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Office of Management and Budget
Office of Information and Regulatory Affairs (OIRA)
1600 Pennsylvania Ave NW
Washington, DC 20500

TRANSMITTED ELECTRONICALLY

RE: ICR Reference 202304-2040-001, Consumer Confidence Report Rule Revisions and Compliance Monitoring Data Collection (Proposed Rule)

Dear OIRA,

The American Water Works Association (AWWA) appreciates the opportunity to provide information to the Office of Information and Regulatory Affairs (OIRA) as it considers information collection burdens associated with the Environmental Protection Agency's (EPA's) proposed Consumer Confidence Report Rule The associated rulemaking is National Primary Drinking Water Regulations: Consumer Confidence Report Rule Revisions, 88 FR 20092 (Docket Id. EPA-HQ-OW-2022-0260).

This letter is to note several concerns as to associated burden and procedural concerns that OIRA can assist in addressing. AWWA raised these concerns directly to EPA in comments filed on April 20, 2023[1] and in more detailed comments submitted May 22, 2023[2]. This letter summarizes the most critical items in AWWA's previous comments to the agency that will impact the information collection burden on regulated entities and have impacts of interagency interest. We encourage OIRA to also review the above referenced comments in their entirety. The proposed rule docket does not include an adequate description of the information collection, storage, management, and sharing responsibilities embedded in the proposal. Those burdens are distributed among individual water systems, primacy agencies, EPA, and other federal agencies. A significantly improved assessment is needed before OIRA can conduct an adequately informed review to approve the agency's information collection request.

Request to declare this rule a significant regulatory action under EO 12866

EPA has included provisions that raise major inter-agency coordination concerns, but EPA has not designated this a significant regulatory action and thus not followed the procedures set forth by the Office of Management and Budget under Executive Order 12866 (Regulatory Planning and Review,

[1] American Water Works Association. 2023 Apr 20. Comment submitted by American Water Works Association. Accessed 2023 May 19. https://www.regulations.gov/comment/EPA-HQ-OW-2022-0260-0042.
[2] American Water Works Association, National League of Cities, and United States Conference of Mayors. 2023 May 22. Comment submitted by American Water Works Association (AWWA), National League of Cities (NLC), and United States conference of Mayors. https://www.regulations.gov/comment/EPA-HQ-OW-2022-0260-0056.

September 30, 1993) as modified by Executive Order 13563 (Improving Regulation and Regulatory Review, January 18, 2011) and Executive Order 14094 (Modernizing Regulatory Review, April 6, 2023).

There are multiple provisions within the proposed rule that may be of considerable inter-agency concern. However, provisions contained on 88 FR 20100 are an especially clear example of how the proposal has inter-agency implications. The proposal states that there are no circumstances in which water can be called "safe." In addition to having major impacts on other provisions of the Safe Drinking Water Act (SDWA) and other Acts which EPA administers (such as the Clean Water Act), it also has implications for programs in the Department of Health and Human Services (HHS) like the Centers for Disease Control and Prevention (CDC), the Federal Emergency Management Agency (FEMA), the U.S. Department of Interior's Bureau of Reclamation and the U.S. Geologic Survey, the U.S. Army Corps of Engineers (USACE), and likely many others. EPA did not account for the cost of removing references to safety from water system websites and material, but whether this regulatory action exceeds $200 million in adverse effect on the economy or not the proposed rule independently warrants review based on the second and fourth criteria for interagency review. The proposal (1) poses a serious inconsistency with actions of other agencies and (2) raises novel legal or policy issues. *EPA and the Office of Management and Budget (OMB) should declare this a significant rulemaking and initiate all procedures of EO 12866 as amended and any other relevant provisions.*

EPA should separate the compliance monitoring data reporting rule into a separate regulatory action with the appropriate procedures.

As mentioned in AWWA's April 20, 2023 letter[3], the provisions of compliance monitoring data reporting should be removed from the CCR rule and placed in a separate regulatory action. To date, AWWA has not received a response to this request, and thus we have included comments on those provisions within these comments.

A separate rulemaking is needed so that EPA can provide a basis in the record for a state reporting requirement.

1. The preamble describes the collection of compliance monitoring data, but the regulatory text would require states to submit all reports and records associated with compliance oversight. EPA does not accurately present the challenge such a duty would present to primacy agencies. The proposed rule reads as follows:

   > "Compliance monitoring data and related data necessary for determining compliance for all existing National Primary Drinking Water Regulations (NPDWRs) in 40 CFR part 141. Related compliance data include specified records kept by the State in § 142.14."

   Section 142.14 includes more than 120 types of data or reports, many of which are documents or a series of documents. Current EPA efforts are to develop an electronic data system. To make the proposed provision implementable EPA would need to implement a curated document management system. EPA does not have such a

[3] American Water Works Association. 2023 Apr 20. Comment submitted by American Water Works Association. Accessed 2023 May 19. https://www.regulations.gov/comment/EPA-HQ-OW-2022-0260-0042.

document management system, nor does it describe a plan to do so in the record for this rulemaking.

In development of the compliance data reporting portal, EPA specifically limited the portal to data. Many reports submitted to EPA are not data, rather they are Adobe Acrobat files, Excel spreadsheets, and printed reports. Not only would EPA need either an electronic and/or physical warehouse for this annual submission, but it would also need extraction procedures to extract useful, accurate information.

2. For more than 15 years EPA SDWA data management planning has focused on data alone, and not the reports underpinning decisions as captured by § 142.14. Importantly, EPA has worked diligently for more than a decade to develop an electronic data system to support state reporting and EPA warehousing of a small fraction of the data encompassed by this proposed provision. That process has started and failed twice after the expenditure of millions of dollars and the commitment of countless hours of effort. The current technology solution is still in development and, if there are not any unanticipated delays, will not be operational for another two years. The project planning documents are caveated, "Because of known and expected changes and impacts ..., the timelines will be significantly changed ..."[4] This effort is referenced in the preamble as though it will allow reporting of all the records encompassed in the proposed rule language. It will not.

   Also, we can reasonably state now that EPA does not have a clear understanding of when it would be prepared to receive the first, basic components of compliance monitoring data collected by states. The agency cannot establish a regulatory requirement with a data reporting element that, in order to function, requires implementation of a data repository by EPA that it has repeatedly failed to develop. Moreover, EPA is not yet in a position where it can articulate the burden associated with the rule requirements, because it does not understand the full cost of even the first step in the transfer of basic compliance monitoring data. The cost of this provision stated in this rulemaking record is fundamentally flawed because EPA did not prepare a cost estimate based on the rule provision, but rather anticipated costs associated with a relatively limited component of implementing the provision.

3. EPA states that the purpose of collecting records kept by the State under § 142.14 is to:

   a. Strengthen EPA oversight

   b. Provide public access to compliance monitoring data

   c. Leverage public access to data to improve water system accountability

   To achieve any of these three objectives the agency will need curated, accurate data that is fit for each purpose. Fundamental to both oversight and transparency, are presenting the correct data to answer the questions being posed, and clearly conveying the

[4] EPA. 2023. March 2023 DW-SFTIES Development Excel Dashboard v2.

relevance and limitations of the available data to those questions. EPA cannot assume state records, records that were collected to meet specific needs, are ready for use for other purposes. Poorly curated data or misapplication of available data is likely to reduce public confidence in EPA, state primacy agencies, and water systems. Importantly, EPA cannot control how others use or misuse publicly available data. Consequently, it will need procedures to:

a. Screen data for security considerations

b. Organize and present publicly available data in a manner that makes deceptive uses challenging

c. Incorporate feedback from state primacy agencies and water systems to correct EPA presentation of compliance data

It is not sound policy for EPA to require data submittal by states without a clear framework not only for collection retention of the required reporting but also a well-thought through plan for management and use of the information collected. Not only is developing a cohesive approach to achieving its objectives sound fiduciary practice, but it is also fundamental to justifying a new primacy burden.

4. EPA does not appear to recognize that once reported, data in the agency's control is subject to Freedom of Information Collection Act (FOIA) requests. Absent data management policies the collected information could be released through FOIA without adequate quality control or security safeguards. Poor data security practice by EPA could place the public at risk.

5. States and EPA could also find themselves subject to petitions regarding primacy decisions based on inadequately curated information. Transparency is an important and necessary goal, but the presence of an unmanaged collection of information creates more opportunity for misinformed second guessing of primacy decisions, including through legal petitions, than useful insights based upon the unmanaged data.

EPA has articulated thoughtful goals for the use of compliance monitoring data. With the advent of modern data systems there is the opportunity to present SDWA compliance data in a cohesive national framework. Doing so will require considerably more preparation than EPA has demonstrated in this rulemaking record. EPA would be ill-advised to proceed with this provision in the current rulemaking in the absence of a cohesive, adequately funded approach to managing the records it collects. To develop a cohesive approach, it will be essential that EPA:

- Complete development of the next generation of the Safe Drinking Water Act Information System, such that it has a working system within a voluntary state participation framework. Learn from that experience before instituting a mandatory duty.

- Engage a broad set of stakeholders including AWWA, the National League of Cities (NLC), U.S. Conference of Mayors (USCM), state primacy agencies, and commercial laboratories, in

developing a prioritized list of data system objectives targeting EPA's objectives (particularly, strengthen EPA oversight and providing public access to compliance monitoring data) and selecting the subset of information primacy agencies would report to meet those objectives.

- If necessary, develop a sound information collection request (ICR) with adequate substantiation of associated financial and personnel hour burden.
- As necessary propose a rule that would assure information collection consistent with the prioritized objectives and associated ICR.

The cost of postcard delivery is likely greater than contemplated by EPA.

In EPA's analysis of economic impacts (EIA)[5], the single largest cost of this proposal is the postage associated with sending postcards for the required second CCR by systems serving 10,000 or greater. On page 42 of that economic analysis, EPA expects the postage of each postcard to be $0.20 referring to it not by a USPS service rate, but as the "current rate for bulk post cards." It is unclear what USPS service EPA is referring to and how it arrived at that value. Using the U.S. Postal Service's price list Notice 123 as of January 22, 2023[6], there are a numerous different postage rates that apply to postcards, with some more than doubling EPA's assumed price. The only service that would meet EPA's assumption is known as "Every Door Direct Mail" (EDDM). EDDM is a useful service in some circumstances, but it can only be used to deliver identical materials to every delivery location within a postal route. If postal delivery routes do not align precisely with CWS service boundaries, EDDM will result in some households receiving notices even though they are not served by the CWS, some households not receiving notices when they should, or a combination of the two. The EDDM cost cannot be used as a drop in for "current rate for bulk post cards." A more accurate assumption of the cost would be to use the "First Class Commercial Postcard Machinable Presorted" price of $0.394 (if EPA includes the cost of presorting postcards), which allows for addressing to individual households, or the "Single Piece – Postcard" price of $0.48 which does not require advanced presorting and thus does not require the cost of presorting. EPA also appears to be modeling the future costs of postage exclusively using current postal rates, rather than recognizing that the cost of postage can and does frequently increase.

EPA must provide pre-approved translations of required language to address unclear and high burden translation and accommodation requirements.

In order for the translation requirements in the proposed rule to be successful, achieving compliance must be attainable in a reasonable manner. To make the best use of limited translation services, EPA should establish and maintain pre-approved translations of required language in as many languages as a CWS could be expected to need to translate a CCR into. Given that EPA's required language tends to be technical and complex, culturally appropriate translations will be difficult at best, and this is most effectively and equitably accomplished using federal resources rather than through the independent

[5] Environmental Protection Agency. 2023 March. Analysis of the Economic Impacts of the Proposed Consumer Confidence Reports Rule Revisions. 810-P-23-001. Accessed 2023 May 19. https://www.regulations.gov/document/EPA-HQ-OW-2022-0260-0030.
[6] United States Postal Service. 2023 January 22. Notice 123: Price List. Accessed 2023 May 19. https://pe.usps.com/cpim/ftp/manuals/dmm300/notice123.pdf.

efforts of thousands of individual water systems, the more than fifty state, territorial, and tribal primacy agencies, and ten EPA regions.

As seen in

Table 1, there are several key advantages to having required text pre-translated by EPA, which include accuracy, equity, and cost.

Table 1. Comparison of pre-translated versus locally translated mandatory CCR language

Attribute	EPA Pre-approved Translation	Local Translations
Number of translations needed (per language) of identical text	1	100's to 1,000's
Accuracy of translation	High (if performed well)	Likely variable
Equity	High (if performed well)	Likely variable
Relative cost	Low	Very high
Regulatory Compliance	Yes	Likely variable
State resources needed to validate	Little to none	Considerable
Time needed for CWS or state to translate	Little to none	Days to weeks

The relationship among the various translation requirements is unclear and the Economic Analysis for the rule does not align to them.

Proposed §141.153(h)(3), described in 88 FR 20112, requires that CWS provide a notice that a report is important as well as contact information "in communities with a large proportion of consumers with limited English proficiency." This provision is nearly identical to the current requirements of §141.153(h)(3) just with the term "non-English speaking residents" instead of "consumers with limited English proficiency." Thus, this requirement is not new or significantly updated other than terminology. However, the proposed rule adds two subsections §141.153(h)(3)(i). These new subsections link providing meaningful access to the CWS or primacy agency being the recipient of federal assistance. Also, §141.153(h)(3)(ii) requires primacy agencies to provide translation support on behalf of "systems unable to provide translation support."

The relationship amongst these three provisions is confusing and unclear. §141.153(h)(3) itself applies only to "communities with a large proportion of consumers with limited English proficiency." There is no specific threshold associated with "large proportion." Thus, the subsection §141.153(h)(3)(i) would logically only apply to those same communities as well. However, it is not clear what new requirement subsection (i) adds on top of the requirements already required in §141.153(h)(3). Likewise, §141.153(h)(3)(ii) would only apply to those communities meeting the criteria of §141.153(h)(3), but this differs considerably from the discussion about the rule, which implies these meaningful access

requirements would apply to all recipients of federal assistance (including primacy agencies) regardless of whether §141.153(h)(3) itself applies.

EPA's analysis of economic impacts (EIA)[7] describes the costs of translations and meaningful access to limited English proficiency customers. Table 15 of the EIA describes the number of CWS that will need to translate the CCR and is based upon American Community Survey areas with at least 5% of the population reporting limited English Proficiency. Because the EIA only covers new requirements, either §141.153(h)(3)(i) or §141.153(h)(3)(ii) must impose new requirements not already captured in §141.153(h)(3), but based upon the information provided by EPA it is not clear how they came to that conclusion.

Additionally, EPA's economic assessment assumes that each CWS that translates a CCR will do so into only one other language. This incorrectly assumes that "communities with a large proportion of consumers with limited English proficiency" in each community all speak the same language other than English. EPA provides no justification for this assumption, and it undermines EPA's concepts of providing meaningful access in all necessary languages.

There is also misalignment of the rule requirements (which set no specific threshold for providing translations or other assistance) and the EIA (which uses a 5% threshold) appears to stem at least in part from an assumption that "meaningful access" to a CCR for customers in other languages can occur through brief telephone conversations (15 to 30 minutes) with customers requesting support (see EIA , Table 16) and that many CWS will choose to provide support this way, or primacy agencies will provide this support on behalf of CWS, instead of providing a translated copy. As detailed technical documents containing extensive technical material required by EPA, translating a CCR in real-time is not likely to be feasible even by a skilled translator unless the translator has been briefed on and become familiarized with the nature of the CCR, the types of information contained within the CCR, and key terms and phrases and their closest equivalents in the target language in advance. There does not appear to be any consideration for the cost, time, and complexity of setting up and maintaining such a system. Additionally, EPA has elsewhere explicitly stated that CCRs cannot be provided by phone "because the entire content of the CCR cannot be provided in the telephone call" (88 FR 20102).

EPA must rethink its requirements, the relationships among them and accurately assess the costs and lay out the requirements clearly so that proper resources can be allocated, and appropriate programs prepared to address them. In effect, EPA is not yet prepared to prepare a credible estimate of the burdens that OIRA is tasked with evaluating.

Additionally, in 88 FR 20113, the requirement is described as "systems must make a reasonable effort to provide the reports in an accessible format to anyone who requests an accommodation." However, there is no further explanation as to what constitutes a "reasonable effort" nor any discussion as to what a reasonable request is or how that is balanced against potentially causing an undue hardship on the CWS.

[7] Environmental Protection Agency. 2023 March. Analysis of the Economic Impacts of the Proposed Consumer Confidence Reports Rule Revisions. 810-P-23-001. Accessed 2023 May 19. https://www.regulations.gov/document/EPA-HQ-OW-2022-0260-0030.

In order to effectively implement these requirements, EPA must conduct this analysis and provide sufficient information for CWSs, primacy agencies, and EPA regions to effectively implement them.

EPA's "Don't say safe" rule provisions undermine EPA's authority and the entire Safe Drinking Water Act.
On 88 FR 20100, the preamble describes § 141.151(g) of the proposed rule as precluding describing drinking water as safe (bold added for emphasis):

> "EPA is proposing to prohibit water systems from including false or misleading statements in their CCRs. CCRs are intended to provide consumers, especially those with special health needs, with information they can use to make informed decisions regarding their drinking water. To make informed decisions, consumers need accurate, nuanced reports. Feedback received during the stakeholder engagement for this proposed rule indicated concern that some CCRs have misleading images and statements about the safety of the water that may not be supported by the contaminant data or other information in the reports. **For example, stating the water is "safe" may not accurately reflect the safety of the water** for sensitive populations, such as people with weakened immune systems, potential lead in drinking water exposure, or other inherent uncertainties and variabilities in the system, such as the potential presence of unregulated contaminants or fluctuation in water chemistry. EPA believes that consumers would benefit from messages tailored to the system and community to reflect local circumstances, that also acknowledge that water quality may fluctuate within the system, or may impact some populations differently, for example, children, immunocompromised, pregnant people, etc. The agency plans to support states and community water systems with tools and resources, such as templates and example language that improve risk communication without misleading consumers or undermining the public trust in drinking water."

This "don't say safe" rule provision, which does not originate from the National Drinking Water Advisory Council (NDWAC) working group recommendations, amounts to an implicit ban on referring to drinking water as safe or even making meaningful comment on safety. This is contrary to nearly 150 years of continuous improvement in drinking water treatment including the entire history of the SDWA itself. Over that course of time, there have been massive accomplishments in drinking water safety including nearly eliminating many forms of waterborne disease and reducing risks through major Safe Drinking Water Act regulations addressing topics such as surface water and groundwater treatment, disinfection and disinfection byproducts, arsenic, lead, nitrates, radionuclides, and scores of others.

EPA is charged with ensuring the safety of drinking water through the regulation of CWS and oversight of primacy through the aptly named Safe Drinking Water Act. Congressional intent that SDWA is intended to assist in the provision of *safe* drinking water is implied in the act's name, as well as other requirements of the Act. As examples (bold added for emphasis):

- 42 USC 330g-2[8] requires for primacy that primacy agencies have "… adopted and can implement an adequate plan for the **provision of safe drinking water** under emergency circumstances…" If it is not possible to define safe drinking water, then it is not possible for any primacy agency, including EPA where applicable, to meet the requirements of 42 USC 330g-2

- 42 USC 200i-2 requires assessments of vulnerabilities that may "disrupt the ability of the system to **provide a safe and reliable supply of drinking water**." Similar phrases are repeated throughout this section of the act. If drinking water cannot be clearly described as being safe, it is not possible for primacy agencies CWSs to comply with these provisions

- 42 USC 300j-1 authorizes the Administrator to conduct "research, technical assistance, information [and] training of personnel" for the purposes of "the provision of a **dependably safe supply of drinking water**" one of the provisions within being "improved methods for providing a **dependably safe supply of drinking water**." If drinking water cannot be considered safe, then research, technical assistance, information [and] training of personnel" on a "dependably safe supply of drinking water" would not be possible.

- 42 USC 300j-3 includes provisions for demonstration projects for "**providing a dependably safe supply of drinking water** to the public" as well as "technologies for the **provision of safe water to the public for drinking.**" Similar text exists in several subjections of this provision.

- 42 USC 300j-4 includes provisions related to records and inspections in which EPA may provide notices to "the State agency charged with **responsibility for safe drinking water**" about inspections. If drinking water cannot be considered safe, then it is not possible to have States be charged with responsibility for it.

- 42 USC 300j-15 provides for assistance to colonias, with one of the three requirements of subsection (a)(2) being that the community "**lacks a safe drinking water supply** or adequate facilities for the **provision of safe drinking water** for human consumption." If no water supply can be defined as safe, then this provision would have no meaning, and Congress would not have included it.

These are only examples of direct conflicts with the Safe Drinking Water Act itself (more specifically Chapter 6a of Title 42 of the U.S. Code). To ban reference to safety with the CCR is to directly undermine the entire regulatory structure that EPA and primacy agencies have developed since the enactment of SDWA in 1974 and subsequent amendments. If the rules that exist under the Safe Drinking Water Act do not exist for the purpose of ensuring safety, why do they exist at all?

EPA's "Don't say safe" rule provisions are contrary to other federal policy and resources.

Other federal policies and resources point towards the safety of water. For example, there are many resources from the Centers for Disease Control and Prevention (CDC) that will be in conflict with this provision. As of the date of submission of the comment, the home page for public water systems for the CDC begins with "the United States is fortunate to have **one of the safest** public drinking water supplies in

[8] United States Code, Title 42 – The Public Health and Welfare, Chapter 6A – Public Health Service. Accessed 19 May 2023. https://www.govinfo.gov/content/pkg/USCODE-2013-title42/html/USCODE-2013-title42-chap6A.htm.

the world"[9] (emphasis added). Within the CDC materials is CDC Advisory Toolbox which has numerous communications with discussions about making water safe to drink in an emergency.[10] It is likely that an extensive review of other federal programs would uncover many other examples, hence the need for interagency review.

Numerous federal agencies recognize that "safe" is not the absence of all risk. The following is a small subset of these applications:

- Every mile driven in a car carries a risk of injury or death due to accidents. Yet, the National Highway and Traffic Safety Administration issues safety ratings for automobiles[11] and auto manufacturers routinely market their products as safe.
- Every pharmaceutical product and medical device carries risk of side effects or being ineffective for any particular patient. These can often include serious side effects, yet the Food and Drug Administration (FDA) assesses the safety of those products and they are routinely used and considered safe[12]. This includes COVID-19 vaccines which have been extensively described by federal agencies as safe despite some known but small risks such as allergy.
- Every type of workplace carries known occupational risks, yet the Occupational Safety and Health Administration (OSHA) issues safety standards, and workplaces with excellent safety histories routinely advertise this.[13]

If any of these sectors were prohibited from referring to their products and services as safe despite regulatory oversight, it is likely that the public would lose confidence in the products and services, and in the regulators as well.

Conclusion

AWWA appreciates the opportunity to comment the information collection and other important procedural and administrative aspects of this rule. We look forward to opportunities to engage with OIRA and EPA through this regulatory process. If you have any questions regarding this correspondence or if AWWA can be of assistance in some other way, please contact Adam Carpenter at (202)326-6126 or acarpenter@awwa.org.

[9] Centers for Disease Control and Prevention. 2021 March 30. Public Water Systems. Accessed 19 May 2023. https://www.cdc.gov/healthywater/drinking/public/index.html.
[10] U.S. Department of Health and Human Services, the Centers for Disease Control and Prevention, the U.S. Environmental Protection Agency, and the American Water Works Association. 2016. Drinking Water Advisory Communication Toolbox. https://www.cdc.gov/healthywater/emergency/pdf/DWACT-2016.pdf.
[11] National Highway Traffic Safety Administration (NHTSA). N.D. Ratings. Accessed 19 May 2023. https://www.nhtsa.gov/ratings.
[12] U.S. Food & Drug Administration. N.D. Safety. Accessed 19 May 2023. https://www.fda.gov/safety.
[13] United States Department of Labor. N.D. Law and Regulations. Accessed 19 May 2023. https://www.osha.gov/laws-regs.

Best regards,

FOR THE AMERICAN WATER WORKS ASSOCIATION

G. Tracy Mehan, III
Executive Director, Government Affairs

Who is AWWA?

The American Water Works Association (AWWA) is an international, nonprofit, scientific and educational society dedicated to providing total water solutions assuring the effective management of water. Founded in 1881, the Association is the largest organization of water supply professionals in the world. Our membership includes more than 4,500 utilities that supply roughly 80 percent of the nation's drinking water and treat almost half of the nation's wastewater. Our 50,000-plus total membership represents the full spectrum of the water community: public water and wastewater systems, environmental advocates, scientists, academicians, and others who hold a genuine interest in water, our most important resource. AWWA unites the diverse water community to advance public health, safety, the economy, and the environment.