



**ASSOCIATION OF  
METROPOLITAN  
WATER AGENCIES**

**LEADERS IN WATER**

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June 20, 2023

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

*Submitted electronically*

**Re:** Request for Comments on Proposed OMB Circular A-4, “Regulatory Analysis”, Docket No. OMB-2022-0014

Dear Administrator Revesz:

The Association of Metropolitan Water Agencies (AMWA) is pleased to have the opportunity to provide comments on OMB Circular A-4, “Regulatory Analysis.” AMWA is an organization of the largest publicly owned drinking water systems in the United States. Members serve over 100,000 customers and collectively provide clean drinking water to over 160 million people. The association recognized the importance of Circular A-4 as a tool to assess the impacts of proposed federal rulemakings transparently, thoroughly, and consistently. As large public water agencies, AMWA member utilities – and their customers – are at the forefront of bearing the costs of federal regulations that affect water utilities, and we, therefore, have a unique interest in ensuring regulatory analyses, including benefit-cost analyses, are as informative as possible. AMWA appreciates the opportunity to provide the following comments on Circular A-4.

**AMWA wants to highlight the significance of the impacts of this proposed Circular.** While OMB’s draft Circular A-4 describes its logic for setting a 1.7 discount rate, AMWA is concerned about the potential consequences of this change. For the last two decades, proposed federal rulemakings have been analyzed in cost-benefit analyses using a 7 percent discount rate, with a 3 percent discount rate as an option for certain regulatory actions. The draft Circular describes that

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regulators use a discount rate based on the real (inflation-adjusted) rate of return on long-term U.S. government debt. The discount rate OMB currently uses is 7 percent, a long-established and well-documented rate of the return on private capital. Since new regulatory requirements will require firms to shift capital resources from other investments to meet the regulation, OMB – and its independent peer reviewers – determined that the private rate of return is the best measure of the opportunity cost to use as the discount rate. The 3 percent rate, selected 20 years ago, is based on a 30-year average of the inflation-adjusted return on a 10-year Treasury bond at the time. OMB now proposes setting one default discount rate – 1.7 percent – “for all effects from the present through 30 years in the future, rather than a more elaborate discount rate schedule.”<sup>1</sup>

There are potentially many future proposed rulemakings that would show positive net social benefits at a 1.7 percent discount rate but not at a 3 percent discount rate. For example, the social cost of carbon, or the estimated cost of damages from present carbon emissions caused to present and future generations, varies widely under different discount rates<sup>2</sup>. Under a relatively higher discount rate of 5 percent, the social cost of one metric ton of carbon emissions in 2025 is \$17. At a 3 percent discount rate, the social cost is \$56, and under a 2.5 percent discount rate, the cost is \$83. These differences demonstrate that even a small shift to a lower discount rate significantly changes how policymakers evaluate the same information inputted into a benefit-cost analysis.

**The proposed discount rate will underestimate impacts to water utilities.** Our member utilities, which are departments of large local governments and independent public water authorities, cannot borrow at the rates proposed by OMB as the discount rate. For example, in EPA’s recent economic analysis for the proposed National Primary Drinking Water Regulation (NPDWR) for per- and polyfluoroalkyl substances, EPA found that the cost of borrowing for water systems is between 3 and 5 percent. Therefore, using a social discount rate lower than members’ borrowing costs will underestimate the impact to our members and ratepayers. Using a discount rate lower than members’ borrowing costs will also favor policies that achieve future benefits relatively more than the current discount rate. As water utilities, AMWA members have a vested interest in ensuring the reliability of water resources decades into the future and, therefore, deeply understand the value of future benefits that preserve our planet’s resources. At the same time, given the pressing, immediate infrastructure needs of water systems across the nation, it is important that federal discount rates align with the opportunity cost members face when deciding how to invest their limited resources now and in the near future.

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<sup>1</sup> OMB. Proposed OMB Circular No. A-4, “Regulatory Analysis.” <https://www.whitehouse.gov/wp-content/uploads/2023/04/DraftCircularA-4.pdf>

<sup>2</sup> Interagency Working Group (IWG) on the Social Cost of Greenhouse Gases. (February 2021). *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990*. [https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument\\_SocialCostofCarbonMethaneNitrousOxide.pdf?utm\\_source=Sailthru&utm\\_medium=email&utm\\_campaign=Future%20Perfect%20%28Wednesday%29:%204/12/23](https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf?utm_source=Sailthru&utm_medium=email&utm_campaign=Future%20Perfect%20%28Wednesday%29:%204/12/23)

**Timelines of regulatory analyses often do not align with the time stakeholders and the public are given to consider proposed rulemakings.** AMWA most often engages with EPA analyses and finds that EPA's public comment periods often do not allow for full consideration of the information outlined in their impact analyses. OMB could use Circular A-4 as an opportunity to clearly communicate regulatory analyses in a way that allows for a thorough review. Public comment periods are often only 30 to 90 days, requiring stakeholders to review and respond to complex assessments on proposed federal regulations and actions that often took months to years to develop. AMWA encourages OMB to use this revision of Circular A-4 as an opportunity to explore whether such brief response periods for stakeholders to assess and respond to these analyses are truly aligned with federal goals of transparency and purposes for public input.

**This draft updated guidance is a reminder that consistency across regulatory analyses – particularly within the same agencies – is necessary to allow for transparent and objective federal rulemaking.** This draft is an opportunity for OMB to ensure federal agencies follow circular A4 guidance consistently. The draft National Primary Drinking Water Regulation (NPDWR) for per- and polyfluoroalkyl substances<sup>3</sup>, recently released by EPA, demonstrate inconsistencies with Circular A-4 guidance that AMWA would like guidance to prevent in the future.

First, EPA did not follow requirements of OMB Circular A-4 (2003) in developing the PFAS NPDWR, as it did not include a full numerical sensitivity analysis. While EPA's PFAS NPDWR economic analysis (EA) includes a partial uncertainty analysis, under Circular A-4, the agency should have been required to complete a full formal uncertainty analysis because the proposed rule would have an annual economic effect of \$1 billion or more. AMWA believes strongly that the agency should have employed a numerical sensitivity analysis and a probabilistic analysis of large, multiple uncertainties. This analysis is especially important because the uncertainty of specific health effects and limitations outlined in EPA's EA (specifically Table 33, Appendix A) could – and should – be quantified and included in a formal uncertainty analysis. This deviation from 2003 Circular A-4 guidance demonstrates that this new proposal can reiterate that agencies should consistently apply A-4 guidance.

Additionally, EPA has demonstrated inconsistencies in following the same methods in calculating costs of proposed regulations. While EPA did not assess the social cost of carbon in the PFAS NPDWR proposal, the agency estimated social cost of carbon in other rulemakings, specifically its proposed rule for the New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I and Group II

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<sup>3</sup> EPA. (March 29, 2023). PFAS National Primary Drinking Water Regulation Rulemaking. <https://www.federalregister.gov/documents/2023/03/29/2023-05471/pfas-national-primary-drinking-water-regulation-rulemaking>

polymers and Resins Industry (the Hazardous Organics NESHAP, or HON)<sup>4</sup>. In the Regulatory Impact Analysis (RIA), EPA included the social cost of carbon for the electricity required to operate the air pollution controls in its proposal. In EPA's 2023 Proposed Rule: New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units (EGUs), the RIA includes an appendix with economy-wide modeling results. EPA finds that including these additional costs for the social cost of carbon increases the social cost of the rule by 35 percent. AMWA believes Circular A-4 can reiterate that agencies should follow the same methods consistently to estimate costs of a proposed rule; consistent use of the same methods will allow agencies to make well-informed decisions that will consider substantial costs.

**AMWA is concerned that the Circular A-4 proposed discount rate, and benefit cost analysis in general, may not fully capture the costs that regulations have on water utilities – and their ratepayers – early in a regulation's timeline.** For most proposed rulemakings that affect AMWA member utilities, the regulation's costs are largely concentrated at the beginning of the rulemaking's timeline, while the benefits are more evenly spread over time. For example, the proposed PFAS NPDWR will require community water systems (CWSs) to build treatment facilities, create and implement contracts with labs for sampling, and meet the NPDWR within three years of the regulation going into effect. Meeting any proposed regulation will require a large initial capital and operational investment. Benefit-cost analyses often compare annualized benefits and costs, assuming both are equally spread over time, which is not how water utilities experience the capital investments required to implement federal regulations.

Additionally, full regulatory analysis requires incorporating further considerations than those described in Circular A-4. For example, benefit-cost analysis does not necessarily require analyzing the impacts of a regulation across different U.S. community populations. Main concerns for water utility leaders are how any costs will continue to drive costs of water upward, how rates to cover the costs of a rule will be spread across different households in their community, and whether there are legal or governance hurdles to implementing rules. In the final Circular A-4, OMB could encourage federal agencies to assess the costs of implementing a regulation more thoughtfully in its early stages by considering costs and benefits on an annualized, or otherwise time-segmented intervals, basis as they are experienced in the real-world rather than considering benefits and costs cumulatively.

AMWA thanks OMB for consideration of our comments. AMWA is concerned about the implications of the changes in this proposed rulemaking and cautions that elements of the proposal do not accurately reflect the impacts of regulations on our members in regulatory analyses. If you

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<sup>4</sup> EPA. (May 8, 2023). New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule. [https://www.epa.gov/system/files/documents/2023-05/FRL-8536-02-OAR%2011IEGU%20NPRM%2020230504\\_Admin.pdf](https://www.epa.gov/system/files/documents/2023-05/FRL-8536-02-OAR%2011IEGU%20NPRM%2020230504_Admin.pdf)

Administrator Richard L. Revesz

June 6, 2023

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have any questions about these comments, please contact Jessica Evans, AMWA's Manager of Government Affairs and Sustainability Policy at [evans@amwa.net](mailto:evans@amwa.net).

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Dobbins". The signature is fluid and cursive, with a prominent initial "T" and a long, sweeping underline.

Thomas Dobbins  
Chief Executive Officer

cc: Shalanda D. Young, Director, OMB