

Water System Restructuring Assessment Rule

The U.S. Environmental Protection Agency (EPA) is proposing the Water System Restructuring Assessment Rule (WSRAR), which provides a structure for states¹, public water systems (PWSs), and the communities they serve to identify and assess restructuring options to help ensure sustainable, safe, and affordable drinking water. The proposed regulation includes three main elements: a new mandatory assessment authority for states; mandatory restructuring assessment implementation requirements; and three incentives for PWSs to restructure.

What is water system restructuring?

Restructuring is a change in the management, ownership, operations, or physical infrastructure of a water system that is intended to improve the water system's capacity to provide safe drinking water. Under the proposed rule, a wide range of restructuring options are possible, including sharing of operators or equipment, debt restructuring, new treatment technology, interconnection with another water system, changes in ownership or the merger of two or more separate water systems into a new, combined water system.

Is water system restructuring mandatory under the rule?

No. The rule provides states the authority to mandate assessments but does not authorize a state to mandate *any* form of restructuring based on the mandatory assessment or otherwise. Any restructuring would be entirely voluntary. Individual states may decide to mandate restructuring, but only under state laws and regulations, not under the proposed WSRAR.

Will a community's water rates go up as a result of a mandatory restructuring assessment?

EPA does not have the authority to regulate water rates, including under the WSRAR. Instead, water rates are decided at the state and local levels. A key goal of the proposed rule, however, is that it requires the mandatory assessment to describe how any identified restructuring option would ensure that the community served receives safe, affordable drinking water.

How will the assessments consider differences across water systems and the communities they serve?

The proposed rule would require assessments to identify restructuring solutions that are "tailored" to water system characteristics. Under the proposed rule, tailoring means that the water system's socio-economic, technical, physical, and geographic features must be used to help define possible restructuring options. These features include the size of the community it serves, the type of water system, and the sources of drinking water (groundwater, rivers, lakes, or streams). Other key features

¹ *State* means the agency of the State or Tribal government which has jurisdiction over public water systems. During any period when a State or Tribal government does not have primary enforcement responsibility pursuant to section 1413 of the Act, the term "State" means the Regional Administrator, U.S. Environmental Protection Agency.

include underserved or low-income status, the existing capacity of the water system to provide safe drinking water, known or possible sources of contamination, and the locations of the nearest compliant water systems that could partner with the assessed system.

What are restructuring plans?

Under the proposed rule, a restructuring plan is a document sent by a water system to the state for review and approval. The plan must describe the type of restructuring the PWS will undertake to ensure that it is eligible for enforcement relief or liability protection. The eligible plan types will result in either a merger between two or more PWSs, a transfer of ownership, or a contract under which another water system temporarily manages a struggling water system to help it solve compliance problems. A restructuring plan also must describe how implementation will resolve underlying causes of violations and improve the capacity of the restructuring water system to provide safe drinking water. Each plan must include a schedule for restructuring and measures of progress, as well as an explanation of how it will ensure that the community will receive safe and affordable drinking water.

How are restructuring plans related to mandatory restructuring assessments?

A restructuring plan is always voluntarily sent by a water system to the state, unlike a mandatory restructuring assessment, which a state may mandate under the rule. A restructuring plan can be based on an assessment, but it is not required to be, with one exception: when a compliant PWS would like liability protection for merging with, or acquiring, a struggling water system.

How would the proposed WSRAR ensure transparency and community participation?

Before approving an assessment report or a restructuring plan, the state would be required to hold a public meeting. The public meeting would allow community-based organizations and residents served by the system to ask questions and provide comments to the state and the restructuring water system. The state and the water utility would provide specific details about the assessment report to the local community and seek their input. To ensure transparency, the proposed rule also would require the state to make electronic and physical copies of assessments and plans available to the public. Finally, the state must consult with the assessed water system about the report to help the water system and the community decide whether and how to restructure.

Who does this action apply to?

This proposed action would apply to all states, territories, and Tribes with primary enforcement responsibility (primacy), PWSs that the state requires to perform a mandatory restructuring assessment, and PWSs that submit a restructuring plan to the state.

What are the new primary enforcement authority (primacy) requirements?

The WSRAR would require all states to submit a primacy revision application to EPA. The primacy application must describe state procedures for: determining which water systems must perform an assessment; approving eligible assessors; reviewing and approving mandatory assessments; and determining water system eligibility for restructuring incentives. In addition, there are new reporting and recordkeeping requirements for states to ensure they are tracking and reporting annually to the EPA information about mandatory restructuring assessments and restructuring plans.

What are the next steps?

The EPA will host additional stakeholder engagements for states, water systems, and other interested stakeholders to provide an overview of the proposed Water System Restructuring Assessment Rule. EPA is also accepting comments in the public docket. Comments can be submitted at www.regulations.gov, Docket ID: EPA-HQ-OW-2022-0678. For more information on the proposed rule and to register for the webinars, please visit the project webpage: <https://www.epa.gov/dwcapacity/water-system-restructuring-assessment-rule>.