



THE UNITED STATES
CONFERENCE OF MAYORS

March 17, 2023

Mr. Michael Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460

Mr. Richard Revesz
Administrator
Office of Information and Regulatory Affairs
1650 Pennsylvania Avenue, NW
Washington, DC 20503

RE: Public Water System Supervision Program (ICR No. 2040-0090)

Dear Administrator Regan and Administrator Revesz,

The undersigned associations write to you regarding the March 3, 2023 agency action issued by the U.S. Environmental Protection Agency (“EPA”) to State Drinking Water Administrators entitled “[*Addressing PWS Cybersecurity in Sanitary Surveys or an Alternate Process*](#)” (the “Rule”), which requires states to examine cybersecurity practices and controls at public water systems (“PWS”) while conducting sanitary surveys and collect data from PWS regarding the same. This is one of several new substantive requirements imposed by EPA’s new final Rule. According to EPA, this Rule is effective immediately. However, the information collection and record keeping requirements associated with this new Rule violate the Paperwork Reduction Act (“PRA”) and are not covered by EPA’s current Information Collection Request (“ICR”) for the Public Water System Supervision Program (“ICR No. 2040-0090”). This ICR covers information collections for “General State Primacy Activities” to implement compliance oversight and enforcement responsibilities under the SDWA. This includes requirements for the primacy agency to maintain records such as the results of sanitary surveys per 40 CFR 142.14. ICR No. 2040-0090 expires on March 31, 2023.¹

¹ Notice of Office of Management and Budget Action, Public Water System Supervision Program (EPA ICR No. 0270.47), Issued 3/09/2020, https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201903-2040-005#

Given the absence of an OMB approved ICR for the information required under the new Rule, state primacy agencies are not authorized to collect this information and public water systems are not required to respond to requests for information.

More specifically, Congress made it very clear in the PRA² that an agency shall not conduct or sponsor the collection of information unless in advance of the adoption or revision of the collection of information, the agency has completed all requirements provided in OMB regulations for data collection.³ This includes publishing a notice in the Federal Register that provides the following:

- a title for the collection of information;
- a summary of the collection of information;
- a brief description of the need for the information and the proposed use of the information;
- a description of the likely respondents and proposed frequency of response to the collection of information;
- an estimate of the burden that shall result from the collection of information;
- notice that comments may be submitted to the agency and OMB; and
- the time period within which the agency is requesting OMB to approve or disapprove the collection of information.

The agency has not fulfilled its obligation to assess burdens the Rule will impose on primacy authorities or PWSs. The Rule requires the collection and review of substantively new and different information than what is currently approved in the current ICR. While the agency's Rule did undergo E.O. 12866 review, no new supporting statement or revised ICR has been prepared or issued for public review and comment.

We are not aware that EPA has given public notice to support renewal of this ICR, that would include providing revised burden estimates, and published a justification of the practical utility of the ICR requirements, especially those contained in the new Rule. Examples of new requirements for primacy agency and PWSs that result in burdens due to the Rule include, but are not limited to, the following:

*Training*⁴

- EPA has released 6 hours of training for states to review the Rule, implementation options and available resources. The training includes a table provided by EPA

² Paperwork Reduction Act, Public Law 104-13, <https://www.reginfo.gov/public/reginfo/prs.pdf>

³ 5 CFR 1320 - Controlling Paperwork Burdens on the Public, <https://www.govinfo.gov/content/pkg/CFR-2010-title5-vol3/xml/CFR-2010-title5-vol3-part1320.xml>

⁴ EPA Cybersecurity for the Water Sector – Training, <https://www.epa.gov/waterriskassessment/epa-cybersecurity-water-sector#rule>

estimating “*the additional time required for states to assess cybersecurity will be reflective of the population served by the system.*”

- EPA has released 6 hours of training for PWSs demonstrating how to use EPA’s cybersecurity checklist to assess their program, information on how to address vulnerabilities, and available resources. EPA’s checklist includes 33 questions related to various cybersecurity controls for which no estimated time burden is provided, but a majority are classified in the training materials as potential “significant deficiencies” if not implemented.

Recordkeeping

- States must maintain records of significant deficiencies and confirmation that the deficiency has been corrected. This requires a modification of existing compliance data systems to add necessary data fields to document cybersecurity related items as part of the sanitary survey.
- States must develop and maintain list of “approved agents” if it allows agents other than the state to conduct the cybersecurity component of the sanitary survey.
- States must add cybersecurity to their annual evaluation of the state’s program for conducting sanitary surveys in the report transmitted to EPA.

Expanded Scope of Coverage

- EPA records⁵ indicate that there are 151,606 PWSs for which this Rule may apply. According to EPA compliance records there are 10,003 community water systems that serve 3,300 or more persons that must comply with AWIA §2013.⁶ These systems are mandated by Congress to include an assessment of cybersecurity threats as part of a risk and resilience assessment and an emergency response plan. Therefore, the scope of the Rule captures an additional 141,603 PWSs that would at minimum be required to assess the applicability of the new Rule and associated requirements.

We do not believe that the expiration of the current ICR satisfies any of the criteria that may justify emergency processing by OMB. There is no reasonable explanation for why the agency would be unable to comply with the normal clearance procedures for the existing ICR. The addition of new information collection obligations created by the Rule do not justify emergency processing either since this action has been under consideration by the agency since 2021.⁷ Finally, there has been no consultation or collaboration with the organizations

⁵ EPA, Safe Drinking Water Information System (SDWIS), 2022Q4 Summary Data

⁶ EPA, America’s Water Infrastructure Act Section 2013 Compliance Data, <https://www.epa.gov/waterresilience/americas-water-infrastructure-act-section-2013-compliance-data>

⁷ Unified Agenda of Regulatory and Deregulatory Actions, Fall 2021, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202110&RIN=2040-AG20>

representing PWSs regarding considerations that might “minimize the burden” per 5 C.F.R. 1320.13.

Respectfully, we ask that EPA withdraw the Rule until such time that it has fulfilled the statutory obligations defined by the PRA and regulations controlling paperwork burdens on the public. In addition, OMB should provide a statement clarifying that any information collected to support compliance with the Rule would constitute a violation of the PRA and regulations controlling paperwork burdens on the public. We have further concerns with the lack of legally-required procedures followed before issuing the Rule which we look forward to addressing with both the agency and OMB.

Sincerely,

American Water Works Association
Association of Metropolitan Water Agencies
National Association of Water Companies
US Conference of Mayors

cc: Radika Fox – EPA/OW
Tim Del Monico – EPA/OCIR
Vicki Arroyo – EPA/OP
Jeffrey Prieto – EPA/OGC
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