



June 28, 2024

Ms. Jen Easterly  
Director  
Cybersecurity and Infrastructure Security Agency (CISA)  
Department of Homeland Security  
Washington, DC 20528

Via Electronic Submission

**Re: Comments on the Cybersecurity and Infrastructure Security Agency (CISA) Proposed Rule - Cyber Incident Reporting for Critical Infrastructure Act (CIRCIA) Reporting Requirements, [89 FR 23644](#), CISA-2022-0010.**

Dear Director Easterly,

The American Water Works Association (AWWA), the Association of Metropolitan Water Agencies (AMWA), the National Association of Clean Water Agencies (NACWA), the Water Environment Federation (WEF), and The National Rural Water Association (NRWA) are filing comments on the proposed rule for Cyber Incident Reporting for Critical Infrastructure Act (CIRCIA) Reporting Requirements. Our members provide essential drinking water and wastewater services to communities nationwide. The majority of these water utilities are part of municipal government, while some are independent authorities, not-for-profit organizations, or investor-owned utilities.

All of our organizations strongly believe that water utilities have a responsibility to manage cybersecurity threats that may impact the continuity of service to the communities they serve.

We also recognize the need for more consistent reporting of cyber incidents among critical infrastructure sectors and the federal government to facilitate information sharing and development of actionable threat intelligence. However, the significant administrative burden associated with cyber incident reporting, whether voluntary or mandatory, must also be recognized. We therefore ask that CISA clarify which water sector utilities are covered entities under the rule and eliminate duplicative reporting requirements in the rule.

The proposed rule defines a number of critical infrastructure entities as “covered entities,” including one that *“Owns or operates a qualifying community water system or publicly owned treatment works.”* These are specifically defined as an entity that *“owns or operates a community water system, as defined in 42 U.S.C. 300f(15), or a publicly owned treatment works, as defined in 40 CFR 403.3(q), for a population greater than 3,300 people.”* (89 FR 23769).

We have several comments on this definition. First, it should be noted that wastewater systems as defined by 40 CFR 403.3(q) are not all “publicly owned.” A more appropriate term consistent with the terminology of the Clean Water Act would be “treatment works.” Otherwise, the definition as proposed would explicitly exempt privately-owned or operated wastewater systems from coverage.

We also recognize that the population threshold used in this definition is derived from SDWA §1433, consistent with community water systems that are required to submit periodic Risk and Resilience Assessments to U.S. EPA. However, we believe a more appropriate threshold would be the one proposed by CISA to apply to other municipal entities, such as police, fire, and emergency services that serve 50,000 or more persons. The reasoning is that many communities have centralized information technology services that support multiple units of government, including the drinking water and wastewater utility. As proposed, CIRCIA would establish a complicated implementation scheme whereby all of a city’s supported enterprises would be triggered for compliance above 50,000 people, except for drinking water and wastewater systems, which would have to comply once they serve just 3,300 people. For parity and regulatory clarity, it would be most appropriate to apply the Small Business Administration threshold of 50,000 people served to the water sector as it is to other local government-based critical infrastructure enterprises in the proposed rule.

Since the value of threat intelligence often has benefits across multiple sectors, our organizations have actively encouraged water utilities to report incidents and share information via appropriate channels. Because these reports are ongoing, and many water systems already share incident information with state primacy agencies and fusion centers, a significant reporting gap would not be created in the water sector if CIRCIA were only applied to water and wastewater systems serving more than 50,000 people. For example, Virginia requires

public agencies, including water utilities, to report cybersecurity incidents to the Virginia Fusion Intelligence Center within 24 hours of discovery. ([Virginia Code § 2.2-5514](#)).

The Water Information Sharing and Analysis Center, or WaterISAC, has been receiving confidential reports from the water community since 2002. WaterISAC, as a private non-profit, is not subject to public records law. Many in the water community are already accustomed to voluntary reporting to WaterISAC, and these reports are shared in a controlled manner with federal partners, including EPA and CISA. (<https://www.waterisac.org/report-incident>), In addition, some water sector utilities are also subject to the recent Security & Exchange Commission cyber incident disclosure reporting requirements.<sup>1</sup>

Most importantly, our organizations request that CISA redefine “covered entities” in the final rule to include only water systems currently subject to the SEC reporting obligations. This change is appropriate given the language in CIRCIA’s authorizing statute stating that CISA may not enforce CIRCIA’s reporting requirements against “*a State, local, Tribal, or territorial government entity*” (§6 U.S.C. 681d(f)). This is underscored by CISA’s statement that the “proposed rule does not impose an unfunded Federal mandate on state, local, or tribal governments because the proposed reporting requirements are unenforceable against SLTT Government Entities.”

Given the Congressionally directed restriction, the definition of a covered entity in the water sector is conflict with the statutory language that prohibits CISA from enforcing the reporting requirements against public entities. As a result, the rule as proposed is effectively voluntary for publicly owned drinking water and wastewater systems. If implemented as proposed, this will create confusion regarding the reporting obligations of a covered entity. Additionally, given this statutory exclusion, we understand that this proposed rule would be solely enforceable upon privately-owned water utilities. The latter, if investor-owned, are already subject to existing SEC disclosure reporting, which appears to be a recognized alternative in the proposed rule.

We recognize the value of critical infrastructure entities reporting cyber incidents and engaging in information sharing. Therefore, we recommend that CISA demonstrate the value of information sharing by providing a robust mechanism to encourage voluntary cyber incident reporting by all sector members independent of ownership type or enforcement applicability, and providing protection for any information disclosed. Our members will continue to report under existing processes, including state-level obligations. We encourage CISA to continue leveraging the methods and practices currently in place to foster cross-sectoral information sharing through partnerships with different sector ISACs and relevant state agencies.

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<sup>1</sup> Securities and Exchange Commission, Final Rule: Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure. [88 FR 51896](#), August 4, 2023.

We appreciate the opportunity to provide this feedback to CISA on the proposed CIRCIA rule. If you have any questions about these comments, please contact Kaline Gabriel, AMWA Manager of Regulatory and Scientific Affairs ([Gabriel@amwa.net](mailto:Gabriel@amwa.net)), Kevin Morley, AWWA Federal Relations Manager ([kmorley@awwa.org](mailto:kmorley@awwa.org)), Cynthia Finley, NACWA Director of Regulatory Affairs ([cfinley@nacwa.org](mailto:cfinley@nacwa.org)), Lisa McFadden, WEF Senior Director, Water Science and Engineering Center ([lmcfadden@wef.org](mailto:lmcfadden@wef.org)), or John DeGour, NRWA Regulatory Affairs Specialist ([john.degour@nrwa.org](mailto:john.degour@nrwa.org)).

Sincerely,

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American Water Works Association

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**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 4,000 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.*

**Who is AMWA**

*The Association of Metropolitan Water Agencies (AMWA) is an organization of the largest publicly owned drinking water systems in the United States. AMWA's membership serves more than 156 million people – from Alaska to Puerto Rico – with safe drinking water. Member representatives to AMWA are the general managers and CEOs of these large water systems. The association represents the interests of these water systems by working with Congress and federal agencies to ensure federal laws and regulations protect public health and are cost-effective. In the realm of utility management, AMWA provides programs, publications, and services to help water suppliers be more effective, efficient and successful.*

**Who is NACWA**

*The National Association of Clean Water Agencies (NACWA) represents the interests of 350 publicly owned wastewater and stormwater agencies of all sizes across the country. Each day, these public clean water agencies provide the essential service of protecting public health and the environment by managing and treating billions of gallons of our nation's wastewater and stormwater.*

**Who is WEF**

*The Water Environment Federation (WEF) represents the water sector and more than 30,000 individual members and 75 affiliated Member Associations (MAs) representing water quality professionals around the world. Since 1928, WEF and its members have protected public health and the environment. WEF's diverse membership includes scientists, engineers, regulators, academics, utility managers, plant operators, and other professionals. WEF uses this collective knowledge to further a shared goal of improving water quality around the world.*

**Who is NRWA**

*The National Rural Water Association is a non-profit organization dedicated to training, supporting, and promoting the water and wastewater professionals that serve small and rural communities across the country. NRWA provides training and technical assistance through 50 affiliated State Rural Water Associations that currently have over 31,000 utility system members. Rural Water training and technical assistance covers every aspect of operating, managing and financing water and wastewater utilities.*