AMWA statement to OMB on EPA's proposed PFAS NPDWR
February 29, 2024

AMWA submitted comments to EPA on its proposed National Primary Drinking Water Rule for PFAS that included an assessment of EPA's benefit cost analysis. The assessment was contracted by an organization with experience in benefit costs analysis. AMWA supported EPA's regulatory determination to regulate PFOA and PFOS in drinking water, however AMWA disagrees with EPA's choice to place the lion's share of the financial burden of PFAS removal from drinking water on the American public rather than those producing and manufacturing these chemicals. As OMG reviews EPA's final rule package, AMWA urges OMB to consider our comments and the implications they could have for rule compliance and the utility ratepaying public, particularly those in underserved communities around the country.

AMWA would like to highlight three points to OMB regarding EPA's rulemaking. These key points are around:

1. EPA's health effects analysis and exposure of the population to PFAS in drinking water
2. The necessity for a minimum of 5 years for compliance for this rule for utilities undertaking capital construction.
3. The substantial underestimate in EPA's proposal of the costs of this rule, and other concerns about EPA's cost-benefit analysis.

First, with respect to health effects and exposure of the population to PFAS in drinking water, ATSDR (CDC's Agency for Toxic Substances and Disease Registry, specifically the NHANES survey https://www.atsdr.cdc.gov/pfas/health-effects/us-population.html) indicate that since 2002, the production and use of PFOS and PFOA in the United States has declined. Similarly, blood PFOS and PFOA levels have also declined. Specifically, from 1999-2000 to 2017-2018, blood PFOS levels declined by more than 85%. From 1999-2000 to 2017-2018, blood PFOA levels declined by more than 70%.

EPA's analysis rests on an assumption of causality in which "PFOA and PFOS are likely to cause cancer." However, as AMWA's analysis notes (Attachment 1 of AMWA's comment package), there is substantial uncertainty as to whether those associations are causal. EPA must take this uncertainty into account via a quantitative, reproducible uncertainty analysis as required by OMB's Circular A-4.

Other competent health agencies Health Canada (HC), the European Food Safety Agency (EFSA), and the World Health Organization (WHO) have reviewed the same scientific literature as EPA and do not find the epidemiology evidence robust enough to support a causal link between PFOA exposure and cancer and overall have reached different conclusions on the existence and the strength of the associations between PFOS and PFOA exposure and disease. As a result, these agencies, and other countries have come up with regulatory standards at concentrations much higher than EPA's proposal.

EPA's proposed MCLs are significantly lower than every state in the U.S. that has regulated PFOA and PFOS by at least half. Other countries, such as Australia and Japan, as well as the United Kingdom (UK) and European Union (EU), have also approved limits on PFAS in drinking water that are higher than those the EPA has proposed. EPA's proposed limits are still much lower than every one of these.

Second, AMWA is concerned that a three-year compliance timeline (the clock starts with rule promulgation) will not be enough time for many water systems impacted by the proposal to complete capital improvement projects to address PFAS. Although a state or EPA may grant up to a two-year extension, this is on an individual basis as determined by the primacy agency and is not guaranteed.

AMWA members have indicated that a project of this magnitude would take a minimum of five years if this project were the only utility priority and there were no delays in procurement or issues that arise from the supply chain, labor, or permitting and procurement regulation and processes. This is detailed in our comments to EPA (page 18-22). Timelines for these PFAS projects are also provided in comments from AMWA members submitted for this meeting with OMB.

AMWA recommends that EPA provide a blanket two-year extension to the compliance timeline nationwide. The benefits for this approach are many. For example, it could potentially ease the immediate impacts on labor markets (the contractors available to do the work of constructing PFAS treatment at utilities) and supply chains, which have been slowing down project timelines and increasing costs since the pandemic. In addition, this would enable utilities working diligently to be in compliance with the rule to be free of an MCL violation that may occur solely because the completion of the PFAS treatment project was delayed for reasons beyond the utility's control. It will not benefit anyone for utilities in this situation to have a drinking water violation - as this would erode public confidence in drinking water and drive many people, particularly those in our communities least able to afford it to more expensive bottled water, which is regulated less strictly than tap water.

Additionally, EPA could provide guidance to states on when providing an additional three-year exemption is appropriate (bringing the compliance timeline to eight years for large utilities), particularly when a utility is acting diligently to implement treatment, yet constraints out of its control have prevented completion in the five-year period. This is in the best interest of protecting public health.

Finally, Attachment 1 of our comments submitted (the benefit cost analysis) provide data illustrating that EPA vastly underestimated the capital costs of the proposed rule.

EPA's estimates were conducted in 2021 and are based on data before the full effect of inflation and supply chain constraints precipitated by the pandemic took hold. AMWA members have reported price increases from 20-120% since 2021.

Engineering firm Black and Veatch conducted a study using real-world data to assess the economic impact of EPA's proposal. EPA's estimated range of annualized costs is around $770 million to $1.2 billion, the Black & Veatch study assessed the costs of this rulemaking could exceed $3.2 billion annually (i.e., about **four times** EPA's estimates).

The Black & Veatch study (https://www.awwa.org/Portals/0/AWWA/Government/2023030756BVFinalTechnicalMemorandum.pdf?ver=2023-03-14-102450-257) tracks with data that AMWA and AWWA received when surveying its members last year to obtain recent cost data on installed PFAS treatment systems at drinking water treatment plants. On average across the 60 systems that provided actual capital costs for PFAS treatment, EPA's estimate is approximately **three times lower** than reported values.

As noted in our comment letter, EPA's cost estimates for this rule fail to adequately include the social costs of carbon dioxide emissions that will occur due to the elevated energy consumption of water utilities implementing new treatment systems for PFOA and PFOS treatment. Our comment letter includes a complete appendix (Attachment A1) on some of these costs.

In addition, water utilities employing GAC for compliance will see their O&M costs increase significantly - again, our members have information about this in the materials uploaded to OMB's site. O&M costs cannot be offset with federal dollars made available via the Bipartisan Infrastructure Law and State Revolving Funds. Funds from the SRF and BIL can only be used for capital expenditures.