acceptable, any potential and existing liability for penalties and damages associated with each specific violation identified in the plan;

(6) Identifies and describes, using data and other forms of documentation that the State finds acceptable, any funds or other assets of the assessed system(s) available as of the date of submission; and

(7) Requests liability protection of the non-responsible water system for the violations identified in the plan.

(b) *Eligible violation types.* For purposes of liability protection under this subpart, specific violations of the SDWA and its implementing regulations must be identified in the restructuring plan submitted to the State.

(c) *Exclusions.* Neither a water system that is subject to a mandatory restructuring assessment under § 142.92, nor a water system that the State finds has satisfied the preconditions for a mandatory restructuring assessment under § 142.92(a), may benefit from liability protection under this subpart.

(d) *Public meeting*. After making its determination pursuant to § 142.93(b), the State shall hold at least one public meeting as soon as practicable with the community served by a restructuring public water system regarding the proposed restructuring plan. The meeting shall be held in accordance with EPA public meeting requirements under 40 CFR 25.6 and any applicable provisions of State law (as determined by the State).

(e) *State determination date*. As soon as practicable, but not later than 18 months from the date on which it determines that a submitted restructuring plan is an eligible type pursuant to § 142.93(b), the State shall determine whether the requirements of paragraphs

(a) through (d) of this section have been satisfied and shall notify the supplier of water in writing. If the State determines that the submitted plan satisfies applicable requirements, then the plan is approved, otherwise, the State may consult with the supplier of water that submitted the plan to determine a schedule and a method by which a corrected plan may be submitted.

(f) *Extent of liability protection*. If the State determines, according to the measures and schedule(s) of the plan approved pursuant to paragraph (e) of this section, that all restructuring activities have been completed, then within 30 days of its determination under this paragraph the State shall notify the non-responsible supplier of water in writing that:

(1) As of the date of State notification, the non-responsible water system is not liable under the SDWA for penalties or damages associated with the violations identified in the plan that exceed the total amount of the identified funds and the value of other identified assets of the assessed system(s); and

(2) Within 30 days of the date of State notification, the non-responsible supplier of water shall consult with the State to determine a method and a schedule by which any identified funds, and the value of the identified assets of the assessed system(s), shall be transferred to the State to satisfy the liability for violations at the assessed system(s). If the non-responsible supplier of water finds that it cannot identify funds or assets to satisfy the liability of the identified violations, it shall support its finding pursuant to the requirements of § 142.95(a)(6).

(g) *Plan availability*. Within 30 days of its determination under paragraph (e) of this section, the State shall make available to the public a copy of the approved restructuring

plan in an electronic format on an appropriate State website and shall transmit physical copies of the restructuring plan to one or more public libraries in the closest possible proximity to the community served by the restructuring supplier of water.

(h) *Determination of change in supplier of water*. If the non-responsible supplier of water is subject to the requirements of § 142.94(b)(1), when making its determination and notification pursuant to paragraph (f) of this section, the State shall identify the date on which the non-responsible supplier of water becomes the supplier of water at the restructured water system. Until the date of State notification, the non-responsible water system is not liable for violations at the assessed water system(s).

(i) *Limitations.* Notwithstanding the liability protection for which a non-responsible water system may be eligible under this subpart, the non-responsible water system must comply with all other applicable requirements under the SDWA and its implementing regulations.

(j) *Liability protection under revised plans*. A non-responsible supplier of water that requests liability protection under a restructuring plan that is approved by the State remains eligible for liability protection under a revised plan if:

(1) The non-responsible supplier of water has provided a justification, using data and other forms of documentation that the State finds acceptable, that a revised plan is necessary to ensure that the objectives of the restructuring plan are achieved as soon as practicable;

(2) The non-responsible water system is not the water system that incurred the violations identified in the revised restructuring plan; and

(3) The State has determined that the revised restructuring plan meets the requirements of this section and has approved the revised plan.

§ 142.96 DWSRF eligibility of restructuring activities.

Notwithstanding 42 U.S.C. 300j-12(a)(3) and its implementing regulations, a public water system undertaking consolidation, transfer of ownership for purposes of improving drinking water quality, or other restructuring activities pursuant to a mandatory assessment that meets the requirements of § 142.92 may receive a loan described in 42 U.S.C. 300j-12(a)(2)(A) to implement such consolidation, transfer of ownership, or other restructuring activities identified in the assessment.

§ 142.97 Reporting violations.

An assessed water system is in violation of this subpart if the supplier of water that performs a self-assessment, or an approved third party performing the assessment on behalf of the supplier of water:

(a) Fails to submit an assessment report to the State as mandated under § 142.92;

(b) Submits an assessment report after the submittal date that was determined by the State as required under § 142.92(f)(2);

(c) Submits an assessment report that does not meet the minimum content requirements of § 142.92(c); or

(d) Submits an assessment report without the certification statement required under § 142.92(f)(3).